FEDERAL TAX RETURN PRIVACY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

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CONTENTS

APPENDIX A

APPENDIX B

FEDERAL TAX RETURN PRIVACY

MONDAY, APRIL 21, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE, OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2221, Dirksen Senate Office Building, Senator Floyd Haskell, presiding.

Present: Senators Talmadge, Byrd, Jr., of Virginia, Haskell, and Dole.

Senator HASKELL. The Subcommittee on the Administration of the Internal Revenue Code will be in order.

I have a short opening statement which I will place in the record at this point.

[The statement follows:]

OPENING STATEMENT OF SENATOR FLOYD K. HASKELL

This is the first public hearing of the Subcommittee on the Administration of the Internal Revenue Code. Our function is to be that of oversight of the administration of the tax laws by the Internal Revenue Service—an agency which touches the lives of nearly every American citizen.

It is appropriate, I think, that we begin our work by studying the precise extent to which the agency touches those lives. Our inquiry today is concerned with the subject of taxpayer privacy: we are here attempting to discover what the Congress needs to do in order to assure that the IRS not stray beyond the proper revenue raising parameters of its statutory obligations.

Our Constitution never mentions the word "privacy": it is, however so replete with explicit protections of the citizenry, their homes and personal possessions that the right "to be left alone", as Justice Brandeis described it, has long been properly recognized in this nation.

The importance of that right cannot be overstated. As government, its functions and its awesome powers grow, so too grows the need to be vigilant against the overstepping of those functions and the abuse of those powers. And no agency of national government is at once so vital to our federal system that its integrity must be beyond question while so pervasive in its contact with the people that the potential for abuse is ever-present.

We have seen that abuse in what we have come to call Watergate. It is not my intention, nor that I'm sure of anyone on this Subcommittee to rehash what is on the public record with respect to the Watergate abuses of the Internal Revenue Service. To the extent that we determine that record to be incomplete further investigation by this Subcommittee, I can assure you, will ensue. In order to facilitate our moving on from the public record which has been established, I am appending to my statement a summation of the principal Watergate evidence with respect to the IRS. This material illustrates the many types of abuse that did take place and against which it is our rule to protect the revenue system in the future.

Although not a catalyst to these hearings, there have been in the last several weeks, two documentary television shows—one produced by the ABC network, the other by the NBC network—which go, in part, right to the heart of the subject we are discussing today. Charges have been made in these shows, as well as

in a number of investigative newspaper reports regarding abuses of the principle of taxpayer privacy both in the past and at present. I intend to include transcripts of these shows, as well as the newspaper clippings I refer to, in the record of these hearings at an appropriate point. More importantly, I promise to get to the bottom of these charges insofar as they relate to the work of this Subcommittee.

We shall begin, then, by hearing our first witness, the Commissioner of the Internal Revenue Service, Mr. Donald Alexander. Mr. Alexander will be addressing himself to disclosure in its broadest sense—both with respect to the disclosure of tax returns and return information and with respect to the publication of private letter rulings.

Senator HASKELL. The series of hearings that we are starting today deal with the privacy and confidentiality of income tax returns. As we all know the operations of the Internal Revenue Service touch the lives of almost every American citizen, and as we all probably also know, the Internal Revenue Service has unprecedented powers which go far beyond those of other investigatory agencies. It is appropriate that we start these hearings by finding out who has access to tax returns, whether they be State government, Federal agencies, public individuals and, possibly, private individuals.

The Constitution of the United States, of course, never mentions the word "privacy." However, the Constitution is replete with explicit protections of the citizenry, their homes, and their personal possessions, and "The right to be left alone," as Justice Brandeis termed it, has long been recognized. And, the importance of that right cannot be overstated.

We have heard of abuses of the Internal Revenue Service in other committees, particularly the committee which Senator Talmadge of Georgia sat on.

It is alleged—and this is something we will go into—that tax returns have, for example, shown up in the files of private detective agencies, of insurance adjusters, and on one occasion, I am informed, bundles of them appeared in county assessor records. Obviously, citizens, when they file returns, do not expect that this will happen. They feel that the return is between them and the Government. The private information filed is filed under compulsion by the powers of the U.S. Government, and it is certainly my feeling that it is entirely inappropriate for these disclosures to take place.

Recently, there has been a public discussion of the powers of the Internal Revenue Service and possible abuses thereof, dealing with not only the subject matter of these hearings, but with other subject matters. Two national networks had programs on this subject, and I intend to include the transcript of these programs to be inserted in the record and also certain newspaper reports dealing with other abuses of the IRS.[1]

The Senator from Georgia, when we were sitting in the other room, mentioned that the return of the junior Senator from Georgia showed up in a newspaper. These things are entirely improper, and I personally, and I am sure the committee intends to get to the bottom of this to the end that these returns be kept confidential, and the right of citizens of the United States to privacy be protected.

I wonder if the Senator from Georgia has a statement?

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[1] See appendix A of this volume, p. 251.

Senator TALMADGE. I think the chairman stated the question very well. I think all aspects of this matter need looking into, and we can make decisions as the facts develop.

Senator HASKELL. Senator Dole?

Senator DOLE. Well, I would only say I am pleased that the chairman has called the hearings. I do not want to impose upon the time of the witnesses, but there have been abuses with respect to disclosure of tax returns, how they are made accessible and what agencies have access to them.

I mention another example. In our State of Kansas, we are required to send our Federal return with our State return, and I am not certain that confidentiality is the same as it may be in other areas. I also understand there is a difference in being a public figure than others, and there seems to be a great rush by many in public office to publish their own tax returns, which is certainly a right they have, and it may be even more present in the future, but I think we are talking about the taxpayer now, the nonpublic-person taxpayer, and his right to privacy and confidentiality, and I am pleased, of course, that President Ford has already recognized the need for this confidentiality, where, by Executive order, now it takes a written authorization by the President for the White House to gain any access to returns, and then they must designate the people in the White House who have a right to review those returns.

And I think this in itself indicated the President's resolve to prevent recurrence of recent political abuses, so I am pleased to be a member of this subcommittee, and I thank the chairman for calling the hearing.

Senator HASKELL. Senator Byrd?

Senator BYRD. I think the chairman's statement is an excellent one, and it puts the problem in focus. I have no additional statement.

Senator HASKELL. Thank you, Senator.

We will place the press release announcing the hearings in this record at this point, and then we will be privileged to hear from the Commissioner of Internal Revenue, the Honorable Donald Alexander.

[The press release follows:]

PRESS RELEASE

FOR IMMEDIATE RELEASE
April 9, 1975

COMMITTEE ON FINANCE
UNITED STATES SENATE
2227 Dirksen Senate Office Bldg.

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE ANNOUNCES HEARINGS ON FEDERAL TAX RETURN PRIVACY

The Honorable Floyd K. Haskell (D.-Colorado) announced today that the Subcommittee on Administration of the Internal Revenue Code will hold hearings April 21, 1975, on Federal tax return privacy.

The hearings will be held in Room 2221, Dirksen Senate Office Building, starting at 10:00 A. M. Haskell, Subcommittee Chairman, said the leadoff witness will be Internal Revenue Commissioner Donald C. Alexander.

"One of the sadder lessons of the Watergate affair is that the confidentiality of individual tax returns is a myth," Haskell said. "The political abuse of tax returns and tax information has undermined the taxpayer confidence so essential to the administration of our tax laws.

"We hope during these hearings to determine whether action to prevent disclosure of tax returns is necessary to bolster that confidence, and what is needed to protect the legitimate privacy of individual taxpayers."

Starting with Commissioner Alexander, the Subcommittee will hear a series of Administration witnesses who will explain present procedures for tax return disclosure and their views on the need for continued access to such information. Officials of the Commerce and Justice Departments and State governments will also testify. Additional hearings to give all other interested persons a chance to testify on the subject will also be held.

Haskell said the Subcommittee will explore a related issue at the April 21 hearings, publication of the so-called "private letter rulings" by the IRS. At the request of a taxpayer, the Service will rule whether or not a proposed transaction will result in favorable tax treatment. Other taxpayers are denied access to the estimated 500,000 such rulings the IRS has made, and there is always the possibility that separate requests may yield different rulings, even for similar situations, the Senator said.

Requests to Testify. -- Persons desiring to testify during these hearings must make their request to testify to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D. C. 20510, not later than April 21, 1975. Witnesses will be notified as soon as possible after this cutoff date as to when they are scheduled to appear. Once the witness has been advised of the date of his appearance, it will not be possible for this date to be changed. If for some reason the witness is unable to appear on the date scheduled, he may file a written statement for the record of the hearing in lieu of a personal appearance.

Consolidated Testimony. -- Senator Haskell also stated that the Subcommittee urges all witnesses who have a common position or the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. Senator Haskell urged very strongly that all witnesses exert a maximum effort, taking into account the limited advanced notice, to consolidate and coordinate their statements.

Legislative Reorganization Act. -- In this respect, he observed that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Senator Haskell stated that in light of this statute and in view of the large number of witnesses who desire to appear before the Subcommittee in the limited time available for the hearing, all witnesses who are scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 50 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Subcommittee, but are to confine their ten-minute oral presentations, to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for oral presentation.

Written Statements. -- Persons not scheduled to present oral testimony and others who desire to present their views to the Subcommittee are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D. C. 20510.

Senator HASKELL. Commissioner, would you proceed however you wish to proceed, and would you introduce your guests on the panel?

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE, ACCOMPANIED BY MEADE WHITAKER, CHIEF COUNSEL, INTERNAL REVENUE SERVICE; LAWRENCE B. GIBBS, ASSISTANT COMMISSIONER, TECHNICAL; BURKE WILLSEY, ASSISTANT TO THE COMMISSIONER; CHARLES GIBB, CHIEF, DISCLOSURE STAFF, COMPLIANCE; HAROLD FLANAGAN, CHIEF, DISCLOSURE DIVISION, CHIEF COUNSEL'S OFFICE; DAVID DICKINSON, TECHNICAL ADVISER TO THE CHIEF COUNSEL; AND FRANK MALANGA, PLANNING AND RESEARCH DIVISION

Mr. ALEXANDER. Thank you, Mr. Chairman.

We have no prepared statement. I would like to introduce those with me.

On my immediate left is Meade Whitaker, Chief Counsel of the Internal Revenue Service.

On my immediate right is Lawrence B. Gibbs, Assistant Commissioner, Technical.

Behind Mr. Gibbs is Burke Willsey, my assistant.

Next to Mr. Willsey is Mr. Charles Gibb, the Chief of our Disclosure Staff in our compliance function.

Next to Mr. Gibb, and almost immediately behind me is Mr. Harold Flanagan, the Director of the Disclosure Division in the Chief Counsel's Office.

Next to Mr. Flanagan is Mr. David Dickinson, Technical Advisor to the Chief Counsel.

And finally, Mr. Frank Malanga, of our Planning and Research function.

We welcome these hearings and we welcome successive hearings on other important topics of tax administration by the subcommittee charged with oversight functions. It is indeed a very important issue for tax administration and for consideration by the subcommittee to see whether the current provisions of tax law are sufficient to safeguard the vital rights of taxpayers' privacy.

The Internal Revenue Service receives more information from more people about more private affairs than any other agency in the U.S. Government, and it has a duty—a legal duty, a moral duty, and a sound administrative duty—to guard this gold mine of information that it receives. It has a duty also to take into account competing needs—the needs of other departments, of those charged with law enforcement responsibilities, of our lawyers who litigate tax cases for us in the Department of Justice for tax returns and tax return information; the needs of the Department of Commerce for the statistical information gained from tax returns which is used for census purposes and for determining where the economy is and the direction in which the economy is going.

We need to reconcile these competing needs, and in reconciling these needs, the position that I have taken, my personal position, is fairly well described in a statement which I made on August 3, 1973, to a subcommittee of the House Committee on Government Operations, in which I suggested that we have a basic problem of balancing two competing interests, the right of the taxpayer to privacy against the need of the requesting person or agency to information necessary to

the fulfillment of its function, but in striking this balance, Congress might wish to impose a heavy burden upon the entities seeking tax information to show that the information could not be acquired elsewhere and that the information was really necessary to the function of the particular entity.

Under present law a large number of departments and people can receive tax returns and tax return information for a large number of purposes, and tax returns are declared to be public unless otherwise provided. We suggest, as we have since 1973, that the legislative opposite would be better, that tax returns should be private and confidential unless otherwise provided.

Senator Bennett, in the last Congress, introduced S. 4116, which embodied Secretary Simon's request for tightening up the law with regard to the privacy of tax returns. This legislation, we think, represents a good starting point for consideration by the Congress.

Mr. Chairman, we have taken some administrative steps in this direction. We have changed our treaties with the States. Senator Dole mentioned a problem that we have, the problem of the wraparound return and, Senator Haskell, you mentioned that tax returns sometimes manage to get published in the papers. That is of great concern to us. It is of great concern to us to see to it that leaks do not come from the Internal Revenue Service and that the Internal Revenue Service complies with its legal and its moral obligation to safeguard the privacy of information submitted to us. There is not much we can do in the case of a wraparound return, where the Federal return is a part of the State return and where the agency charged with the administration of a particular State tax law may not be able to have, or be able to maintain, the same safeguards that we do our best to insist upon.

This is one of our problems. How do we get at this problem? Well, what we can do is tighten up the treaties that we have with all the States except Texas and Nevada, and we have so tightened up. We have a new model treaty, which I would like to submit for the record, Mr. Chairman, and point out the distances between the present treaty and the former treaty.

Senator HASKELL. It would be very helpful.

[The material referred to follows:]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

(S) R.C. BLANKENSHIP.

REVISED MODEL AGREEMENT FOR USE IN NEGOTIATING FEDERAL-STATE AGREEMENTS

Attached is a copy of the revised Model Agreement on Coordination of Tax Administration. This revised model was recently transmitted to IRS field offices for use in negotiating new or updating existing Federal-State agreements.

Differences between this revised model and the old model reflect primarily a tightening up of the language in order to place greater emphasis on the confidentiality of Federal tax return information. In particular, sections 7 and 9 of the old model, relating to limitations on the exchange of tax information and protection of the confidentiality of tax returns, have been restructured and a new section 10, on the termination or modification of the agreement, added.

Additionally, a few other relatively minor changes in the model were made. These, with one exception, are mainly clarifying changes intended to remove any possibility of misinterpretations of the provisions in the agreement. The exception relates to the scope of exchange of tax information, in section 5, which was broadened to include the prospective exchange of information pertaining to energy conservation taxes and the regulation of tax return preparers.

The italic in the attached copy of the revised model, except for the section titles, indicates the revised material.

REVISED MODEL AGREEMENT ON COORDINATION OF TAX ADMINISTRATION—MARCH 1975

The State of [name of State] and the United States Internal Revenue Service, U.S. Department of the Treasury, recognize the mutual benefits to be derived through coordination of their tax administration programs to secure returns, determine tax liability, and effect collection of taxes; and the parties [—updating and renewing their agreement of (date)—] do hereby agree to continue cooperative programs already established and to enter into additional arrangements designed to improve the administration and enforcement of tax laws of their respective jurisdictions. With these objectives, officials of the State, acting under authority vested in or delegated to them to administer State tax laws, and the District Director and other appropriate officials of the Internal Revenue Service will consult from time to time regarding their respective enforcement facilities and problems, and well establish mutually agreeable programs for the exchange of information and assistance.

1. *Basis for Instituting Actions*—This agreement provides the general basis for achieving the stated objectives in the coordination of tax administration and the general nature of the actions to be taken in accordance with these objectives. Specific arrangements to achieve these objectives will be initiated in a manner and at such time as is mutually agreeable to the appropriate State and Internal Revenue Service officials. They shall explore and adopt mutually acceptable techniques and modes of exchange which will "provide the most useful data, at the least possible cost and" *be most beneficial to improved tax administration*, with least possible interruption ~~to their~~ respective operating routines, *and with strict adherence to rules, regulations, and laws for protecting the confidentiality of tax returns and tax return information.* To this end, they will seek to attain the maximum exchange of data by electronic and mechanical means. "Modifications of or supplementations to this agreement which are not of a substantive nature may be made by such officials without consulting higher authority, but proposed changes of a substantive nature will be referred to the Governor and the Commissioner of Internal Revenue."

2. *Inspection of Tax Returns*—This agreement shall constitute the requisite authorization for designated personnel of the Internal Revenue Service to inspect all classes of State tax returns. This agreement shall also constitute the requisite authorization for designated tax personnel of the State to inspect income, estate, gift, employment, excise, and all other classes of Federal tax returns *administered by the Internal Revenue Service* (except returns *the return* relating to—"the tax on wagering, Chapter 36;" the occupational tax on coin-operated devices, Subchapter B of Chapter 36; "and the tax on machine guns and certain other firearms, Chapter 53)," for the purposes of administering State tax laws or for the purpose of furnishing information to local tax officials for use in administering local tax laws.

This authorization shall continue in effect until such time as the Commissioner of Internal Revenue, by written notice to the Governor, provides that such inspection will be permitted only on the basis of periodic applications therefor. The inspection of Federal returns pursuant to this authorization will be for the purpose of administering the following State tax laws: (Give reference to State tax laws.)

As a prerequisite to inspection by State tax personnel of Federal returns or receipt of related information, the Governor agrees to furnish to the District Director(s) of Internal Revenue at _____ a list showing the names official titles, and "if feasible" the social security numbers of all State tax personnel designated by the Governor to inspect Federal tax returns or receive related information. Such list will note whether any State tax personnel so designated are limited to the inspection of certain classes of Federal tax returns or related information. Additions to and deletions from the list will be furnished as they occur. Likewise, information concerning Internal Revenue Service personnel designated to inspect State tax returns or related information shall be furnished to the State in the form and manner requested by the State.

"Before" Federal tax return or taxpayer name and address information may be furnished by State authorities to tax officials of a political subdivision of the State for use in administering the tax laws of such subdivision *only after* the Governor "will request" *has requested and obtained written* authorization

from the Commissioner of Internal Revenue. *Any request for such authorization shall state,*—"stating" the official titles of the local tax officials who will receive the tax return information, *shall indicate* "indicating" the specific data to be furnished, and *shall refer* "referring" to the local tax laws which such officials are charged with administering. *Any such authorization is conditioned on the agreement of* "In this event" the State "agrees" to furnish to local tax officials only such tax return data as is directly pertinent and essential to the administration of the local tax laws, "will exercise diligence to assure that local tax officials take appropriate steps" *to ensure that such local officials establish and enforce adequate safeguards* to prevent unauthorized use or disclosure of such information, and "will" *to* maintain a list of the names of the local tax officials to whom the information is furnished.

3. *Delinquent Returns and Collection of Taxes*—Under such arrangements as may be practicable and feasible, the appropriate State and Internal Revenue Service officials will furnish each other information which will assist in locating the whereabouts, sources of income, employers, or real and personal property of persons whose tax accounts are delinquent. Additionally, they will exchange lists of taxpayers and other information relevant to the identification of persons who have failed to file tax returns.

4. *Cooperative Audits and Audit Adjustments*—Within the framework of available enforcement resources, the appropriate State and Internal Revenue Service officials will develop cooperative return selection and examination programs with the objective of minimum duplicate audit effort, increased Federal and State audit coverage and minimum taxpayer contact "and optimum revenue results." They will furnish each other, in accordance with mutually agreed schedules and routines, information on audit adjustments made by their respective offices, and such other information as will assist in determining final tax liability.

5. *Scope of Exchange*—Other information relevant to the administration of State and Federal taxes may be exchanged, if feasible, under arrangements made by the appropriate State and Federal tax officials. Such information may include, but shall not be limited to, lists, magnetic tapes, transcripts or abstracts pertaining to: (a) taxpayer identity and address, and tax return and related data; (b) tax refunds and rebates; (c) registrations of automobiles, trucks, tractors, and other highway motor vehicles; (d) distributors and suppliers of motor fuels and special fuels; (e) organizations exempt from taxes under State or Federal law and revocation of exempt status; (f) individuals, partnerships and corporations engaged in a specific type of business or profession; (g) incorporations and dissolutions of corporations; (h) valuations and appraisals of real or personal property; (i) inventories of lock boxes of decedents; (j) employers, together with their addresses and identification numbers, (k) *data relating to the production, processing, and transportation of fossil fuels, minerals and other natural resources; and* (l) other data, *including information relating to the regulation of tax return preparers,* which the appropriate State tax and Federal tax officials may deem to be useful in tax administration.

6. *Other Cooperative Activities*—In addition to the exchange of tax information, State and Internal Revenue Service officials will, to the extent feasible, extend to each other assistance in other tax administration matters. This may include such activities as taxpayer assistance, stocking tax forms for the public, training of personnel, special statistical studies and compilations of data, development and improvement of tax administration systems and procedures, and such other activities as may improve tax administration.

7. *Limitations*—"Differences" *The extent of exchange of tax return and return and related information between the Internal Revenue Service and the State is conditioned upon similarities* in tax structures and rates, statutory authority, regulations, administrative procedures, and available resources. *Differences in the two tax systems will be taken into consideration* "must be given appropriate consideration" in determining the extent "to which the State and the Internal Revenue Service can undertake to provide information and assistance to the other" *of the exchange.*

All tax information furnished pursuant to this agreement, irrespective of the manner, form or mode, shall be used solely for the purpose of tax administration, "and shall not be made public or otherwise used except to the extent and in the manner permitted by applicable laws, rules, or regulations." *No person shall disclose any information acquired by him to any person in any manner whatever not provided by law.*

Information generally will not be furnished respecting any case in which prosecution is pending or is under consideration, but may be furnished after the criminal aspects of a case have been finally disposed of, irrespective of the method of disposition.

Because some taxpayers may be unaware that State tax officials are authorized under Federal law to obtain Federal tax return information for State or local tax administration purposes, letters to taxpayers from the State or its political subdivisions will clearly state that such information was obtained pursuant to law.

State tax officials may not disclose any Federal tax return or return information to tax officials of any other State, or to political subdivisions of any State, without written authorization from the Commissioner of Internal Revenue.

8. *Officials to Contact for the Obtaining of Information*—Requests by the State for tax return information in magnetic tape mode will be made to the Commissioner of Internal Revenue, attention ACTS:A. Requests for physical inspection or copying of Federal tax returns showing addresses within the State will be made to the Director, Internal Revenue Service Center (address); requests for inspection and copying of audit abstracts and reports pertaining to such returns will be made to the District Director(s) at ----------, *who will be responsible for making proper arrangements for such inspection.* For tax returns showing addresses outside the State, the requests will be made *by the Governor* to the Commissioner of Internal Revenue, attention CP:D. Requests by Internal Revenue Service personnel for inspection or copying of State tax returns and related documents will be made to (such State officials as the Governor or his delegate shall designate) [OR] (insert official titles of persons to contact; preferably not to use actual names).

9. *Protecting the Confidentiality of Tax Returns—The State of ---------- and the Internal Revenue Service recognize their mutual responsibilities to protect the confidentiality of tax return information, as provided by law, and to assure that such information is disclosed only to those persons, and for such purposes, as are authorized by law. In recognition of these responsibilities, each party to this agreement shall, when requested by the other party, review with the other party its safeguard measures to protect the confidentiality of tax return information made available to it under Federal-State cooperative exchange programs.*

~~The appropriate State or Federal tax officials shall take all steps necessary to safeguard the storage and handling,~~ *as appropriate, having custody* of tax return data *made available to them* exchanged under this agreement—whether in hard copy, photocopy, magnetic tape or other form—*shall take all steps necessary to insure that the safeguard measures established for protecting its confidentiality are carried out. These measures include establishing and maintaining a secure area or place in which the return or return information exchanged shall be stored, restricting accesss to the return or return information only to those officials and employees having a need for access to such return or return information, and providing such other safeguards as are deemed necessary or appropriate or as may be reasonably requested by the party furnishing the information.* ~~All personnel having access to the tax returns or tax return data in any form shall be reminded in writing of the criminal penalties for any unauthorized disclosure of tax returns or data therefrom.~~

Processing of Federal tax return information on the magnetic tape file (including tape reformatting or reproduction, or conversion to punch cards or hard copy printout) will be performed only under the immediate supervision and control of authorized employees of the State tax authority, in a manner which will protect the confidentiality of the information on the file.

The State agrees that it will destroy copies of Federal returns or return information in its possession after they have served their purpose.

The Governor hereby designates (insert title of State tax official) to be responsible for maintaining the safeguards necessary to preserve the confidentiality of Federal tax return information in the hands of State, and if applicable, local tax authorities, and for maintaining the list of local tax officials to whom information is furnished.

10. *Termination, or Modification, of Agreement—The provisions of this agreement are subject to the provisions of the Internal Revenue Code and Regulations, and to the provisions of State statutes and regulations, and this agreement may be terminated or modified at the discretion of the Commissioner or of the*

Governor on account of changes in Federal or State statutes and regulations or whenever in the administration of Federal or State tax laws that actions seems appropriate.

Any unauthorized use or disclosure of tax returns or data therefrom furnished pursuant to this agreement, or inadequate procedures for safeguarding the confidentiality of such returns or data, also constitutes grounds for immediate termination of this agreement and the exchange of information thereunder.

APPROVED:

Governor of the State of	Commissioner of Internal Revenue
Signed at _____ this _____ day of _____, 197 .	Signed at Washington, D.C., this ____ day of _____, 197 .

Mr. ALEXANDER. Two of those differences are the requirements that we imposed in our new model treaty upon States to safeguard information and the right that we have written into the treaty to permit immediate termination if those safeguards are not established and are not maintained.

We have released a large number of tax returns in calendar year 1974 to other departments and agencies for law enforcement purposes, and the number of taxpayers whose returns released for such purposes is 8,210. Of that aggregate, nearly all were released to the Department of Justice and to U.S. attorneys for use principally in the trial of cases.

Recently, we have had some correspondence with the Department of Justice with a view toward working with them to tighten up the standards under which we release tax returns to them and to make certain that U.S. attorneys are fully aware of their responsibilities to request tax returns only when absolutely necessary and to safeguard the information given to them.

I would like to submit, Mr. Chairman, for the record the memorandum which the Assistant Attorney General, Tax Division, sent out to all U.S. attorneys on April 2, 1975, as a result of this correspondence.

Senator HASKELL. It will be received for the record.

[The material referred to follows:]

I declare that I have examined this material and to the best of my knowledge and belief is true, correct, and complete.

(S) CHARLES GIBB.

UNITED STATES DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington D.C., April 15, 1975.

Mr. DONALD C. ALEXANDER,
Commissioner, Internal Revenue Service, Department of the Treasury, Washington, D.C.

DEAR MR. ALEXANDER: This is in response to your letter of March 22, 1975, enclosing a document designed to assist the U.S. attorneys in making requests to inspect income tax returns.

We appreciate your initiative and cooperation in developing and bringing to our attention the information contained in this document. This is to advise you that the document has been issued as a memorandum to all United States Attorneys over the signature of Scott P. Crampton, Assistant Attorney General, Tax Division. A copy of that memorandum is enclosed for your information.

Your cooperation is appreciated.

Sincerely,

GERALD D. FINES,
Acting Director.

Enclosure.

DEPARTMENT OF JUSTICE,
April 2, 1975.

To: All United States Attorneys.
From: Scott P. Crampton, Assistant Attorney General, Tax Division.
Subject: Inspection of Income Tax Returns.

The confidentiality of tax information is a matter of great concern to the President, the Congress, the IRS and this Department. In light of this concern the IRS has been reviewing its efforts to be responsive to your needs for tax returns and tax information while limiting to the extent possible the disclosure of such confidential data. There are several ways in which the IRS can be assisted in achieving these objectives.

The disclosure of tax information to U.S. Attorneys is provided for by 26 CFR 301.6103(a)–1 (g) and (h). These regulations provide in part that returns shall be open to inspection by a U.S. Attorney where necessary in the performance of his official duties. The request shall be in writing and shall be *addressed to the Commissioner of Internal Revenue* with a copy being sent to the District Director or Service Center Director with whom the return was filed. The request must be *signed by the U.S. Attorney* and must show (1) the *name* and *address* of the person for whom the return was made, (2) the kind of tax reported on the return, (3) *the taxable period* covered by the return, and (4) the *specific reason* why inspection is desired.

The *italics* have been supplied above to emphasize the areas in which some requests have not conformed to the regulations and in which care should be taken in preparing requests to avoid delay in their processing by the IRS.

It is important that each request be signed only by a U.S. Attorney or an Acting U.S. Attorney. Since the regulations do not provide otherwise, the IRS will be unable to process requests signed by other persons either in their own name or in behalf of the U.S. Attorney.

One purpose of the change in the disclosure regulations in March, 1973, was to require the National Office of IRS to exercise additional judgment in authorizing the disclosure of tax information. For these reasons requests for disclosure should be selective and should be made *only* in those cases where it is absolutely necessary to the desired outcome of *cases officially before you.* All other possible sources for securing information should be explored before turning to tax returns. To assist the IRS in this regard each request should provide, to the fullest extent permitted by any necessary security limitations, the specific reason for the request and the manner in which the information is to be used. Other Federal agencies must submit requests for inspection of tax returns directly to the IRS. Therefore, U.S. Attorneys should not submit requests for the sole purpose of furnishing information to such agencies.

Access to tax information must be requested and authorized on a strict need-to-know basis. Therefore, requests should ask only for inspection of tax returns and tax files with the exception of those instances where actual copies of specific documents are needed for the successful prosecution or defense of a case. If actual copies are necessary, the need should be fully explained in your request.

In addition, only the inspection of minimum information needed should be requested. For example, if the case involves the verification of income where merely financial information is required, inspection of only the tax return should be requested. In such a case, Special Agents' reports and other investigative files should not be sought. Furthermore, in certain circumstances, financed information may be abstracted from returns and furnished without providing copies of entire returns. Current addresses may also be furnished by the IRS without the necessity of obtaining a return. Therefore, wherever suited to case requirements, requests should seek only specific information needed for each tax period.

IRS files are keyed to social security and employer identification numbers. Therefore, although not required by the regulations, providing the IRS with available social security or employer identification numbers will assist in locating returns.

Violations of 26 U.S.C. are investigated by the IRS, and the proposed use of a Grand Jury for investigating such violations must originate within that Agency and must be submitted to the Tax Division of this Department for con-

currence and authorization before proceeding. Accordingly, the IRS will be unable to authorize disclosure in response to requests stating that the information is for use in Title 26 investigations, or Grand Jury investigations of tax violations, initiated by U.S. Attorneys, unless authorized by the Tax Division.

No written request is necessary to obtain information in connection with a case referred to the Department of Justice by the Service for defense or prosecution.

The time involved in processing disclosure requests can be significantly reduced by submitting a single request with an attached list, in lieu of several requests, where a case involves more than one taxpayer for whom inspection is desired. This will reduce your preparation workload and will assist the IRS in responding to the request.

Other than for current tax years, most income tax returns are stored in Federal Record Centers and are not immediately available to the IRS field offices who will actually be disclosing the tax information. In most cases, several weeks will elapse before the information can be made available. In addition, a taxpayer may have lived in several locations, served by several different IRS field offices. In the latter case, additional time may be required in order for IRS to locate tax files. These points should be kept in mind and, if at all possible, requests for inspection should be prepared as soon as possible after identifying the need for such inspection. In emergency circumstances, such as for an unexpected court appearance, the IRS can provide some information on short notice. In most cases, however, this is not possible and the number of such requests should be held to a minimum.

The IRS has prepared several sample requests, depending upon the specific type and minimum extent of information needed. These are included as attachments. They are not meant to be all inclusive but are intended to serve as guides in assisting you to prepare requests in a manner which will result in your receipt of the tax information required in your case. Also attached is a list of IRS Service Centers and the District Offices which they serve. Copies of your requests should be addressed to the Service Center or District Office covering the area of the taxpayer's last known address. Where discussion with IRS employees and inspection of Revenue or Special Agents' reports are necessary, copies of requests should be sent to the appropriate IRS District Director.

[Pattern letter]

REQUEST FOR ADDRESS INFORMATION

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224
Attention: CP:D.
Re Name of Individual,
Last Known Address,
Social Security Number or EIN.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1(g), I request that this office be furnished the current address of the referenced individual.

The above information is needed by this office in connection with an official investigation involving (state the specific purpose and how the information is to be used i.e.: ". . . a criminal fine which has been imposed on the subject taxpayer The requested information is necessary in order that this office may determine the debtor's whereabouts.").

The information furnished in response to this request will be limited in use to the purpose for which requested and will not be made public except to the extent that publicity results if used in litigation.

Sincerely,

(Signature and Name of U.S. Attorney)

[Pattern letter]

REQUEST FOR FINANCIAL INFORMATION

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224
Attention: CP:D.
Re Name of Individual,
Last Known Address,
Social Security Number or EIN,
Type of Tax and Tax Periods.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1(g), I request that this office be furnished (specify financial information needed: i.e., total income, etc.) from income tax returns filed by the above individual for the periods indicated.

The requested information is needed by this office in connection with an official investigation involving (state the specific purpose and how the information is to be used ie: ". . . a current investigation concerning loans obtained by . . . from various banks. In each instance . . . appears to have furnished false statements to these banks concerning his income and assets, in violation of 18 U.S.C. 1014. The requested information will permit us to verify the accuracy of his statements.")

The information furnished in response to this request will be limited in use to the purpose for which requested and will under no condition be made public except to the extent publicity necessarily results if used in litigation.

Access to this information, on a need-to-know basis, will be limited to those attorneys or employees of my office who are actively engaged in the investigation or subsequent litigation, or other Federal employees assisting me in the investigation. Persons having access to this information will be cautioned as to its confidentiality and as to the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, U.S.C. regarding the unauthorized disclosure of such information.

Sincerely,

(Signature and Name of United States Attorney)

[Pattern letter]

REQUEST FOR COPIES OF FORMS W-2 TO LOCATE DEBTORS AND THEIR EMPLOYERS

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.
Attention: CP:D.
Re Name of Individual, Last Known Address, Social Security Number.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1(g) or (h), I request that this office be furnished with copies of all Forms W-2 which were attached to the latest income tax return filed with you by the above individual.

The above information is needed by this office in connection with an official investigation involving (state the specific purpose and how the information is to be used i.e.: ". . . a judgment debt owed to the United States by the subject. The information will assist us in our efforts to locate him.").

Documents furnished in response to this request will be limited in use to the purpose for which they are requested and will under no condition be made public except to the extent publicity necessarily results if they are used in litigation. Further, these documents will be returned to your office furnishing them after they have served the purpose for which intended.

Access to these documents, on a need-to-know basis, will be limted to those attorneys or employees of my office who are actively engaged in the investigation or subsequent litigation, or other Federal employees assisting me in the investigation. Persons having access to these documents will be cautioned as to the

confidentiality of the information contained therein and of the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, U.S.C. regarding the unauthorized disclosure of such information.

Sincerely,

(Signature and Name of United States Attorney)

[Pattern letter]

REQUEST FOR INSPECTION OF INCOME TAX RETURN

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.
Attention: CP:D.
Re Name of Individual, Last Known Address, Social Security Number or EIN, Type of Tax and Tax Periods.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1 (g) or (h), I request that this office be allowed to inspect the income tax returns of the referenced individual for the periods indicated.

The information contained in these documents is needed by this office in connection with an official investigation involving (state the specific purpose and how the information is to be used i.e.: ". . . the subject's current trial for bank burglary in violation of 18 U.S.C. 2113(a)(b). The defendant will alledge in his defense that these funds represent gambling earnings. We wish to determine whether or not he reported any gambling income on his Federal tax returns.").

Information furnished in response to this request will be limited in use to the purpose for which requested and will under no condition be made public except to the extent publicity necessarily results if used in litigation.

Access to this information on a need-to-know basis, will be limited to those attorneys or employees of my office who are actively engaged in the investigation or subsequent litigation, or other Federal employees assisting me in the investigation. Persons having access to this information will be cautioned as to its confidentiality and as to the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, U.S.C. regarding the unauthorized disclosure of such information.

Sincerely,

(Signature and Name of United States Attorney)

[Pattern letter]

REQUEST FOR COPY OF INCOME TAX RETURN

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.
Attention: CP:D.
Re Name of Individual, Last Known Address, Social Security Number or EIN, Type of tax and tax periods.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1 (g) or (h), I request that this office be furnished (certified) copies of the income tax returns *including available Forms W-2*, of the referenced individual for the periods indicated.

These documents are needed by this office in connection with (state the specific purpose and how the information is to be used i.e.: ". . . a suit filed by the above individual pursuant to 28 U.S.C. 1346(b), 2671 et seq. seeking recovery of damages sustained when he jumped from a window at the VA hospital. Plaintiff's counsel has indicated that he will tender into evidence a copy of this tax return to substantiate his contentions as to the damages sustained. The requested copy of the return will enable me to verify that the copy of the return entered into evidence is in fact a copy of the return filed with the Internal Revenue Service. If the returns differ, the requested copy may serve as impeaching evidence.").

Documents furnished in response to this request will be limited in use to the purpose for which they are requested and will under no condition be made public except to the extent publicity necessarily results if they are used in litigation. Further, these documents will be returned to your office furnishing them after they have served the purpose for which intended.

Access to these documents, on a need-to-know basis, will be limited to those attorneys or employees of my office who are actively engaged in the investigation or subsequent litigation, or other Federal employees assisting me in the investigation. Persons having access to these documents will be cautioned as to the confidentiality of the information contained therein and of the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, U.S.C. regarding the unauthorized disclosure of such information.

Sincerely,

(Signature and Name of United States Attorney)

[Pattern letter]

REQUEST FOR COPY OF INCOME TAX RETURN AND ADMINISTRATIVE FILE INCLUDING REVENUE AND SPECIAL AGENTS' REPORTS AND PERMISSION TO DISCUSS CASE WITH SERVICE EMPLOYEES

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. 20224.
Attention: CP:D.
Re Name of Individuals, Last Known Address, Social Security Number or EIN, Type of tax and tax periods.

DEAR SIR: Pursuant to 26 CFR 301.6103(a)-1(g) or (h), I request that this office be furnished (certified) copies of the income tax returns of the referenced individual for the periods indicated together with administrative files including Revenue and Special Agents' reports as are available. It is further requested your employees be permitted to discuss the details of their inquiries with personnel of this office should this become necessary.

These documents are needed by this office in connection with an official investigation involving (state the specific purpose and how the information is to be used i.e.: ". . . possible violations of 18 U.S.C. 1341, 1343, 2314 and 371 by the above individuals. These persons appear to have employed the so-called "advance fee" racket scheme. The basic scheme involves false and fraudulent representations that a loan can be secured for a financially troubled business. Receipt of a "finders fee" plus expense money is accompanied by a representation that the loan will be forthcoming. Our evidence indicates that no loans have been obtained and that no fees have been refunded. Our investigation has disclosed that the Internal Revenue Service is or has been investigating the same persons. The requested information and discussion will assist us in determining their income from this scheme, and in discovering others who may be involved.").

Documents furnished in response to this request will be limited in use to the purpose for which they are requested and will under no condition be made public except to the extent publicity necessarily results if they are used in litigation. Further, these documents will be returned to your office furnishing them after they have served the purpose for which intended.

Access to these documents, on a need-to-know basis, will be limited to those attorneys or employees of my office who are actively engaged in the investigation or subsequent litigation, or other Federal employees assisting me in the investigation. Persons having access to these documents will be cautioned as to the confidentiality of the information contained therein and of the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, U.S.C. regarding the unauthorized disclosure of such information.

Sincerely,

(Signature and Name of United States Attorney).

ATTACHMENT

ANDOVER SERVICE CENTER

Albany, N.Y.; Augusta, Maine; Boston, Mass.; Buffalo, N.Y.; Burlington, Vt.; Hartford, Conn.; Portsmouth, N.H.; and Providence, R.I.

ATLANTA SERVICE CENTER

Atlanta, Ga.; Birmingham, Ala.; Columbia, S.C.; Jackson, Miss.; and Jacksonville, Fla.

PHILADELPHIA SERVICE CENTER

Baltimore, Md.; Philadelphia, Pa.; Pittsburgh, Pa.; and Wilmington, Del.

KANSAS CITY SERVICE CENTER

Chicago, Ill.; Des Moines, Iowa; Milwaukee, Wis.; Springfield, Ill.; and St. Louis, Mo.

BROOKHAVEN SERVICE CENTER

Brooklyn, N.Y.; Manhattan, N.Y.; and Newark, N.J.

MEMPHIS SERVICE CENTER

Greensboro, N.C.; Indianapolis, Ind.; Louisville, Ky.; Nashville, Tenn.; Parkersburg, W. Va.; and Richmond, Va.

CINCINNATI SERVICE CENTER

Cincinnati, Ohio; Cleveland, Ohio; and Detroit, Mich.

AUSTIN SERVICE CENTER

Albuquerque, N. Mex.; Austin, Tex.; Dallas, Tex.; Little Rock, Ark.; New Orleans, La.; Oklahoma City, Okla.; and Wichita, Kans.

OGDEN SERVICE CENTER

Aberdeen, S.D.; Anchorage, Alaska; Boise, Ida.; Cheyenne, Wyo.; Denver, Colo.; Fargo, N.D.; Helena, Mont.; Omaha, Nebr.; Phoenix, Ariz.; Portland, Ore.; Reno, Nev.; St. Paul, Minn.; Salt Lake City, Utah; and Seattle, Wash.

FRESNO SERVICE CENTER

Honolulu, Hawaii; Los Angeles, Calif.; and San Francisco, Calif.

MARCH 22, 1975.

Mr. GERALD D. FINES,
Acting Director, Executive Office for United States Attorneys,
Department of Justice, Washington, D.C.

DEAR MR. FINES: The confidentiality of tax information is a matter of great concern to the Service, the President, and the Congress. In light of this concern we have been reviewing our efforts to be responsive to the needs of U.S. Attorneys for tax returns and tax information while limiting, to the extent possible, the disclosure of such confidential data.

There are several ways in which U.S. Attorneys can help us achieve these objectives. These lie mainly in the manner in which requests for inspection of tax returns are prepared, with particular consideration being given to the specific need for and intended use of the tax information.

We wish to assure you that most such requests fully meet the requirements of 26 CFR 301.6103(a)-1(g) and (h), the regulations governing the disclosure of tax information. In some cases, however, requests have not conformed to the regulations, resulting in delays and, in a few instances, denial of the requests.

In recognition of these circumstances, the attached information document was perpared with the cooperation and assistance of Mr. William P. Tyson of your office and Mr. Cono R. Namorato of the Tax Division. The document highlights those areas where disclosure problems have occurred, and illustrates the ways in which they can be avoided. It is our hope that you can make the document, or the information from it, available to all U.S. Attorneys.

If you have any questions concerning the document, Mr. Charles A. Gibb or Mr. Pierre A. Fauconnet, of our Disclosure Staff, will be pleased to assist you. They may be reached at 184-4263 or 3907, respectively.

With kind regards,

Sincerely,

(S) DONALD C. ALEXANDER,
Commissioner.

Mr. ALEXANDER. There are other things that we are doing under present law. We are questioning, to the extent we can, whether information requested of us meets the two standards that I had outlined in my testimony back in August 1973. First, the standard of not being obtainable elsewhere, and then the standard of a real need for a proper purpose of the requesting department or agency.

Now, there is little more than we can——

Senator HASKELL. If I may interrupt, Commissioner, do you require Justice to specify what that real purpose is?

Mr. ALEXANDER. You will see in this letter of April 2 that the Assistant Attorney General sent to the U.S. attorneys that there is a rather clear direction that specification be made. Now, there is little we can do to require beyond proper and sufficient wording of the letter given us, but we are putting a burden—and this burden is somewhat troublesome to our friends who request tax returns and tax return information and raw statistical data from us—to make a strong showing of the unavailability of that data from other sources and the need for that data by the requesting organization. We can go no further under present law.

Senator Dole mentioned the Executive order issued by the President to impose material restrictions upon White House access to tax returns. Since I have been Commissioner of Internal Revenue, the White House has not asked me—or to my knowledge, anyone else in the Internal Revenue Service—for tax returns, and I surely do not expect President Ford to ask for tax returns.

I was delighted to see the issuance of that Executive order, for the problem of backdoor release of tax returns, of possible misuse of information, is a problem which depends in the last analysis upon the integrity of those who have access to returns and of those who have custody of returns.

Mr. Whitaker, do you have anything to supplement what I have said?

Mr. WHITAKER. Nothing at this time, Mr. Commissioner.

Mr. ALEXANDER. Mr. Chairman, we are ready to answer your questions.

Senator HASKELL. Well, I appreciate your coming, and in view of the fact there are three of us here, if it is satisfactory to my colleagues, we will have a 10-minute rule.

Commissioner, I have a number of questions. I think the first thing that troubles me is, what the State and Federal relationship is. You talk about treaties with States. Now, that is a new concept to me. I did not know the Federal Government had treaties with States. I suppose you would not have a lot of the information that I ask at your fingertips, so I will ask to submit questions in writing and ask that they be followed up.

But for example, what access does the normal State have to individuals' Federal returns? Can they get copies of them?

Mr. ALEXANDER. Yes; they can under section 6103(b) of the Internal Revenue Code, and my use of the word "treaties" was surely not meant to imply that the Internal Revenue Service had a treaty power delegated to it. It was shorthand for the official title, which is "Agreement on Coordination of Tax Administration With the State of_____."

New York State, for example, has a close working relationship under this provision of the Internal Revenue Code, with the Internal Revenue Service, under which data from tax returns is given to the State for purposes of State tax administration, and indeed, State tax administration supplements Federal tax administration.

Senator HASKELL. What do you mean by "supplements"?

Mr. ALEXANDER. The State of New York audits a number of returns which are not audited by the Internal Revenue Service because the Internal Revenue Service lacks the manpower to do so. The results of these audits are made available to the Internal Revenue Service, just as the Internal Revenue Service makes available to the State of New York the results of its audits.

The taxpayer, of course, is provided with an opportunity to disagree with the results of those audits by the State of New York, and a full opportunity for hearing, not only for the exercise of administrative rights, but obviously, the exercise of legal rights as well.

Senator HASKELL. For example, Commissioner, if I were a resident of the State of New York, might my return or relevant information from my return be handed over to State officials?

Mr. ALEXANDER. That is correct. Is that the situation Mr. Gibb?

Mr. GIBB. Yes, sir. The material is generally made available by magnetic tape on an exchange program between the Federal and the State government.

Senator HASKELL. Well, give me an idea, if you could, with how many States this type of arrangement is in existence?

Mr. GIBB. For the current year, 1974—excuse me, the immediately prior year, for the tax year, 1973, there are 38 States plus the District of Columbia and Puerto Rico participating in the magnetic tape exchange program.

Senator HASKELL. Thirty-eight, you said?

Mr. GIBB. Thirty-eight States in that program.

Mr. ALEXANDER. That is exchange of data from magnetic tape.

Senator HASKELL. Roughly, how many individual returns would have been made available in that fashion for the calendar year—let us take 1973 as an example.

Mr. GIBB. I do not have a figure on the specific number of tax returns that were picked up which were the precise documents themselves—the 1040 returns. The figures I do have relate back to the magnetic tape program.

We may be able to furnish that for the record.

Senator HASKELL. But you do not know how many returns were made available, let us say to the State of New York via magnetic tape for the calendar year 1973.

Mr. GIBB. I do not have those figures with me.

Senator HASKELL. But those would be available for the record?

I think this is something that we would want; we would want this information for all of the States.

[The following material was subsequently supplied for the record:]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

(S) R. C. BLANKENSHIP.

FEDERAL TAXPAYER INFORMATION FURNISHED TO STATE TAX AUTHORITIES, CALENDAR YEAR 1974

	Copies of tax returns supplied	Returns inspected at IRS locations	Extracts of Data from the Master File					
			Individual returns	Business returns	Gift tax returns	Exempt Organizations	Taxpayer addresses	Other Information[1]
Alabama	300		1,143,177					13,400
Alaska			112,443	27,296				2,100
Arizona			795,116					13,700
Arkansas	1		668,604					9,395
California	1,286	20,000	8,258,033			87,600	353,127	267,321
Colorado	38		989,751					19,634
Connecticut	470	392,000						
Delaware			227,185					1,399
District of Columbia	3,390		317,924					5,677
Florida	275,056	2,500,000	3,030,413	878,277				13,200
Georgia			1,728,490					
Hawaii								4,062
Idaho	544		282,065					4,500
Illinois		182	4,443,762					15,222
Indiana		43	1,996,438					19,000
Iowa	5		1,073,644					5,000
Kansas	238							8,250
Kentucky			1,118,200					14,500
Louisiana	162		1,161,670					
Maine			394,221					4,186
Maryland	18,306	307	1,600,435					21,320
Massachusetts		124	2,319,524					11,764
Michigan			3,360,808					24,000
Minnesota		312	1,468,981					19,652
Mississippi	14		673,228					4,000
Missouri	65		1,751,897					8,925
Montana			274,799					6,589
Nebraska			589,835				1,731	4,382
Nevada	1							
New Hampshire	909		329,264					
New Jersey	19	4,500						1,800
New Mexico	10		385,947					1,300
New York			6,855,367		59,078	62,400		200,840
North Carolina	15,000	100					1,388	27,600
North Dakota	58							
Ohio	124		4,125,850					7,450
Oklahoma	91		930,841					14,890
Oregon			869,286					11,500
Pennsylvania	107	484	4,529,147					4,268
Puerto Rico			58,623	74,999				
Rhode Island		214,400	377,306					
South Carolina	12							5,150
South Dakota			242,619					
Tennessee	152		1,483,590		2,058			200
Texas	25							
Utah	100	2,000	411,303					8,250
Vermont			175,965			3,400		2,239
Virginia	1	1	1,848,049					5,000
Washington	6							275
West Virginia	23	23	586,979					1,297
Wisconsin	984	70		447,552				16,856
Wyoming		201						
Total	317,497	3,134,747	62,980,779	1,428,124	61,136	153,400	356,246	827,445

[1] Audit reports, adjustments, closing letters, revenue agent reports, etc.

Note: Rounded figures are close approximations in lieu of actual counts.

Now, would you go ahead. Are there other arrangements that you have with other States? Apparently 38 States can get magnetic tapes showing the information on my Federal tax return if I happen to be a resident of that State. Now what are your arrangements with the remaining 12 States?

Mr. GIBB. The States have the right under the exchange agreements—that we sometimes refer to as the treaty between the States and the Federal Government—and they have general inspection privileges which permit the State representatives designated by the Governor to appear at the Internal Revenue offices and physically inspect

tax returns and select those that they would like to audit themselves—that is physical inspection.

Senator HASKELL. Make a copy?

Mr. GIBB. They are authorized to make copies; that is, correct.

Senator HASKELL. And copies are made at the Internal Revenue Service offices, I assume. That is the only place they could be made?

Mr. GIBB. That is right.

Senator HASKELL. Would I be accurate if I said 12 States engage in this practice, and 38 States get the magnetic tapes? Is that roughly the breakdown?

Mr. GIBB. There could be an overlap. If they have the magnetic tape exchange program, they are also entitled to inspect physically as well, as part of the exchange agreement.

Mr. ALEXANDER. But there are two States that do not have those agreements with us, so I think we have run out of States before we have run out of numbers.

Senator HASKELL. Right.

Mr. ALEXANDER. Generally, the "magnetic tape" States do not receive returns, as such. Instead, they receive magnetic tape which contains information—not all of the information on the return, but information derived from the returns.

Senator HASKELL. Now, Commissioner, did you see the television show put on by the American Broadcasting Network, which was entitled "IRS: A Question of Power?" [1]

Mr. ALEXANDER. I certainly did, Mr. Chairman.

Senator HASKELL. Yes, you were on it. I saw it yesterday afternoon; but I did not know whether you had seen the whole show.

Do you feel that there were any inaccuracies or omissions in that particular production? First inaccuracies.

Mr. ALEXANDER. Mr. Chairman, that show had four basic thrusts. One was a shared concern about the privacy of tax returns. Another was a concern about the possible political misuse of the Internal Revenue Service. The major one dealt with so-called horror cases. And then there was a question of legislative oversight.

As to legislative oversight, the Internal Revenue Service is delighted to see the creation of this subcommittee, and the comparable subcommittee in the House, and with the fact that you are taking the time to have this hearing on this vitally important topic this morning.

As to the politicization of the Internal Revenue Service, or the attempted abuse of the Service for political purposes, we are glad to see the interest of ABC and other networks in the integrity of the Service and in the Service doing its best to prevent possible misuse of process or misuse of information.

Now there is none of this going on, I am convinced, at this time, and President Ford would never permit it. But I hope what is here for the present will be lasting for the future.

Senator HASKELL. Well, I think we all hope that; we all feel confident and applaud President Ford's Executive order—but my question was, in your view were there any inaccuracies in that particular program.

Mr. ALEXANDER. Yes. I was getting to that, rather slowly.

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[1] The transcript of this show is reproduced at p. 251 of this volume.

The last two topics were privacy of tax returns and horror cases. As to horror cases, the network presented only one side of the situations that they covered.

As a former trial lawyer, Mr. Chairman, you know that frequently—nearly always—there are two sides. Sometimes one side is far stronger and closer to being right; sometimes the other side is. And that is what makes for disputes and makes for lawsuits. In a number of those horror cases, there was another side.

Now I am sure you do not want me to take the time to respond to those here, but, Mr. Chairman, they did present a situation in a Northeastern State concerning a possible misuse of tax return information. It is my understanding that the Internal Revenue Service investigated that situation rather thoroughly when it occurred—before I became Commissioner—and found as a result of its investigation that there had not been a leak from the Service.

Now the rights of the States to tax returns and tax return information is a great benefit to the States in making their administration of their tax system work properly. But I am sure that they, like us, are greatly concerned about the necessity for preserving the privacy of the information given to them.

Now if you want me to discuss the horror cases, Mr. Chairman, I will be glad to, one by one.

Senator HASKELL. No. I heard the bell; my time is up. I think it is quite material, Commissioner, that we know with specificity how you may disagree, or how you may feel that in your view, based on certain facts in your knowledge, specific things were inaccurate or omissions were made. That might be the kind of thing I would ask you to submit for the record as my 10 minutes are up.

I have some other questions, but I will now turn to Senator Dole.

Senator DOLE. Is there any information on the average number of returns that are made available to other agencies or States on a yearly basis? Just how many Federal returns leave your Service and go out to other agencies and States?

Mr. ALEXANDER. Senator Dole, I mentioned the figure of 8,210 a few minutes ago as the number of taxpayers whose returns were given to other agencies and other departments for enforcement purposes in 1974. Now that does not include a lot of transcripts and the like given to, say, the Department of Commerce in 1974, because I think they received nearly 80 million transcripts.

Senator DOLE. How many go out to the States then?

Mr. ALEXANDER. As to the States, we will be getting that information for the record.* But as I mentioned, and as Mr. Gibb mentioned, with many States we have the arrangement for the transfer of magnetic tape, and those magnetic tapes, I think, included 63 million taxpayers.

Senator DOLE. How many tax returns were filed?

Mr. ALEXANDER. We had about 81.5 million of these individual returns last year. We have over 120——

Senator DOLE. It seems nearly everybody who filed a tax return with the Internal Revenue Service can assume, then, that somebody else is going to have access to it—either the State or Commerce for statistics, or the FTC or the Justice Department. So we start off with my premise that your return is going to be given to one party, at least. And I

*See p. 21.

assume you give the same return to more than two agencies. So maybe one return—my return—may end up in four or five different places.

Mr. ALEXANDER. Well it might, but what would more likely happen, Senator Dole, much more likely, is that certain information from your return, and my return, and other returns would be transferred to certain other departments and agencies for limited purposes; to the Department of Commerce for census work, for revenue sharing, and for prediction of the economy.

Senator DOLE. Now are there any restraints on disclosure when that information is transmitted from the IRS to, say, some State or agency?

And second, in this treaty you have with the States, what do you get in exchange for what you give to the State? Do you get a copy of my State return?

Mr. ALEXANDER. I think we could, but I do not think we do, do we?

Mr. GIBB. I am not that familiar with the exchange program to know precisely what we get. We have the right, yes.

Senator DOLE. If it is a treaty, if it is an agreement, you must get something. You just do not give everything.

Mr. GIBB. That is correct. The agreement is an exchange agreement which entitles the Revenue Service—yes, sir, we would provide the results of an audit, for example, to the State. We would be entitled to the results of the audit the State made and have the basis to make an adjustment.

Senator DOLE. Is it limited to that? Is it limited to that one area?

Mr. ALEXANDER. No; it is not, Senator Dole. There are a number of cooperative activities: cooperative collection activities; cooperative activities in locating taxpayers, for example; cooperative in stocking forms for taxpayer assistance. There are a host of cooperative activities. It is not a one-way street, but it is largely in the direction away from the Internal Revenue Service and toward the States, rather than the other way around.

Senator DOLE. But the intent of it, I assume, is to make more effective use of the tax collecting system, and to furnish proper information to the States and then to the IRS if it comes in the other direction. And I assume against this you weigh the right of privacy. I would guess that any taxpayer who files a return certainly must know that it might be used in a proper case, say, by the Department of Justice. So there is a fine line between disclosure confidentiality versus the interest of law enforcement, I suppose.

Mr. ALEXANDER. There is. But in answer to the first part of your question, the law which makes unauthorized disclosure of information a crime is not limited to the Internal Revenue Service or its employees. Instead, it makes it unlawful for any person to print or publish in any manner whatever, not provided by law, any income tax return, or part thereof, source of incomes, profits, losses, or expenditures.

So the legal requirement for confidentiality found in section 7213 of the Internal Revenue Code, and section 1905 of title 18, does apply across the board; it is not limited to Internal Revenue.

Senator DOLE. In other words, if you give it to Commerce or FTC, then it applies to them?

Mr. ALEXANDER. Oh, yes.

Senator DOLE. It applies to the States?

Mr. ALEXANDER. Well, not in exactly the same wording as the wording applicable to Internal Revenue employees and other officers or employees of the United States, but——

Senator DOLE. Has anyone ever been prosecuted under that section?

Mr. ALEXANDER. Yes; oh, yes.

We can get the figures on this too, Senator Dole.

[The following material was subsequently supplied by Mr. Alexander:]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

(S) W. A. BATES,
Assistant Commissioner (Inspection).

DISCLOSURE OF CONFIDENTIAL INFORMATION

The service has conducted investigations concerning the possible disclosure of confidential information and has taken disciplinary action in fiscal years 1973, 1974 and 1975 to date (March 31, 1975), as shown in the chart below:

INVESTIGATIONS AND DISCIPLINARY ACTIONS

	Fiscal year—		
	1973	1974	1975 to date (Mar. 31, 1975)
Investigations conducted	58	96	119
Disciplinary actions	9	23	12
Separations	4	2	3

The following chart shows the number of referrals to the Department of Justice for illegal disclosure of confidential tax information, the number of prosecutions declined and the number of convictions for fiscal years 1973, 1974 and 1975 to date (March 31, 1975).

PROSECUTIONS AND PROSECUTION REFERRALS

	Fiscal year—					
	1973		1974		1975 to date (Mar 31, 1975)	
	Employee	Non-employee	Employee	Non-employee	Employee	Non-employee
Prosecution referrals	8	0	5	3	1	1
Prosecution declined	7	0	4	1	1	1
Convictions	1	0	1	2	0	0
Pending trial	0	0	0	0	0	0

It is not our practice to release the names of persons who were referred for prosecution and prosecution was declined. Those persons prosecuted were as follows:

FY 1973—Larry Samuel Dabrow—employee—Revenue Officer

FY 1974—Patricia Elaine McNally—employee—Service Center, File Clerk; Harry Russell Scott, Jr.—non-employee—Private Detective; Donald Paul Foster—non-employee—Private Detective

Records currently available do not indicate whether or not any of the prosecution declinations were state employees. None of the prosecutions were state employees.

Senator DOLE. I mean it is curious; I have never heard of a case where somebody was in trouble because they disclosed someone else's tax return.

Mr. ALEXANDER. No, sir, Senator. That is hardly anything to be proud of, and we do our best, when allegations are made about improper disclosure——

Senator DOLE. But is there any? There used to be a theory around that the IRS maintained certain former IRS officials, and if they would

send a tip in on somebody who might have underpaid his taxes, that they would get a certain bonus for that service.

Mr. ALEXANDER. There is a provision in the Internal Revenue Code permitting rewards.

Senator DOLE. Rewards?

Mr. ALEXANDER. Rewards to be paid to those who send information to the Service, which information is of value in determining that somebody has been evading taxes.

Yes; there is such a provision. That is in the law, and the Internal Revenue Service does make certain payments yearly.

Senator DOLE. Is it a percentage amount?

Mr. ALEXANDER. It cannot exceed, as I recall, 10 percent of the tax found due. And it is usually a far smaller——

Senator DOLE. Is that a widely used source of finding additional revenue?

Mr. ALEXANDER. We get a number of letters from people——

Senator DOLE. Could you furnish for the record how much money you paid out in rewards the past year?

Mr. ALEXANDER. I would be glad to, Senator. It is my recollection that it is about $500,000; maybe a little less.

Senator DOLE. Then are the names of those people who write such letters made public under the Freedom of Information Act?

Mr. ALEXANDER. They have not been.

Senator DOLE. Are they exempt, or you just do not make them public?

Mr. ALEXANDER. They are not made public. I understand that that act specifically exempts names of informers.

Senator DOLE. Who has final responsibility then for determining whether a request for tax return information should be granted or denied? Do you make the final decision, or is that delegated to someone else in the IRS?

Mr. ALEXANDER. It is delegated in large measure to Mr. Gibb. However, requests come through my office, in large part—not all of them, but most of them—and I participate in these decisions. In particular where a new request for tax return information comes in from someone who wants to do a new statistical study, we question that need—not just for the information, but also is the study really necessary? Why do you have to have it? Can't you get the information somewhere else? And obviously, I participate in these——

Senator DOLE. Well, that was my followup question. Is it necessary? Do you furnish Commerce, for example, the information they need for statistical reports, or do you furnish the returns?

Mr. ALEXANDER. We do not furnish the returns to them. We furnish data from tapes to them.

Senator DOLE. The magnetic tapes you referred to earlier?

Mr. GIBB. Census does get some information from hard copy. Again, I am not personally familiar with that program.

Mr. ALEXANDER. I think those are corporate returns.

Mr. WILLSEY. Those are corporate returns, and there is a printout from the tape itself on which the information from corporate returns are transcribed.

Senator DOLE. So the only information Commerce receives would be from corporate returns?

Mr. ALEXANDER. No, no. Commerce receives information taken from individual returns. And I mentioned about 80 million of them. But we should not confuse the returns themselves with a transcript on some medium—magnetic tape, perhaps—of information from the returns.

Now there is a difference and there is not a difference. There is a difference in what is being transferred. In one case it is information from a return, rather than the return itself. Returns do not float around like paper airplanes, and we are not interested in running a lending library in the Internal Revenue Service.

But a transcript, in whatever medium, contains information which should be respected as private and held confidential by the agency receiving it. And Commerce has an excellent record in this respect.

Senator DOLE. I presume that is separated then from the name of the corporation or the name of the taxpayer. The information is not necessarily associated with any corporate name or any individual name.

Mr. WILLSEY. In some instances. The problem that we have with the corporations right now is, and we have a discussion going with Commerce right now about the extent to which they would like to match information from corporations based on the name of the corporation with information they have received from other sources to determine projections for the state of the economy and things of that sort. So there are some instances where the name of the corporation, as well as the raw data from whatever form, is made available to Commerce.

Senator HASKELL. I might mention before I call on Senator Talmadge, that when we submit requests for additional information, I am going to ask, Commissioner, that the information be transmitted, obviously through you, but with an accompanying affidavit from whomever the officer in the Internal Revenue Service who is responsible for collecting the information as to its veracity and completeness. I know when income tax returns are audited, and private citizens are asked to give information, they have to submit it in affidavit form, and it would seem appropriate that in this oversight hearing, that we receive information from the Service in comparable form. I just wanted to mention that.

Senator Talmadge?

Senator TALMADGE. Commissioner Alexander, I want to complement you for your statement, sir. You will recall during our Watergate hearings, there was much evidence—and the news media made a great deal of it—that certain individuals in the White House and in the committee to reelect the President attempted to subvert the Internal Revenue Service for political purposes. To the credit of one of your predecessors, Randolph Thrower, who I think resigned because of that pressure and went home to reenter the private practice of law, insofar as I know, Commissioners of the Internal Revenue Service have resisted any effort to subvert the Service for political purposes, and I want to congratulate you and others for doing that.

However, that information and that publicity shocked, I think, the American people. I think it is the duty of this committee, working with you and your associates, to make certain that the Internal Revenue Service cannot and will not be subverted for political purposes; and also, to make certain that the taxpayer who files a tax return

can expect that tax return to remain confidential, except where necessary to effectuate the better operation of his Government, either State or Federal. You would agree with that statement, would you not?

Mr. ALEXANDER. Yes, sir.

Senator TALMADGE. Now, we have read in the press in recent weeks about some so-called leprechaun operation down in Miami, Fla. I did not read it all, but I recall that some woman was allegedly spying on taxpayers' sex and drinking habits. Was she employed by the IRS?

Mr. ALEXANDER. Senator Talmadge, this is a matter of very serious concern to the IRS. We have been investigating these allegations in depth. We are still investigating them. They are of an extremely serious nature. I am at some disadvantage in commenting on the specifics of this matter, as you can understand, sir. But from the investigation that we have made, this lady who is the source of much of the allegations appears to have been a confidential informant. She received money from the IRS, some $2,900, in 1972 as I recall. I do not believe that she was then an employee of the Internal Revenue Service, and I do not think that the word employee should be applied to her.

Senator TALMADGE. She never was an employee of IRS?

Mr. ALEXANDER. That is my understanding.

Senator TALMADGE. In other words, the only fee she received was the so-called informants' fee, if she furnished information to the IRS that enabled you to collect taxes from people that she was spying on?

Mr. ALEXANDER. I think she was paid by an IRS employee out of IRS money as a confidential informant. There was a provision in the IRS manual permitting the payment of money for the development of people in this category of confidential informants. The Deputy Commissioner and I have suspended all such payments, so that no new payments are to be made until we get this properly sorted out, which we are doing now, and payments must receive the personal approval of the Assistant Commissioner of Compliance. And as I testified before, I believe he is reluctant to give his approval, unless he is certain that the payment is for a proper action in the proper enforcement of the tax laws, as President Ford stated a few weeks ago.

Senator TALMADGE. It is not the policy of IRS, then, to hire these so-called spies to go around and spy on individuals about their sex or drinking habits, or other aberrations, is it?

Mr. ALEXANDER. I have stated this before; in my opinion, the allegations point toward an aberration rather than an action which this agency should take in the future.

Senator TALMADGE. You do have a kind of fraud squad, and it is their purpose, I presume, to try and ferret out these people who do not pay their taxes, rather than so-called paid spies or informers. Is that correct?

Mr. ALEXANDER. Yes; we call our fraud squad the Intelligence Division. They are special agents, and our special agents are mostly—I cannot say entirely, because I cannot say that everybody is doing his job perfectly all of the time, every day, in the 80,000 personnel of IRS—but our special agents are dedicated, they are trained, they are good people, and they go about the job of enforcing the tax laws well. And we need a strong Intelligence Division. We must have it, among

other reasons, because some people do not give us any information at all. They refuse to file returns or file correct returns.

Senator TALMADGE. I agree with that fully.

Now, another thing that was much in the news media was this so-called alleged stress school, where agents were tempted with women and alcohol to see what their breaking point was. Was that carried on to any degree, or was that newspaper speculation?

Mr. ALEXANDER. Senator Talmadge, we are talking about 1965, so my predecessor, Sheldon Cohen, would be perhaps better able to answer this question than I. There was some of this type of training going on back then. I understand that the particular aspect you mentioned was given up even before Commissioner Thrower came into office. So we are talking about four Commissoners back, and I am sure this activity would be as big a surprise to Commissioner Cohen as it was to me to read about it in the papers, because he undoubtedly did not know about it. That, I would suggest, is not a part of our regular training course, and it is not about to be a part of it in the future.

Senator TALMADGE. In other words, that policy has long since been abandoned?

Mr. ALEXANDER. Long since been abandoned. In fact, the so-called schools for undercover people have not been held since early 1973, before I became Commissioner. So the schools are out, and this particular aspect of that schooling was out long before that.

Senator TALMADGE. Now, referring to the question of leaks—the chairman referred to the leak of my colleague's tax return—and my understanding is that incident arose in the following manner. Apparently, some of those who prepare tax returns—individuals, lawyers corporations, or what not—use common computers, and they refer this data to the common computer. And apparently, whoever has access to that computer can get all information therein. I believe my colleague's tax return was published by some underground newspaper in Atlanta, and apparently was derived in that way. Do you have any knowledge of members of the IRS leaking tax returns?

Mr. ALEXANDER. As to leaking tax returns all over the United States, and without regard to time, certainly I have some knowledge.

Senator TALMADGE. They have been disciplined severely, and I presume prosecuted?

Mr. ALEXANDER. Absolutely, if we can I have some knowledge of that having happened since I became Commissioner, and I am deeply concerned about it. We do our best to stop it, we do our best to cause the prosecution of those who violate not only their moral responsibility, but their legal responsibility. Now, as to this particular incident that you have mentioned. I have no knowledge of it. I intend to look into it, because we are quite concerned about the possibility of third-party access to tax returns and tax return information, by reason of the very attribute that you mentioned—the use of computer facilities, in particular shared time on commercial computer facilities—and we are doing our best to eliminate this possibility, to keep our work, as well as our information in-house.

Senator TALMADGE. Thank you, Commissioner. My time has expired.

Senator HASKELL. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Commissioner, what tax information goes to the Justice Department in connection with strike force activities?

Mr. ALEXANDER. Mr. Whitaker can answer this, I think, somewhat better than I can. But the strike force is an amalgam of talents to which the Internal Revenue Service is a major supplier, if not the major supplier. People work closely together, ours and others. We have a right, and, if requested, an obligation, to give tax return information and tax returns to the Department of Justice for proper purposes. Mr. Whitaker?

Mr. WHITAKER. Generally speaking, Senator, any prosecuting lawyer who is prosecuting a tax offense, perhaps along with other criminal offenses, must have access not only to the relevant tax returns themselves, that is, the information that is reported by the taxpayer, but they must also have access to the investigative work which we have done in running down a tax crime. Therefore, the requests by the Department of Justice, either by the U.S. attorneys or by the Assistant Attorney General, for access to tax returns in connection with a particular taxpayer who is under investigation generally include, not only a request for access to the return itself, but also for the opportunity to confer with the special agents or, if necessary, the revenue agents who have done the tax investigation. The prosecuting lawyer must have complete access to whatever information we have, since IRS is the investigative arm for tax matters.

Senator BYRD. Well, it applies, then, only to tax returns of those who are being prosecuted?

Mr. WHITAKER. Yes, sir. I think there are occasions when a third-party return might be necessary if the third party has been engaged in a transaction that is otherwise related to the taxpayer under investigation.

Senator BYRD. What safeguards protect such information?

Mr. WHITAKER. The same safeguards that apply to the Internal Revenue Service itself: Section 7213 of the Internal Revenue Code, and section 1905 of title 18. Both prohibit any unauthorized disclosure.

Senator BYRD. What proportion of top level IRS agents are assigned to strike forces?

Mr. WHITAKER. Mr. Commissioner?

Mr. ALEXANDER. A substantial portion, Senator Byrd. We have various ways of measuring in the IRS. One way is man-years.

Senator BYRD. I did not catch that word.

Mr. ALEXANDER. Man-years is one way. We are going to change that to person years, but we still call them man-years at this time. And the strike force work, and related work for the Department of Justice—because there are cases that are so-called Department of Justice interest cases that have much of the attributes of strike force work, required about 1,906 man-years last year.

Now, there were 1,219 man-years of direct investigative time by our special agents, those in our Intelligence Division, engaged in investigating cases of suspected tax fraud; and our revenue agents working with them; the accountant working with the criminal investigator. We have highly skilled people in this work, and making sure that the criminal element meets its tax obligations is a very important, a continuing part, of IRS' responsibility. But making sure we use our manpower properly and engage in proper law enforcement is a vital part of our responsibility as well.

Senator BYRD. What is your total personnel in that?

Mr. ALEXANDER. Our total personnel in our special agent category is about 2,500 or a little bit over that. But we also have support staff in management working with them, so that number translates into a larger number of man-years. We have over 14,000 revenue agents, and that number again translates into a larger number of man-years when you consider support staff. About 40 percent of our special agents are engaged in strike force or narcotics work, and the other 60 percent of our special agents are criminal investigators engaged in working tax evasion cases of the general population; those, perhaps, whose only brush with the criminal laws is in driving too fast or failing to file tax returns, or filing false tax returns.

Senator BYRD. How many persons are employed by the Internal Revenue Service, the total?

Mr. ALEXANDER. About 80,000, of which more than half are not in compliance activities at all.

I would like to supply for the record if I may, Senator Byrd, exact figures in response to each of your questions, including this last one, sir.

Senator BYRD. Thank you.

[The following material was subsequently supplied by Mr. Alexander.]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

ALAN A. SIL.

Internal Revenue Service, Fiscal Year 1974, Number of Average Positions by Budget Activity

	Total-average positions
Audit of tax returns, tax fraud, and special investigations, total	30,660
Revenue agent	14,220
Tax auditor	4,191
Special agent	2,519
Other	9,730
Strike Force and other Justice cases included in the above, total	1,792
Revenue agent	636
Special agent	583
Other	573
Technical rulings and legal services	2,855
Taxpayer conference and appeals	1,409
Data processing operations	24,817
Collection	11,243
Taxpayer service	2,798
Other [1]	2,480
Total service	75,762

[1] Executive direction, internal audit and security, statistical reporting.

Senator BYRD. Now, as a followup to Senator Talmadge's question, does the IRS at the present time have confidential informants?

Mr. ALEXANDER. At the present time, if we have any, they are probably being paid out of the personal pockets of the special agents, because the Deputy Commissioner and I have terminated all such payments, and I have not heard about the Assistant Commissioner of Compliance authorizing any. Do you know, Mr. Willsey?

Mr. WILLSEY. He has authorized only a very few where the need was clear.

Senator BYRD. When did you and the Deputy Commissioner terminate that arrangement?

Mr. ALEXANDER. March 17 of this year. I will be glad to supply that order for the record, sir.

Senator BYRD. Yes; I think that would be desirable.

[The material referred to was subsequently supplied by Mr. Alexander.]

(8) March 21 order applicable to confidential informants.

Attached is a copy of the teletype that was sent on March 17, 1975 to all Regional Commissioners revoking the expenditures of confidential funds. We are not aware of a March 21 order. The response to the above question (8) was researched and prepared by members of my staff. I have carefully reviewed it and to the best of my knowledge and belief it is true, correct and complete.

JOHN J. OLOZOWSKI,
Director, Intelligence Division.

All Regional Commissioners, Internal Revenue Service.

Effective immediately, IRM 9372 (confidential expenditures for information) is revoked.

No further expenditures of funds previously approved under section IRM 9372.2 will be permitted, pending a final review and evaluation of this activity. Any exceptions must be requested by you and requires the personal approval of the Assistant Commissioner.

WILLIAM E. WILLIAMS,
Deputy Commissioner.

Senator BYRD. So up until a month ago, the IRS did have such confidential informants?

Mr. ALEXANDER. I do not mean to suggest, Senator Byrd, that we had confidential informants of the kind that Senator Talmadge was inquiring about. I cerainly hope we did not, but I think we did have some confidential informants, persons who were regularly paid for giving information of value to——

Senator BYRD. Why did you discontinue the confidential informant program as of March 17?

Mr. ALEXANDER. Why did we?

Senator BYRD. Yes.

Mr. ALEXANDER. To get a handle on what was going on; to start from a clean slate. If you start from a zero budget in a particular function, then you can sort out what is necessary and what is not. Now if you start with a rollover, then you only say, are you doing everything right out there; and if you are not doing everything right, stop it. Then we get into a definitional discussion of what is right, and we get into different judgments as to what is right, and we get into an interpretation of language which I think is capable of different constructions by different people. The way to resolve a problem of the magnitude of the one illustrated by Operation Leprechaun, as we saw it, was to terminate everything and start from a clean slate; start from ground zero to see just what, in this difficult area, was necessary to tax enforcement, and to make sure that any activities of this agency, and any payments made by this agency, were limited to tax enforcement in its best sense.

Senator BYRD. I assume, then, since you used such a system up until March 17, that you feel that the philosophy of it is appropriate and necessary.

Mr. ALEXANDER. I surely do not want to imply that I think that the philosophy illustrated in the allegations about Operation Leprechaun

is a sound or proper or necessary philosophy. Confidential informants are, I am told by those in law enforcement, a necessary ingredient to law enforcement. I do not know much about law enforcement. I have my doubts about the wisdom and the advisability of the use of confidential informants. Surely, I have my doubts about the wisdom and the advisability of any widespread use. I have been told in the papers by undisclosed spokesmen that I was suggesting that information necessary to the enforcement of tax laws would arrive via the Easter bunny. I do not recall making any such suggestion, and I do not think that the choice is that easy. I think that we can enforce the tax laws, and we can enforce them properly. Proper law enforcement means not getting down in the gutter with the people that are in the gutter as far as meeting their tax responsibilities.

Senator BYRD. Thank you. Thank you, Mr. Chairman.

Senator HASKELL. Commissioner, I mentioned in my opening statement reports that have come, at least to my attention, that tax returns showed up in the hands of insurance adjusters, and in certain cases private detectives; in one case a divorce lawyer, in another case in the county assessor's records. Have any reports of this type of situation come to your attention?

Mr. ALEXANDER. Reports have come to my attention since I have been Commissioner, Mr. Chairman, and we are greatly concerned about these reports. We follow up on these reports as best we can and investigate the report fully to find out what substance there is to it. If there is substance to it and investigate to find out how a leak occurred, who is responsible, and then to do something about it. If we develop facts indicating that an employee of the Internal Revenue Service has violated his obligations, we refer that case to the Department of Justice with a recommendation for prosecution.

Senator HASKELL. Now, Senator Dole, I believe, asked you as to whether people who gave out information improperly were prosecuted, and I believe you were going to supply a list for the record.* I think it would be helpful to have—and I will articulate this question a little bit better in writing—such a list of people, not only people who were prosecuted, but also the type of investigations that were made. And I will ask you now: Are you aware of any leaks that might not have come from the Internal Revenue Service, but might have come from State agencies?

Mr. ALEXANDER. I am aware of certain allegations with regard to that issue, Mr. Chairman, yes; and we have investigated certain allegations since I have been Commissioner.

Senator HASKELL. And if the leak comes from a State agency or personnel in the State agency, does the IRS actually prosecute in that case, or do you refer it to the Justice Department? How do you handle it?

Mr. ALEXANDER. The IRS would investigate it, and if it were determined that an employee of the State agency were at fault, the IRS would give its information to the proper prosecutorial group. Mr. Whitaker, do you know of any instances since you have been chief counsel?

Mr. WHITAKER. I do not know of any instances of that sort, Mr. Chairman. Of course, the Department of Justice would be the part of the executive branch which would conduct the prosecution if a Federal

*See p. 25.

offense were involved. If a State offense were involved, it would have to be a matter of simply referring to State authorities.

Senator HASKELL. Perhaps I ought to ask a legal question then. If an employee of the Department of Revenue of Colorado gives my return to a private detective agency, is that a Federal offense or a State offense? You probably do not know if it is a State offense. Is it a Federal offense?

Mr. WHITAKER. I think it would be if the return came from a Federal source.

Senator HASKELL. Now this would be my return having been given to the Department of Revenue for the State of Colorado under one of these treaty agreements. Some employee in the State decides to give it to an insurance adjuster.

Is that a Federal offense?

Mr. WHITAKER. I am not sure that that would be a Federal offense, Mr. Chairman; 7213 is not the best drafted statute for this purpose. There are some possible insufficiencies in it. Moreover, it might be very difficult in the kind of a fact situation that you postulate to determine whether it is actually State or Federal information which was released because the Federal tax information, if incorporated with State tax information, might, under an interpretation of 7213, become really State tax information. I think there is considerable doubt as to the applicability of section 7213 in that particular circumstance, but this is a matter perhaps to which the Department of Justice ought to respond.

Senator HASKELL. Yes, I appreciate that. In response to Senator Dole, I believe one of you gentlemen said that something in the neighborhood of 63 million returns one way or another, either via magnetic tape or actual returns, were given to States. This is a massive dissemination of Federal returns. I understand why States would want them, because it perhaps facilitates their investigatory objectives. Nevertheless, it is a massive dissemination of returns and that is why I asked the question as to what type of policing was done on the misuse of those returns and whether or not the Federal statute would reach such an abuse. That really was what motivated my question.

Now another subject matter. The IRS for, I guess, a number of years, under both Republican and Democratic administrations, have been assembling special files on so-called "extremists." Through the Special Service Staff, the Nixon administration, I guess, investigated so-called left wing organizations while the Democrats have examined so-called right wing organizations.

Now this was one of the things discussed in the ABC television program. Have the Special Service Staff files been destroyed?

Mr. ALEXANDER. The Special Service Staff files have not been destroyed and they will not be destroyed until those that are investigating the operation of the Special Service Staff, including the Joint Committee on Internal Revenue Taxation has completed their investigations. The files are being held for this purpose and this purpose alone and we do not intend to destroy them or any part of them until these investigations have all been concluded. But the Special Service

Staff was abolished in August 1973. On August 9, 1973, I ordered it abolished and indeed it was abolished.

Senator HASKELL. And the files are now being held because of possible criminal violations. Is that the reason?

Mr. ALEXANDER. The files are now being held because the Joint Committee charged with direct oversight of Internal Revenue in section 8022 of the Code is completing its investigation of the Special Service Staff—what it did, how it did it, and why it did it, and to whom. And other investigative bodies have indicated an interest in these Special Service Staff files, and accordingly, we will hold them until these investigations are over, the last one is over, and then we will get rid of them.

Senator HASKELL. And obviously, the Special Service Staff is not functioning any longer.

Mr. ALEXANDER. It certainly is not and in my opinion it never should have been created.

Senator HASKELL. Now what agencies other than the Department of Justice get tax returns for investigative purposes?

Mr. ALEXANDER. A number of other agencies, Mr. Chairman, and again we will supply the exact detail for the record, the Securities and Exchange Commission, the Federal Trade Commission, for example, the Renegotiation Board in connection with renegotiation cases.

Senator HASKELL. I presume that you would have figures as to the number of returns and the identity of returns turned over to both the Department of Justice and these other agencies in 1974 for investigating purposes.

Would I be correct in making that assumption?

Mr. ALEXANDER. You are correct in making that assumption, Mr. Chairman. As to that figure of 8,210 taxpayers that I mentioned, I stated almost all of them went to the Department of Justice or to U.S. attorneys. We do have a number of people asking us for returns for enforcement purposes, including the Department of Agriculture, the Customs Service, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board. GAO asked us for 342 returns. We gave them selected information. They were investigating, as I recall, certain activities of the Department of Housing and Urban Development. The Securities and Exchange Commission called for returns on 93 taxpayers. We will supply the full list for the record. And I am talking about here the number of requests made by these agencies, the number of taxpayers involved in these requests and the number of returns because sometimes the request not only covers multiple taxpayers, but it also covers multiple returns of a particular taxpayer. Instead of asking for 1 year's return for a taxpayer, they might ask for 2 or 3.

Senator HASKELL. Thank you. My time is up.

[The following material was subsequently supplied by Mr. Alexander:]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

(S) CHARLES A. GIBB.

INCOME TAX INFORMATION REQUESTED BY FEDERAL AGENCIES WHICH WAS AUTHORIZED UNDER 26 CFR 301.6103(a)-1, CALENDAR YEAR 1974

Federal agency	Number of requests	Number of taxpayers	Number of returns
Department of Agriculture	3	5	12
Bureau of Alcohol, Tobacco and Firearms	1	2	2
Department of Commerce	1	5	5
U.S. Customs Service	1	3	12
Federal Deposit Insurance Corporation	1	12	12
Federal Home Loan Bank Board	5	50	178
General Accounting Office	1	[1]342	[1]342
Interstate Commerce Commission	2	9	45
Department of Justice (other than U.S. attorneys)	384	3,228	10,446
U.S. attorneys	1,594	4,448	18,062
Department of Labor	1	2	6
Securities and Exchange Commission	17	93	386
Renegotiation Board	1	11	21
Total	2,012	8,210	29,529

[1] Returns were not furnished; selected information was extracted from the returns by IRS and furnished to GAO.

Note: The reasons given by these agencies for requesting returns are summarized in the attached pages.

SUMMARY OF REASONS FOR REQUESTS OF FEDERAL AGENCIES FOR INCOME TAX RETURNS

DEPARTMENT OF AGRICULTURE

Investigations under the Packers and Stockyards Act into possible illegal payments to employees.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Investigation involving the manufacture and sale of ammunition, and the dealing in firearms without a Federal license, in violation of the Gun Control Act of 1968.

DEPARTMENT OF COMMERCE

Because of the sensitivity of the position for which an individual is being considered.

U.S. CUSTOMS SERVICE

Official matter involving the collection of customs duties.

FEDERAL DEPOSIT INSURANCE CORPORATION

Investigation of allegations concerning the sale of shares of stock which had been pledged to a bank as collateral for a loan, and which were subsequently determined to represent stolen securities.

FEDERAL HOME LOAN BANK BOARD

Investigations made pursuant to authority granted under Section 407(m)(2) of the National Housing Act, as amended (12 U.S.C. 1730(m)(2)), into apparent conversions and misappropriation of association funds, wrongdoing by association officers in the area of unaccountable and unjustifiable travel and entertainment expenses, and possibility that employees and officers of the Board may have used resources of the association for their personal enrichment and may have benefited substantially from transactions involving the association.

GENERAL ACCOUNTING OFFICE

Review of the effectiveness of the Department of Housing and Urban Development procedures for income recertification for the section 236 Rental Housing Assistance Program. (Returns were not furnished. Certain information was extracted by IRS and furnished to GAO.)

INTERSTATE COMMERCE COMMISSION

Investigations of regulated motor carriers under the jurisdiction of the Interstate Commerce Commission.

DEPARTMENT OF JUSTICE

The Attorney General.—Investigations into violations of various Federal statutes; drug enforcement programs; investigations by Watergate Special Prosecution Force.

Antitrust Division.—Possible violations of antitrust laws, Truth in Lending Act, Clayton Act, etc.

Civil Division.—Litigation involving the United States Government; redetermination of excess profits on renegotiable contracts.

Civil Rights Division.—Employment discrimination suits under Title VII of the Civil Rights Act of 1964.

Criminal Division.—Strike Force investigations; Grand Jury investigations; combatting fraud; narcotics targets; possible violations of various Federal statutes; possible violations of securities regulations; bribery cases, and other criminal investigations.

Land and Natural Resources Division.—Condemnation proceedings, court cases.

UNITED STATES ATTORNEYS

Official investigations involving violations of various Federal statutes, including investigations of bank fraud, mail fruad, bribery, bankruptcy, embezzlement, etc.; collection of judgments; litigation against the United States; Grand Jury investigations; violation of narcotics laws; determination of debtors' whereabouts and ability to pay.

DEPARTMENT OF LABOR

For use in a lawsuit.

SECURITIES AND EXCHANGE COMMISSION

Investigations into violations or possible violations of the federal securities laws.

RENEGOTIATION BOARD

To enable the Board to perform its duties under the Renegotiation Act of 1951, as amended.

In addition to the tax return information furnished under 26 CFR 301.6103 (a)-1, certain Federal agencies have received tax data under Executive Orders issued from time to time by Presidents, which permit such agencies to examine certain classes of returns or selected information from returns on a general basis. These Executive Orders were issued in the interest of the internal management of the government and to assist Federal agencies in carrying out their responsibilities under the law. For example, the Department of Commerce, under Executive Order No. 10911, may inspect returns and extract therefrom such data as the Secretary of Commerce may designate for purposes of the economic censuses, for purposes of determining revenue sharing allocations, or for similar statistical studies. This information is usually furnished on tape or microfilm, but may also be selected information on abstract cards or transcript-edit sheets. When feasible, IRS may prepare statistical data for an agency rather than furnish copies of returns. Treasury regulations provide that any information obtained by Commerce and other agencies pursuant to their Executive Orders shall be held confidential and may be published or disclosed in statistical form only, provided such publication does not disclose, directly or indirectly, the name or address of any person filing such a return.

Under Executive Order 10619, the Social Security Administration may inspect income tax returns and the retained portions of any employer's return of withheld social security taxes for the purposes of promptly determining the correct payments of benefits under Title II of the Social Security Act. Since taxes under the Self-Employment Contributions Act and the Federal Insurance Contributions Act which finance the payment of such benefits are collected by IRS, the cooperation of IRS and SSA is essential to the proper administration of Title II of the Social Security Act.

Attached is a list of tax return records furnished to Federal agencies during 1974 pursuant to their Executive Orders, and their reasons for requesting the data.

TAX RETURNS OR INFORMATION FROM RETURNS FURNISHED TO FEDERAL AGENCIES HAVING EXECUTIVE ORDERS TO RECEIVE SUCH INFORMATION

CALENDAR YEAR 1974

Agency: 1. Social Security Administration; Regulation and Executive Order No. 26 CFR 301.6103(a)-100, E. O. 10619.
Reason: For administration of provisions of Title II of the Social Security Act.
Number of returns inspected: 6,633.
2. Department of Commerce; 26 CFR 301. 6103(a)-104, E. O. 10911.
Reason: For purposes of the 1973 Census of Agriculture.
Information Furnished (Tapes or Microfilms)—Selected Items from:
95,000—Forms 1065, Partnership Returns.
7,500—Forms 1120, Corporation Returns.
165,000—Forms 1040, Schedules C and F, Proprietorship Returns.
12,600,000—Business Master File Entity File Tape Records.
9,669,316—Business Master File Monthly Entity Change Records.
15,089,124—Forms 941, Employer's Quarterly Tax Returns.
460,604—Forms 943, Employer's Annual Tax Returns for Agricultural Employees.
4,439—Forms 990C, Farmers' Cooperative Records from the Exempt Organization Master File.
12,600,000—Principal Industrial Activity Extracts.
Reason: For purposes of updating the Population Migration Study and Revenue Sharing Estimates.
Information Furnished (Tapes)—Selected Information from:
79,700,000—Forms 1040, Individual Tax Returns.
Reason: For purposes of the 1972 Survey of Minority Owned Businesses Report.
Information Furnished (Tapes)—Selected Information from:
14,000—Individual Master File Entity Tape File Records.
Reason: For use in estimating the national income and product and plant and equipment expenditures.
Inspection authorized of:
300—Transcript-Edit Sheets of Corporation Returns.
3. *Renegotiation Board*, 26 CFR 301.6103(a)-105, E. O. 10907.
Reason: For use in administering the Renegotiation Act of 1951, as amended.
Information Furnished:
1,803—Specially prepared abstracts of Corporation Returns.
4. *Federal Trade Commission*, 26 CFR 301.6103(a)-106, E. O. 10908.
Reason: For use in the Industrial Financial Reports Program.
Information Furnished:
89,000—Abstracts of Corporation Returns (Transcripts).
43,000—Abstracts of Corporation Returns (Tapes).
45—Transcript-Edit Sheets of Corporation Returns.

Senator HASKELL. Senator Dole.

Senator DOLE. Do you coordinate your efforts insofar as investigation and law enforcement with the Justice Department?

Mr. ALEXANDER. Yes, sir; we do. The Justice Department, of course, acts as our lawyer in a tax evasion case.

Senator DOLE. And then, of course, the Attorney General would have the top coordinating role in that effort.

Is that correct?

Mr. ALEXANDER. Yes, in particular the task force effort. There is a rather close working relationship between our people, both our special agents and our revenue agents, and the strike force attorney.

Senator DOLE. Now I think it has been alleged that in the early 1960's there was extensive wiretapping and bugging by IRS personnel.

Is that still the practice? It was alleged that the then-Attorney General who coordinated the efforts of Justice and IRS did authorize extensive bugging and wiretapping.

Mr. ALEXANDER. IRS has a flat prohibition against wiretapping. a flat prohibition. There have been recent allegations that that prohibition has been violated. We are investigating those allegations at this time.

At this time we know of no violations that have been proven of our flat prohibition, but we want to make sure that there were not any, that there were not any indirect violations.

Senator DOLE. So is it fair to assume that your information comes from either the taxpayer himself or from the person out there somewhere who sends in information? Do you have other ways if you do not wiretap? Of course you have your investigative staff and compliance staff.

Mr. ALEXANDER. Our special agents are skilled criminal investigators and they are alert to the possibility of noncompliance. They know incorrect methods——

Senator DOLE. But they do not do it with bugs and wiretaps. And you do not have any facility now where you train agents in that skill.

Mr. ALEXANDER. No. We have long since given up the Stress Schools and the other school that was mentioned as the school for undercover agents. And as I say, we have not had any since I have been Commissioner. Our special agents are trained at, and are skilled at, the job of unearthing evasions of the tax laws.

Senator DOLE. How long do you keep these tax returns of an individual or a corporation? I should know the statute. Five years?

Mr. ALEXANDER. Six years for individuals. Is it any different for corporations?

Mr. GIBB. As far as I know it is the same for corporations.

Senator DOLE. And then what happens?

Mr. ALEXANDER. Corporate returns are kept indefinitely, I am reminded by Mr. Gibb.

Senator DOLE. Are they on microfilm? Where do you store all these?

Mr. ALEXANDER. The Federal Records Centers.

We initially store the returns ourselves. We keep them in our service centers where you file them for only a short period of time. Several of our service centers clear returns out in about 6 weeks. The others keep them for periods up to a year, then they go into the Federal Records Centers where they are retained, where they remain for the rest of the 6-year period for individual returns—unless used for audit—and then they are destroyed.

Senator DOLE. To get back to the wiretapping, you say you have it under investigation. There was recent allegation of a wiretapping incident in Baltimore, Md.

Is that one you have under investigation?

Mr. ALEXANDER. We are investigating all allegations of this nature, including that.

Senator DOLE. How many are there?

Mr. ALEXANDER. There have been some more.

Senator DOLE. Five?

Mr. ALEXANDER. I do not have the exact number.

Now we do engage in what is called electronic surveillance. Principally——

Senator DOLE. Well, like radio, television?

Mr. ALEXANDER. Let me draw a distinction between wiretapping and electronic surveillance because I do not want to make this sound too broad.

A statement which was recently attributed to me was that we did not engage in electronic surveillance—I never made that statement. I said we did not wiretap. Now electronic surveillance involves such things as monitoring a telephone conversation with the permission of one of the parties. It involves such things as wiring someone up with that person's permission to engage in a conversation with another person.

Now this is very limited. This is done only under the Attorney General's guidelines and this is used and should be used only in situations where there is a one-on-one problem and where the allegation of impropriety, of illegality, is very serious, such as an attempt at bribing one of our employees. Our inspection service uses this method of investigation rarely, and I will supply for the record the number of uses.

Senator DOLE. Those are the only two areas of electronic surveillance—where you wire somebody up and he comes into a taxpayer's office and visits with him one-on-one, or where you have the consent of one party and a phone conversation and you are monitoring that.

Are those the only two methods that you use?

Mr. ALEXANDER. I am not sure because, again, we get into a problem of definition. I will check to see whether there are any other things that could remotely be called electronic surveillance under the broadest use of the term and supply for the record the numbers of instances, the circumstances, protecting, of course, taxpayer privacy, and our investigative responsibilities in these situations.

Senator DOLE. Is it fair to ask the number of cases where you have used this limited electronic surveillance?

Mr. ALEXANDER. Well, we have monitored telephone calls in our taxpayer service activities constantly because that is the only way we know that we can properly manage a telephone bank to make sure of adequacy and courtesy to taxpayers.

Senator DOLE. To make certain I understand who is the consenting party—who would that be?

Mr. ALEXANDER. The consenting party is our employee.

Senator DOLE. So I am the taxpayer and the fellow in the IRS consents that somebody else in the IRS monitor our phone call.

Mr. ALEXANDER. Only if, and this is unthinkable, you were engaged in such an activity that that particular type of investigative technique were necessary. Back to taxpayer service, Senator Dole, for a moment.

Senator DOLE. I do not want to belabor it.

Mr. ALEXANDER. You understand that there we do need to monitor our telephone calls because we need to manage a telephone bank to make as sure as we can that our people are giving correct answers and courteous answers to taxpayers who call up. If we listen to only one side of the question, or only one side of the conversation, and our taxpayer assistor says, yes, the answer would be right if the question is, "May I claim my 4-year-old son as a dependent?" or would be wrong if the question is "May I claim my 4-year-old dog as a dependent?" So we need to listen to both sides of the conversation.

Senator DOLE. Well, you cannot talk to the dog, right.

Is it only used where you have a possible evasion of tax or some underreporting of income? Is it just a monitoring service that tries

to improve the service of the IRS or is it for some specific purpose, to trap someone who might otherwise not fully report income?

Mr. ALEXANDER. We do not like to trap people, but we do have an obligation to investigate tax evasion and we have an obligation—and this is where electronic surveillance or wiring up is more commonly used—to check out allegations or actual fact of people who try to bribe our employees or try to obstruct justice, try to obstruct our investigation.

Senator DOLE. You would get the consent of the employee on monitoring a telephone call if it was about his bribery.

And finally, do you have any special relationship with the telephone companies that permit you to do this telephone monitoring service? Do you have to have approval of the telephone company or is that done quietly?

Mr. ALEXANDER. There have been some recent allegations of relationships, improper relationships, with the telephone companies, and we are checking those out at this time.

Insofar as the monitoring of telephone calls is concerned, we use this investigative technique in very few criminal tax evasion cases and more often in bribery cases. I am sorry to say that bribery attempts seem to be increasing rather than decreasing.

Senator DOLE. I see.

Mr. ALEXANDER. I am not sure whether our activities require advance approval of the telephone company. I will check that out, Senator Dole, and supply you an answer.

Senator DOLE. And I think it might be helpful if that information were fully supplied for the record. You do not need to sign the affidavit referred to, as far as I am concerned, but it occurs to me that I understand the necessity in some cases. But you have said, in effect, you do not do what Senator Byrd and Senator Talmadge have alluded to, but that you are doing something else. Maybe you have substituted this for what may have been an ongoing practice before. Maybe this has been ongoing for a long time.

Mr. ALEXANDER. Senator Dole, I think the figures we will supply for the record will show you that we do not abuse, nor do we intend to abuse, the rights——

Senator DOLE. Do I have a right as a taxpayer if I get a call from an IRS agent to ask if my call is being monitored?

Mr. ALEXANDER. Yes; I would think that is an appropriate question for the taxpayer to raise. And can I clarify our taxpayer service function?

Senator DOLE. Please do.

Mr. ALEXANDER. Senator Dole, in our taxpayer service function, we tell the public right on the front page of the tax package that we engage in telephone monitoring and we do not keep track of the taxpayers. We do not ask for the name and the address or the telephone number, unless it is necessary to call them back, unless they leave a question with us that is so difficult we cannot answer it at all and we have to research it and call them back the next day.

So we do not keep track and we are not about to keep track of them.

Senator DOLE. Thank you.

[The following material was subsequently supplied by Mr. Alexander:]

I declare that I have examined this material and to the best of my knowledge and belief it is true, correct, and complete.

(S) W. A. BATES, *Assistant Commissioner (Inspection)*.

I would like to submit the following statement to clear up the record on the Internal Revenue Service policy and use of electronic surveillance equipment.

DEFINITIONS OF TERMS AND POLICY

Telephone conversations.—The use of electronic devices to intercept telephone conversations *without* the consent of at least one of the parties to the conversation (normally referred to as "wiretapping"), is prohibited.

The use of electronic devices to intercept telephone conversations *with* the consent of one or all of the parties to the conversation requires the approval of an IRS official designated by the Commissioner of the Internal Revenue Service.

The designated officials in Inspection are the Assistant Regional Inspectors (Internal Security), and Chief, Investigations Branch, or their superiors.

The designated officials in Intelligence are the Chiefs of Intelligence in District Offices and Chief, Operations Branch, or their line and functional superiors.

Non-Telephone conversations.—The use of electronic devices to overhear or record a non-telephone conversation *without* the consent of at least one of the parties to the conversation (normally referred to as "bugging"), requires a court order.

The use of electronic devices to overhear or record any non-telephone conversations *with* the consent of at least one of the parties to the conversation requires the advance written approval of the Attorney General or any designated Assistant Attorney General or Deputy Assistant Attorney General except in emergency situations. If used in an emergency, the Attorney General must be notified within 24 hours.

Every year a report on the use of electronic equipment by the Internal Revenue Service is prepared covering the fiscal year from July 1 to June 30. This report includes a description of the circumstances involved in each case in which electronic equipment was used. The report is sent to the Attorney General through my office. Any deviations from the Internal Revenue Service policy would be disclosed in this report.

After carefully reviewing the IRS policy on the use of electronic surveillance equipment, I find it is even more restrictive than the requirements of Public Law 90-351 (The Omnibus Crime Control and Safe Streets Act of 1968), and the Attorney General's Guidelines for the use of such equipment by all Federal agencies. After carefully considering our responsibility under the law in this extremely sensitive area, it is my considered opinion that the IRS policy properly provides adequate controls over the use of such equipment and protects the rights of privacy of our citizens.

We consider it necessary to use electronic surveillance to protect employees in any situation where there is potential violence and to corroborate testimony and evidence in a one-on-one situation where other probative corroboration can not be obtained.

USE OF ELECTRONIC EQUIPMENT

The Service complies fully with the Attorney General's guidelines on the use of electronic equipment. In addition the Service prohibits the interception of telephone conversation except with the consent of one of the parties of the conversation. We know of no instance where the Service engaged in any wiretapping with or without a court order or monitored any conversations without the consent of one of the parties during the fiscal year ended June 30, 1974.

Monitoring and/or recording of conversations by use of electronic devices with the consent of one of the parties to the conversation has been held by the courts to be legal and not a violation of an individual's Constitutional rights. The Attorney General's Guidelines and our policy and procedures were formulated to provide administrative controls over the use of electronic equipment for the purpose of monitoring and/or recording conversations with the consent of one of the parties to the conversation.

Following are the number of cases for which the Service received approval or the Attorney General was notified of consensual electronic surveillance and

the number in which such devices were actually used during the last two fiscal years:

Investigative Division	Fiscal year— 1973 Approval received	1973 Actual use	1974 Approval received	1974 Actual use
Inspection service	135	132	155	155
Intelligence division	24	11	22	19
Total	159	143	177	174

To demonstrate the type of activity that warranted the consensual use of electronic surveillances during fiscal year 1974, presented below is a breakdown of the 177 cases by type in which approval was received or the Attorney General was notified of the use of electronic surveillance equipment with the consent of one of the parties to the conversation:

Types of cases	Inspection	Intelligence
Bribery	139	0
Narcotics	3	0
Possible corruption	4	0
Bribe solicitation	3	0
Conversion—Government property	1	0
Obstruction of justice	0	0
Tax Fraud—Obstruction of justice	0	6
Unauthorized disclosure	2	0
Tax fraud—Secure evidence	0	9
Tax fraud—Corroborate evidence	0	7
Assault	2	0
Fraudulent refund scheme	1	0
Total	155	22

It should be noted that approvals for consensual use of electronic surveillance are given for a 30 days period during which more than one instance of monitoring may take place.

Consensual telephone monitoring activities do not require notification to, or advance approval of, the telephone company.

Senator DOLE. Senator Talmadge.

Senator TALMADGE. Commissioner Alexander, I want to comment just very briefly on Federal-State cooperation or treaties which I believe you referred to. I think that is vital to the interest of both the Federal Government and the States.

As you know, every Commissioner of Internal Revenue has a difficult time trying to get additional agents from the Congress. They are always understaffed. The same thing is true of all State governments. Now both the State agents and the Federal agents are working for the Government. Well, I think those efforts ought to be pooled in the interest of the respective governments because they are both drawing taxpayers' salaries and there is no need in having them duplicate work. However, I think all of us are interested in seeing that the taxpayers have the same protection from the State agents that they may have from the Federal agents. And if the law is not clear that someone in the State agency, say Georgia, leaks my tax return, I think we ought to make certain that it is a violation of the Federal law as well as the State law.

And I would be pleased to have your staff submit an amendment to that effect because I think it ought to be included. Also, I would

like to ask your opinion as to whether or not the criminal sanction in the law ought to go beyond merely a criminal sanction and have a civil sanction as well.

Mr. ALEXANDER. Senator Talmadge, in S. 4116, to which I referred earlier, and in the Treasury Department's submission to the Congress last year, which I suggested would be a good starting point for congressional consideration at this time, we did address the first of those two questions. We addressed the first by strengthening the provisions of present law, the somewhat awkward provisions that Chief Counsel Whitaker described to you, in an effort to give greater protection to the taxpayer irrespective of whether it was a Federal or whether it was a State agency that had the information which should be kept confidential.

Now the addition of a civil remedy, as well as a stronger and better and tougher criminal penalty is something which I would like to consider. It might raise some difficult questions for the administering agency. To what extent is the civil sanction imposed against the particular person acting, perhaps, with more zeal than judgment, and to what extent should it be imposed against the agency that employed that person?

Senator TALMADGE. I believe you stated, Commissioner, that since you have been the Commissioner of Internal Revenue the White House has never asked for any tax returns.

Do they request any information about the tax returns on potential Presidential appointees?

Mr. ALEXANDER. Yes, sir, they do. They have made a number of requests for tax checks. These tax checks were started back in 1961, I believe, by then-President Kennedy, and all they involve is whether the particular person under consideration for appointment has filed returns in the past 3 years and whether that person is delinquent in the payment of taxes and whether that person has been investigated criminally and whether fines or penalties have been asserted against that person.

That is all.

Senator TALMADGE. I think that is entirely appropriate and ought to be continued.

Mr. ALEXANDER. We believe this is entirely appropriate that the appointing authority should be advised as to whether the prospective appointee is in tax trouble.

Senator TALMADGE. I agree.

Has the Internal Revenue Service ever sold or given or furnished in any other way tax returns of or tax information on private individuals or corporations?

Mr. ALEXANDER. We sure have not sold any. Have we given them away?

Mr. GIBB. Only with respect to themselves, sir.

Mr. ALEXANDER. That is right. Someone can ask for their own return and they are entitled to their own return, and of course, the executor is entitled to the return of the decedent and the like.

Mr. Gibb or Mr. Flanagan, could you supplement my answer?

Mr. FLANAGAN. Occasionally we do have to give out third-party returns under court orders involving litigation where there is a related matter. This is usually done with the permission or consent of the

taxpayer. Normally, the IRS opposes such orders if taxpayer consent is not obtained on the grounds that they are not "as authorized by law" within the meaning of Code section 7213 on 18 U.S.C. section 1905.

Senator TALMADGE. No names or addresses or lists thereof have ever been furnished to any group for mail order campaigns or for any other purposes, have they?

Mr. ALEXANDER. Oh, no; we do not sell our mailing lists.

Senator TALMADGE. Or give it away?

Mr. ALEXANDER. Or give it away. Occasionally people write us and say they would like to get off our mailing list, Senator.

Senator TALMADGE. I am certain that is true, and if you let any people off, please let me head the list.

Mr. WILLSEY. Senator Talmadge, we do make available a list of tax-exempt corporations. That is available by subscription or purchase from our exempt organizations function.

Senator TALMADGE. For what purpose is that made available?

Mr. WILLSEY. It is pursuant to the statute. Any taxpayer can go into the District Director's Office and determine whether an organization is tax exempt.

Senator TALMADGE. Any citizen is entitled to that information?

Mr. WILLSEY. Yes, sir.

Senator TALMADGE. Thank you. I have no further questions, Mr. Chairman.

Mr. ALEXANDER. May I add two other things, sir?

Senator TALMADGE. Yes.

Mr. ALEXANDER. A 1-percent shareholder can request and obtain a corporate return, and moreover, anybody can go into one of our offices and ask if another person has filed a return under section 6103(f). That is one of the provisions in the Secretary's submission to Congress last fall that he recommended be deleted.

Senator TALMADGE. Thank you. I have no further questions, Mr. Chairman.

Senator HASKELL. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Alexander, to follow up Senator Talmadge's question with regard to potential Presidential appointees, the way you replied I thought was perfectly appropriate, and that the information should be given and that it is necessary that it be given. I am wondering whether you have had requests, or whether the IRS has had requests, in the last 4 or 5 years for tax returns of potential appointees?

Mr. ALEXANDER. Not since I have been Commissioner, Senator Byrd.

Senator DOLE. That is August of 1973?

Mr. ALEXANDER. Sir?

Senator HASKELL. August of 1973, is that when you were appointed?

Mr. ALEXANDER. No. I was sworn in on May 29, 1973. My commission took effect May 25 of 1973, so I am 23 months, almost, in office.

Senator BYRD. What occurs to me is that someone at the White House could say, we are thinking about appointing Mr. So-and-So, and would like to see his tax returns. They might not, necessarily, have any real intention of making that appointment.

Mr. ALEXANDER. That is a possibility; I do not believe it is a possibility under this President. I do not think he is about to do that or about to let anybody else do that. Any request from the White House has to be signed by President Ford personally under his new Executive

order that we previously described. However, that could happen, I suppose, in the future. What IRS has done is centralize in IRS any transmission of tax return information pursuant to any such hypothetical request. For that matter, as to all these tax checks that I mentioned, only I, or in my absence, the Deputy Commissioner can transmit this information beyond IRS. That is an effort to make sure, as sure as we can in this imperfect world, that we guard against the potential misuse of the appointment process.

Senator BYRD. Does the IRS review the safeguards other agencies use to protect the tax returns given to those agencies?

Mr. ALEXANDER. We do, subject to certain limitations.

I mentioned earlier that the Department of Justice through Assistant Attorney General Crampton's memorandum was calling to the attention of the U.S. attorneys the need for strict observance of these safeguards.

Senator BYRD. Yes. But how does IRS do it? What safeguards do you have?

Mr. ALEXANDER. The way we do it is to look at these requests that come in to us, and if we see a name that gives us pause, then we inquire. As a matter of fact, I understand that Mr. Willsey and Mr. Wolfe, Assistant Commissioner of Compliance, made such an inquiry this morning. I have made some where we see a name that is the name of someone prominent in the political field, particularly someone prominent in a way as to indicate there might be opposition to that person or dislike of that person by the inquiring official. We will check back to see if the return is really necessary, and necessary for what—necessary for a proper purpose.

Senator BYRD. Yes. But once a return is turned over to another agency of Government, then you have no safeguards from that point on, I assume?

Mr. ALEXANDER. Only the safeguards of the law that Mr. Whitaker and I have described.

Senator BYRD. Can other agencies of Government obtain returns without a written request?

Mr. ALEXANDER. Returns themselves, no. Other agencies, like the Department of Commerce, obtain mass magnetic tape information from us. But all of that, according to my understanding, is pursuant to written request.

Mr. GIBB. By Executive order, sir.

Mr. ALEXANDER. Under Executive order.

Would you care to amplify that, Mr. Gibb.

Mr. GIBB. Yes, sir.

There are Executive orders that are signed by the President to open returns or return information for inspection by Federal agencies—for example, the information procured by Census is not procured on a name by name basis by a signed letter by the head of the agency, as is required for investigative purposes. But the Executive order opens the returns to inspection on a broad basis. Once the mechanics are worked out, the information can be made available pursuant to that Executive order under existing procedures.

Senator BYRD. Is that the total return or just certain parts of the return?

Mr. GIBB. That is generally parts of returns, and that type of agreement is generally based on magnetic tape releases of particular data elements. That would be the common practice.

Senator BYRD. Well, the Commissioner stated that if anyone in the White House seeks a return, such an order must be signed personally by the President and must be personally approved by either the Commissioner or the Deputy Commissioner.

Now, does that also apply, I would assume, to the subordinate agencies of Government—the Commerce Department, Agriculture Department, and what have you?

Mr. WHITAKER. Senator, may I respond to that for a moment?

The Tax Division of the Department of Justice, of course, defends the Internal Revenue Service in most civil and criminal matters in the district courts of the United States and the Court of Claims. We make no record of disclosures for these purposes. We do not ask the Tax Division to make a written request for tax returns in those cases because those are tax cases that we have worked up and refer to the Department of Justice to act as the attorney for the Service.

However, other departments which have an interest in a tax return for a specific investigation before them do have to follow the regulations, which require a request by the head of the agency, and non-tax matters the Department of Justice must follow the same procedure.

Senator BYRD. By the heads of agencies do you mean the head of the Department, like the Department of Defense or the Department of Commerce? Does the Secretary need to sign that?

Mr. WHITAKER. Yes, sir.

Senator BYRD. I think the Commissioner testified earlier that there were some 8,000 returns that had been made available to other agencies during the year. Is my recollection accurate on that?

Mr. ALEXANDER. 8,210 taxpayers, sir.

Senator BYRD. Well, yes.

Now I assume that, then, is broken down by departments of Government.

Mr. ALEXANDER. Departments of Government and agencies of the Government. For example, the Renegotiation Board is, as I understand it, an agency, but not within a particular department.

Senator BYRD. Were all of those submitted as a result of a written request?

Mr. ALEXANDER. It is my understanding they were.

Mr. GIBB. That figure, yes; they are the head of agency requests.

Senator BYRD. And then the request was complied with by the written approval of either you or your deputy?

Mr. WHITAKER. Senator Byrd, may I clarify one matter of the written request in that case? In the case of the Department of Justice, either a U.S. attorney or an Assistant Attorney General has authority to sign a request, as well as, of course, the Attorney General and Deputy Attorney General. In the case of other agencies of Government, that is, other than the Department of Justice, the request must be signed by the head of the agency or the department.

Mr. ALEXANDER. Senator Byrd, in response to your last question, what must be approved in my office is a reply to a White House request for a tax check. What goes through my office is most, but I understand not all, of the requests that are embodied in this figure of 8,210

for the calendar year 1974, the number of taxpayers involved in requests by agencies exercising investigating powers.

Now these requests come in in writing. These requests are responded to in writing. These requests are responded to by my office, by the Assistant Commissioner of Compliance, or by Mr. Gibb.

Senator BYRD. Well, then, you have one rule apparently for the President, which is a very strict rule. All requests coming from the White House must be signed by the President himself.

Mr. ALEXANDER. That is the White House Executive order the President put into effect.

Senator BYRD. I am not complaining about it. I am saying it is good.

Mr. ALEXANDER. The President imposed these restrictions upon himself and his office.

Senator BYRD. I think it is an excellent restriction. But I am wondering, if it applies to the President, why should not a similar restriction apply to the department heads and the agency heads?

Mr. ALEXANDER. A similar restriction, given the modifications that Mr. Whitaker mentioned, pretty well applies to the department heads and the agency heads. The U.S. attorneys and the Assistant Attorneys General are an exception to the general rule that Mr. Whitaker and I described, that the request come from the head of the department or the head of the agency for the particular information.

Senator BYRD. My time has expired.

Thank you. Mr. Chairman.

Senator HASKELL. Commissioner, to follow up one of Senator Talmadge's remarks, Senator Talmadge indicated it is desirable that State and Federal taxing authorities work in cooperation and not duplicate each other's efforts.

You know there was a famous gangster in the twenties who said, if you want to keep a secret, tell yourself. And there is something to that. Here we have information from 63 million returns going out to States. I wonder if it would not be sufficient for their purposes—if I had to pay an additional tax or an assessment notice was sent to me, or notice of deficiency—for the State to be informed that the IRS was asserting an additional tax.

I am really very concerned with this proliferation of returns all over the place, no matter what our laws are. And I wonder if you would have a comment on that.

Let us say the State of Colorado was told by your office that a notice of deficiency or a 30-day notice had been issued to me. Would not that be sufficient to put them on notice that you folks thought I owed some more tax, without the necessity of giving them the full scope of my return?

Do you think that would be sufficient for their administrative purposes?

Mr. ALEXANDER. They would be, as you pointed out, the best ones to respond to that point. We have conflicting goals here. On the one hand, we have a goal of exercising our separate tax responsibilities as effectively as we can at minimum cost to the American taxpayer, and that calls for close coordination.

On the other hand, we have a goal of maintaining the privacy of the information entrusted to us. That would call for a separation. Meshing these two goals is awkward and difficult, and the line is

drawn at different points by different people. If States moved toward piggybacking—if they moved toward assigning to us the responsibility of administering their tax systems, which of course would involve tailoring their tax systems to ours and giving up jurisdiction and people—then we might meet both of these goals better than we do today.

Senator HASKELL. I understand the problem. It is just very difficult.

Talking about piggybacking, the Department of Justice can ask for a return, and you have introduced what I think is a very salutory regulation; they must specify their reason. But in view of the fact that your powers of investigation are broader, you do not have to show probable cause, for example, obtain a "John Doe" summons to investigate bank records. Are you concerned that in the past—I do not think it can happen under the present regulations—the Department of Justice may have, in effect, piggybacked on your powers of investigation by asking for tax returns where no tax offense was involved?

Mr. ALEXANDER. We are quite concerned about the use of our powers and our resources and people. I have great faith in Attorney General Levi's view of proper law enforcement, and I think that our views are very closely attuned.

As you mentioned, we are speaking of the past, rather than the present or the future. I am quite concerned about the use of the tax law as a generalized tool for the enforcement of unrelated laws, or the fulfillment of unrelated goals. The use of the tax law relating to tax enforcement as a pretext to serve another purpose is hardly an appropriate one, and hardly the one for which Congress granted these great powers which this agency has.

On the other hand, who tend to earn their money by violating other laws surely can be reasonably expected to have little respect for the tax laws.

Senator HASKELL. You are making a presumption that they violated other laws, Commissioner. And I am suggesting that the Justice Department, absent the regulation that you recently put into effect, on mere suspicion, or mere whim, could, in effect, piggyback on any of your powers. I am not talking about present company; I am talking about past company or possible future company. And this is an area that gives me some concern, and I just wondered if you shared my concern.

Mr. ALEXANDER. It gives me great concern, Mr. Chairman, and we are doing our best to meet our responsibilities to be responsible here.

Senator HASKELL. I realize that, and I appreciate it and I applaud you for it. But the thing that is going through my mind is that we are all mortal, and I wonder whether or not there should be some legislative effort in this area.

A further question: The first time I ever heard the word squeal other than connected with pigs was when I saw this ABC program yesterday afternoon.

As I understand, a squeal is where somebody writes in and says, Floyd Haskell really sold *x* number of shares—just to take an example—and did not report it. Now am I correct? Is that what is, in the parlance, known as a squeal?

Mr. ALEXANDER. Until I saw that program, I did not realize that we had the word squeal in the IRS vocabulary used for the purpose attributed to it by that particular network.

I think we now have three definitions of squeal. One is the sound made by a pig; two is the sound made by a tire when a car turns rapidly and decidedly; and three is an informant's letter—a letter from someone, perhaps totally gratuitous, who wants to tattle on someone else.

Senator HASKELL. And can that letter precipitate an audit?

Mr. ALEXANDER. An informant's letter could, if it contained sufficient information, be considered seriously by one of our field officials in connection with whether to do anything about it. Now most of them are junk; most of them end up being held for a while because we are likely to get a followup letter commenting, Why on earth did you not do something about it? You are engaged in some sort of a coverup—which is a favorite word these days—or we are likely to get a claim for a reward. So we hold them for a little while, we do nothing with most of them, and then we get rid of them.

Senator HASKELL. Do those letters, in order to precipitate an audit, have to be signed?

Mr. ALEXANDER. I do not think I could state that flatly, but I am suggesting that most of these letters—not all—but most of these letters are junk and are treated as junk.

Senator HASKELL. But you cannot state whether or not it is a requirement that the letter be signed.

Mr. ALEXANDER. No; I cannot. Perhaps some of my friends with longer service in Internal Revenue can respond to that one.

Mr. Gibb?

Mr. GIBB. No; there is no requirement that such a letter be signed.

Mr. ALEXANDER. However, I think the lack of signature would be taken into account in assigning weight, if any, to the letter.

Senator HASKELL. I certainly would think so.

Now in connection with this idea of a squeal letter—which may or may not be anonymous—there was the case of Mr. Green who worked for the newspaper Newsday. We are going into past history and I am only doing this because I think it may serve as a case history of what we do not want to happen again. I am not being critical of you or your administration. But in that particular instance, Mr. Green was apparently audited—and audits put people to an awful lot of trouble. I have been audited in my life, and you know you have to dig into records and get out check books at the very least, and they cause you much trouble.

In that particular instance, do you know whether or not a so-called squeal triggered the investigation?

Mr. ALEXANDER. Well, Mr. Green has gone public, and since he went public the Joint Committee on Internal Revenue Taxation, which investigated these allegations of political harassment by abuse of IRS processes, responded on December 12, 1973, in part, publicly. I think they found, on the basis of their investigation, that Mr. Green had not been harassed, if you will, by misuse of the IRS process, but he had been audited by the State, and the audit was not triggered by an informant's letter.

Senator HASKELL. If I may interrupt—I am not asking what the joint committee may have found. I think my question was, Commissioner Alexander, whether or not the audit was precipitated by a so-called squeal.

Mr. ALEXANDER. It is my understanding that it was not.

Senator HASKELL. And you would, in response to a written question, I assume, search the records and make a necessary investigation to be sure, and produce the necessary documents.

Mr. ALEXANDER. Well, we have a problem, sir, again of the very question we have been discussing this morning. The question of taxpayer privacy.

Senator HASKELL. I agree with that.

Mr. ALEXANDER. Although Mr. Green may not have great respect for his privacy, we do. And with his authorization, of course, we could release the entire file.

Senator HASKELL. Right. With his authorization.

I have a couple of other questions, but I will defer to Senator Dole.

Senator DOLE. First, I have a series of questions which I will submit in writing on letter rulings. I understand they will be made public, right?

Mr. ALEXANDER. That is correct, Senator Dole.

Senator DOLE. That is based on the decision by the court of appeals?

Mr. ALEXANDER. That decision as to letter rulings issued in the future was made prior to that court decision. On July 31, 1974, I testified before Senator Kennedy's subcommittee, and at that time stated that we intended to make future rulings available to the public.

Senator DOLE. Right.

Now I want to follow that up quickly. Would you also make public the written request of the taxpayer for a letter ruling? Is that also under consideration?

I mean, if I write for a ruling, will my letter be made public along with the ruling?

Mr. ALEXANDER. Well we were going to make the letter rulings themselves available to the public. And, of course, as you have pointed out, we were in litigation at the time, and in August the Court of Appeals for the District of Columbia handed down its decision. Since then, the district court in the District has acted on that remand.

Senator DOLE. You do not have any plans then to make public for public inspection the written requests for letter ruling?

Mr. ALEXANDER. That may be subject to public inspection irrespective of our plans. We had planned to release the letters themselves, rather than the underlying documents submitted to us. But I am speaking from the standpoint of administration rather than from the standpoint of the applicability of the Freedom of Information Act.

Mr. Whitaker?

Mr. WHITAKER. Under the case to which you refer, Senator Dole, in the District of Columbia at least, a request for a specific incoming ruling request could become public. We would have to comply under the Freedom of Information Act, under the law as it now is in the District of Columbia.

Mr. ALEXANDER. Senator Dole, we were responding to two considerations. The first of these, in our private rulings, or letter rulings, process involved the question of private law—secret law. Do certain people have access to a body of law, denied others, to the workings of this valuable part of tax administration?

The second question deals with the integrity of the agency. Do certain people get rulings that are denied others because certain people have certain powers, or are in certain positions that others are not in?

In response to both of these considerations: first, our concern about secret laws; second, our concern about the integrity of the agency, we decided, back in July 1974, that we would go public in our rulings process in the future, but we would try to respect the confidentiality of rulings made in the past. We would try to.

Senator DOLE. Right. I understand that may be the subject of some controversy also.

Mr. ALEXANDER. Well it surely is, because of the court decision that you and Mr. Whitaker and I have adverted to. And we are rethinking the way we must proceed, both as to the past and as to the future.

Senator DOLE. Now if the letter ruling cannot be relied on by any other taxpayer, I assume that would still be the policy even though it is going to be available for public inspection. It is not a precedent, or cannot be relied upon by some other taxpayer such as a revenue ruling which is published and can be relied upon?

Then you also give information on audits and how to deal with certain taxpayers. Will that be made public?

Mr. ALEXANDER. No sir.

The audit process we consider to be a process involving the taxpayer, involving the IRS, and not involving the public. We think this is a basic issue of taxpayer privacy, and the Court of Appeals for the District of Columbia in the *Tax Analysts* case drew a line between a letter ruling and technical advice.

Senator DOLE. But I am correct the letter ruling cannot be relied upon by other taxpayers?

Mr. ALEXANDER. The letter rulings are not precedent.

Senator DOLE. Right. Even though they are going to be open for public inspection, that does not change that basic point.

Mr. ALEXANDER. That is the position we took in the notice of rulemaking that we have issued. We think that is the proper position.

Senator DOLE. All right.

I have some other questions on letter rulings that I, with the permission of the chairman would like to submit for the record. Because this is an area of some concern.

[The material referred to follows:]

Question 1. Of the some 30,000 letter rulings issued each year, how many relate to matters (such as changes in accounting methods) where the taxpayer is *required* to get a ruling? Is there any reason to treat these rulings differently than those which are *voluntarily* sought?

Answer. A. The answer to the question regarding the number of "required" rulings would depend on how one defines the term "required". If this term is defined to encompass only those rulings issued in situations where the Internal Revenue Code effectively requires that a taxpayer obtain a ruling from the Service before proceeding with a transaction or to obtain favorable tax treatment, then it is fair to say that all accounting period, all accounting method, and certain reorganization cases, among others, would be encompassed. These three categories of cases alone account for nearly 60% of the approximately 30,000 rulings issued annually.

B. "Required" rulings could conceivably be treated differently from "non-required" rulings. For example, if the Service publishes letter rulings which are issued in the future and if, in a given "required" ruling situation, there is disagreement between the Service and the requester as to deletions, it would appear that the Service could be obligated to issue the ruling; however, if a "non-required" ruling request were involved, it would appear that the Service could refuse to issue the ruling in such event.

With regard to those letter rulings that have already been issued, we cannot of course follow the above procedure. Thus, in *Tax Analysts and Advocates* v. *I.R.S.*,

75-0650 (D.D.C., filed April 28, 1975), the court will be asked to determine whether and to what extent "required" rulings should be treated differently from "non-required" rulings.

Question 2. Some have expressed concern that the disclosure of letter rulings may involve unnecessary public disclosures of competitive information. Does the IRS think this is a real problem and, if so, what could be done about it?

Answer. The Service believes this is a definite problem and we have no simple solution. Rulings are based on specific facts. Competitive information may be necessarily includible in the text of the letter ruling to accurately reflect the holding of the ruling. To the extent that such information is deleted prior to release of the letter ruling, the position of the Service may be inadequately communicated to the public. If included in the released letter ruling, especially where, for whatever reason, the Service was unable to contact the recipient prior to release, there is a possibility that the Service could unwittingly disclose confidential commercial or financial information or a trade secret.

We believe that, insofar as possible, an opportunity should be afforded the ruling recipient to advise the Service of such information before the ruling or related correspondence is made public. We feel that it will be extremely difficult for the Service to determine unilaterally matters of such vital importance. Those requesting rulings will wish to maximize secrecy of competitive information. Those reading the ruling will wish to maximize public disclosure of the information to assure that the holding of ruling is completely understood. These conflicting points of view may make it difficult for IRS to function. Failure to protect the information may lead to suits to enjoin publicity of a given interpretation (See, for example *Charles River Park "A" Inc.* v. *HUD*, 73-1930 (D.C. Cir., March 10, 1975), while failure to publish information may lead to additional FOIA suits. To summarize, we believe it will be extremely difficult to balance the public's right to know against the individual's right to privacy.

Question 3. Does the IRS believe that, as a matter of policy, letter rulings should be made public and, if so, should there be a special statute dealing with the question? What should the principles of disclosure be?

Answer. I have long been concerned that perhaps we have had too much private law in the tax field as well as other fields. The Freedom of Information Act is the law of the land, and the recent amendments to that Act will further add to its strength.

The IRS has been under considerable pressure through litigation in the courts to open our entire rulings program to the public. These efforts have been designed to address what was perceived as two basic problems with the present system:

(1) The secret law that may result when one taxpayer receives a ruling that is not known to other taxpayers; and

(2) The appearance of a potential for abuse or favoritism because many of the letter rulings are not published as revenue rulings. A taxpayer can never be sure that he is not being discriminated against when he is unable to obtain a favorable ruling. At the same time, taxpayers in general can never be sure that some taxpayers are not treated more favorably than others because of who they happen to be.

The issue is not one of bureaucratic reluctance to provide the public with information to which it is entitled. The conflict is between the public's right to know and the taxpayer's right to privacy. More specifically, the Service has a legal duty to safeguard the confidentiality of tax return information which taxpayers have entrusted to the IRS. This principle of confidentiality carries the force of law.

Section 6103 of the Internal Revenue Code in effect prohibits the disclosure of tax return information by the Service except as specifically authorized by regulations approved by the President. In addition, Section 7213 of the Code and 18 U.S.C. 1905 impose criminal sanctions upon IRS employees and others who violate the provisions of the disclosure statutes.

Through the operation of our rulings program, the Internal Revenue Service has in its possession thousands of documents which contain vast amounts of confidential data. It is the position of the Internal Revenue Service that the information submitted by taxpayers with respect to the rulings program is "tax return information", the disclosure of which is governed by Section 6103 and 7213 of the Code. Moreover, these documents were submitted to IRS under the assumption that they would remain confidential. No effort was made to identify or segregate information of the type protected under 18 U.S.C. Section 1905 or information which might cause serious harm to the taxpayer if disclosed. As a practical matter, there is no suitable method of determining what informa-

tion would have to be deleted to protect fully the concerned taxpayers. That is one of the reasons the notice of proposed rulemaking we issued on December 10 of the last year provides for public inspection of only those rulings we issue in the future. Another reason for the limitation of the release to only prospective rulings was that the release was premised on the requirement of a waiver by the taxpayer, and it was believed that a retroactive waiver would be difficult, if not impossible, to secure.

This issue is now before the courts and, hopefully, in the near future we will have a judicial resolution of the conflict between the public's right to know and the individual's right to privacy.

With regard to the advisability of legislation in this area, a Bill was introduced in the last session of Congress, S. 4116, which would have exempted previously issued letter rulings from release. This Bill has not been reintroduced in the current session of Congress. We continue to believe that unpublished letter rulings are tax return information exempted from disclosure by statute, and also that documents submitted to us in confidence should remain confidential. In the case of *Tax Analysts and Advocates* v. *I.R.S.*, Civil No. 75-0650 (D. D.C. Filed April 28, 1975), the complaint demands release of all letter rulings issued since July 4, 1967 (the effective date of the Freedom of Information Act). There are also several other Freedom of Information Act suits pending in which disclosure of unpublished letter rulings is being demanded, and litigation on this issue seems to be rapidly growing despite the request by the Internal Revenue Service that these requests be placed in abeyance pending a final determination of the second *Tax Analysts* suit as well as *Fruehauf Corp.* v. *Internal Revenue Service*, No. 74-1474 (C.A.6, decided June 9, 1975) petition for rehearing filed July, 1975.

Even if the Tax Analysts litigation results in the release of some or all of our post-July 4, 1967 letter rulings, we are still faced with a problem involving letter rulings issued before that date. There are several hundred thousand of such rulings still in existence, most of which are routine in nature and are retained only because they record transactions and developments which have continued bearing or cumulative effects on the tax liability or status of the organization involved. Moreover, these rulings, for the most part, are not indexed or classified in any manner that would enable the Internal Revenue Service to readily identify them by subject matter.

In summary, we continue to believe that past letter rulings should be exempted from disclosure because they are tax return information protected from disclosure by statute, and also because the underlying requests were submitted in confidence. With regard to future rulings, we believe the notice of proposed rulemaking mentioned above can be drafted to minimize the possibility of release of confidential information.

Question 4. Is it important that the identity of the taxpayer receiving the letter ruling be disclosed and why?

Answer. It can be argued that, in the absence of furnishing the identity of the taxpayer receiving the letter ruling, there exists an appearance of a potential for abuse or favoritism. A taxpayer can never be sure that he is not being discriminated against when he is unable to obtain a favorable ruling. At the same time, taxpayers in general can never be sure that some taxpayers are not treated more favorably than others because of who they happen to be.

In the prior Tax Analysts litigation, the District Court determined, upon remand, that identities of the two taxpayers involved therein had to be made available.

In the current Tax Analysts litigation, plaintiffs seek release of the identity of the taxpayer; however, they would also permit deletion of material whose release would be an unwarranted invasion of personal privacy.

Question 5. The IRS also issues so-called technical advice memoranda to its field offices prescribing how a particular audit issue should be resolved for a particular taxpayer. Taxpayers as well as the IRS field offices may request technical advice. Should these be treated differently from letter rulings and why?

Answer. Technical advice requests generally arise in connection with audits of taxpayers' returns. In *Tax Analysts and Advocates* v. *I.R.S.*, 505 F.2d 350, the court determined that technical advice memoranda issued by the National Office deal directly with information contained in tax returns and thus are specifically exempted from disclosure by statute.

However, in *Fruehauf Corp.* v. *I.R.S.*, No. 74-1474 (C.A. 6, decided June 9, 1975), the court determined that technical advice memoranda are not specifically exempted from disclosure by statute.

We agree with the determination of the *Tax Analysts* court in this regard, and accordingly, the Government has petitioned for a rehearing in the *Fruehauf* case on the technical advice issue. We have also sought a rehearing in that case on the letter rulings issue.

Question 6. Does the IRS plan to make the written request of the taxpayer for a letter ruling available for public inspection and, if so, why?

Answer. Under section 552(a)(3) of the Freedom of Information Act, requests for rulings constitute "records" that are required to be made available upon request if not otherwise exempted under one of the exceptions provided in the Act. Thus, while the Service would generally not make such request available at the time the letter ruling itself is made available, we interpret the Act as requiring us to do so upon request, provided that it is finally determned that the rulings and the underlying requests are not exempt from disclosure.

Question 7. What is the position of the IRS on disclosure of letter rulings that have already been issued?

Answer. Please see our response to Question 3, above.

Senator DOLE. I do not want to overemphasize the necessity for the IRS to obtain accurate information to make certain that those who owe taxes should pay taxes, because there are a great many who avoid or evade or otherwise escape taxation—some, with every intent to do so.

Is it true that many former IRS agents become informants after they leave your Service?

Mr. ALEXANDER. I do not think so. Now I cannot say that we have canvassed the informant population.

Senator DOLE. I am just curious. I recall at least one, that I know of, claimed to make a pretty good living having had the information and knowledge of how the system worked, to furnish information about others. Well, are there some?

Mr. ALEXANDER. I think that is hardly an appropriate business for a former IRS agent to go into.

Senator DOLE. Well I assume if he is out of the Service, he could probably do about anything he wanted. I am talking about someone who has retired or has otherwise left the Service.

Mr. ALEXANDER. Well he can, subject to restrictions which Mr. Whitaker and I are reexamining at this time, and subject to some possible lack of legal authority that we hope to correct.

Senator DOLE. He cannot or he can?

Mr. ALEXANDER. He can.

The statement to which I was responding, sir, was the statement suggesting that a former IRS employee could do pretty well what he wanted to. My comment on that statement—assuming I understood what you said, and interpreted it properly—is to suggest that we are reexamining the rules.

Senator DOLE. I think my question was: Are there professional informants? Are there people who, on an annual basis, make a fair amount of money by furnishing information to the IRS? And I am not certain that is information that is available. If it is available, it might be interesting. You might find John Doe who consistently makes money in this fashion; maybe not. Maybe it is just by letters or by happenstance, or by someone who is really concerned—and they ought to be concerned if they see what they feel to be an obvious evasion of taxes or underreporting, or whatever it might be.

But, are there professionals in this business that you know of?

Mr. ALEXANDER. I am unable to respond to that, but I will assure you, Senator Dole, that I will look into it, because I share your interest in this.

Senator DOLE. I think my question was: Are there professional in-years, if you found that every year you have a top 10 or 11, and there are always 5 or 6 the same in the top 10 or 11. I do not say that would mean anything, but it would mean they have a pretty good idea what to look for, and it probably would be totally legitimate. It is authorized by a statute. It is in the law to make certain that revenues owed the Government are collected. But there is just something about it that does not quite fit somehow if you have a professional service.

A final question on the concern of the duplicity. It almost appears that we can be assured when we mail our tax return in that nearly every taxpayer's return is going to end up at least in one other place other than the IRS. If you were talking about 61.5 million.

Mr. ALEXANDER. Not his return, necessarily, Senator Dole.

Senator DOLE. Or information about it.

Mr. ALEXANDER. Information from his return.

Senator DOLE. I share the concern expressed by Senator Talmadge. I do not suggest that it is wrong that that is done. It seems to me that maybe you should add to the 1040 a P.S., please send a duplicate copy so we may forward it to one of the agencies. It would save you a lot of time and money if we just sent you two copies instead of one.

But the primary point is there ought to be a protection for the taxpayer. But it would be helpful if we had some comments from the counsel on what we might do to make certain that if a taxpayer is required in a State to submit his Federal return and that later it is disclosed that he would be subject to some Federal penalty——

Mr. WHITAKER. Well again, Senator, as——

Senator DOLE. Not the taxpayer subject to Federal penalty, but the discloser.

Mr. WHITAKER. As the Commissioner pointed out, the administration proposal last year in the 6103 area included some, what we think are improvements to section 7213 and other parts of the code in order to give us a better handle in this particular area. We think it is something that does require some legislative attention.

Senator DOLE. With reference to specific proposals that are before the committee—the Bentsen proposal and the Weicker proposal, and a couple of House bills—do you have any specific comments?

Mr. ALEXANDER. I do not believe that we have any at this time. We do note that these proposals are considerably narrower than the administration proposal to which Mr. Whitaker referred.

Senator DOLE. Will there be an administration proposal?

There was an act passed last year.

Mr. ALEXANDER. The Privacy Act.

Senator DOLE. The Privacy Act.

Is that the reason that any administration proposal has been delayed?

Mr. ALEXANDER. I am sure that the impact of the Privacy Act, which takes effect next September 27, is being studied very seriously at this time. As I suggested, we could refer—irrespective of the passage of the Privacy Act—to the administration proposal as being a good starting point for legislative consideration, with perhaps a comparison, point by point, with the other proposals to which you referred.

The other proposals, if I recall—particularly the one introduced in the House by Congressman Litton and the one in the Senate by Senator Weicker—may cover only the tax return itself. We think

the principle of taxpayer privacy goes beyond the tax return. It goes to the information derived from the tax return on tapes that we discussed this morning; it goes to the audit process. And, by the way, I want to mention on confidential informants, on the question of who is in the top 10, that we are auditing what we spend, who got it, for what purpose, and GAO is also auditing this process right now.

Senator DOLE. Which process?

Mr. ALEXANDER. So the GAO will be reporting. The process of payments to confidential informants; the payments to informants generally that you were talking about a few moments ago.

Senator DOLE. I see.

Mr. ALEXANDER. So GAO is auditing this area of Internal Revenue enforcement at this time, and it is starting to audit it. We are engaged in auditing it, so we will have further information on this. We are as interested as you are.

Senator DOLE. I assume it would be possible for an informant to squeal on an informant. I do not know where the limit is.

Mr. ALEXANDER. I am not sure there is any rule against double squealing.

Senator DOLE. I did not see the program yesterday, but I think there was an indication in the program that the IRS is a heartless group. You are required to move in on the basis of a jeopardy assessment. The intent is to put somebody out of business. I do not know whether you really have that flexibility. I think the intent is to preserve the asset, which is required by law, and I am sure it is not the intent of the IRS to put people out of business.

Mr. ALEXANDER. We do not want to put people out of business, Senator Dole. We have an obligation to collect the Nation's taxes and we have an obligation to be sensible and fair about it.

Senator DOLE. I saw recently on television that in Minnesota the IRS sold some farmer's assets because he withheld a certain amount each year because of his concern about the war in Southeast Asia. I do not suggest it was improperly portrayed, but I think you could draw an inference that the IRS had taken advantage of this person.

Mr. ALEXANDER. I looked into that particular instance, and I do not believe the IRS took advantage of that particular person.

It will be interesting to see the attitudes of the tax protesters next year toward the problem in Indochina.

Senator DOLE. I think it may change some. But apparently this particular couple has not changed its view; they are still going to withhold their taxes, a certain portion.

Mr. ALEXANDER. Well, the tax collector will never be the most popular man on the street.

Sometimes a decision to withhold taxes is based upon the reason asserted for it; and sometimes the reason asserted for it is asserted because a decision has already been made.

Senator DOLE. The only other question I have I will submit in writing.

Thank you very much.

Senator HASKELL. Senator Byrd?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Alexander, do you happen to have a breakdown, with regard to the 8,200 tax returns as to what agencies or departments they went to?

Mr. ALEXANDER. Yes, sir. I do and I will submit that for the record.

Let me clarify that, sir. That is the number of taxpayers. There were some multiple returns asked for in that 8,200 figure. So the numbers were larger, and we will submit this for the record.[1]

Senator BYRD. Thank you.

Now, with regard to the monitoring of telephone calls, which apparently you do with consistency; I think you used the word frequency.

Mr. ALEXANDER. Frequency and consistency in our taxpayer service activity and in the activity of rendering taxpayer service to people through their use of a telephone, as contrasted with our enforcement function.

Senator BYRD. Yes; but in your enforcement function you also monitor conversations, I understand.

Mr. ALEXANDER. We have and I am going to supply those figures for the record also, sir.[2]

Senator BYRD. And you differentiate that from wiretapping?

Mr. ALEXANDER. Yes. We have a flat prohibition against wiretapping in the Internal Revenue Service. That prohibition has been in effect, I believe, for almost 10 years. We do not consider this to be a necessary part of our investigative techniques.

Senator BYRD. But monitoring you do?

Mr. ALEXANDER. Yes; we do. We think that there are some differences which are sufficient to cause us—in weighing the necessity for the use of a particular technique against the problems accompanying that use—cause us to continue to use, to a very limited extent, this particular investigative technique, rather than abandon its use. We do have a problem, Senator Byrd, in a one-on-one situation where someone is trying to corrupt or obstruct our processes, and there we do need corroboration by a third party witness. We can achieve that in a certain few situations only, as we see it, by the use of this particular investigative technique, and we use it under severely restricted circumstances.

Senator BYRD. Now, how much would it increase your difficulties if you were to notify the individual that the call was being monitored?

Mr. ALEXANDER. I think it would make certain investigations impossible because the act of notification to the particular individual, let us say, that is seeking to bribe one of our employees, that we are aware of that attempt, would immediately terminate any successful investigation.

Senator BYRD. I certainly agree with that, but I did not realize that you were talking about that particular type of case. That gets into the electronic surveillance case, does it not?

Mr. ALEXANDER. Yes; it does, sir. These are the situations in which these techniques are most frequently used.

I will supply for the record the numbers involved, the times that we have used the particular technique, and the exact description of the technique, so there will be no confusion about what we mean by our terms, and why we considered it necessary under the particular circumstances. These are used by our inspection service in an effort to keep our people from being corrupted by those who would try to corrupt them; to keep our processes from being misused by those who would try to

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[1] See p. 38.
[2] See p. 37.

obstruct them; and to maintain the integrity of the Internal Revenue Service. We think they are necessary for that purpose.*

Senator BYRD. What percentage of civil and criminal tax fraud cases is initiated through informant letters?

Mr. ALEXANDER. I do not know, sir, and I am not sure we can obtain that. I will ask for that information and give you everything that we can supply for the record.

[The following material was subsequently supplied by Mr. Alexander:]

The first procedure involves rewards to informants in cases in which an informant submits a formal claim for reward on Form 211, based on information which he or she gives voluntarily. The Intelligence Division evaluates the information submitted, and if criminal potential is present, it initiates an investigation. Usually, the information indicates no immediate criminal potential and it is then evaluated by the Audit and Collection Divisions for possible audit or collection activity. Although the vast majority of information items are not useful, if the information does lead to the collection of additional taxes, a payment of reward may be authorized. Administratively, authorizations for payments are controlled by the Audit Division from a rewards to informers fund in the Compliance appropriation.

In FY 74 the Service received approximately 106,000 information items, i.e., informants' letters, telephone calls, etc. from the public at large. Of these 106,000 items, 4,244 involved claims for reward submitted by informants and approximately 750 resulted in criminal tax investigations by the Intelligence Division. Generally, payments of reward are not made until the taxes, penalties, or fines involved have been collected. Many of the claims received in FY 74 are still pending; therefore, we cannot specify the number of these particular claims that resulted in rewards. However, in FY 74, we did pay a total of $468,000 to 558 informants under the rewards to informants procedures. A total $16,862,227 in taxes, penalties, fines, forfeitures, and interest was recovered in cases where rewards were claimed.

The second procedure involves expenses incident to securing evidence in those situations where it appears that a criminal case cannot be successfully completed except through the use of informants and the direct purchase of information. The major portion of these payments are made by our Intelligence function in investigations of taxpayers who seek to evade their taxes. Our Inspection function also makes confidential expenditures in criminal investigations of those attempting to bribe or otherwise influence Service officials in carrying out their duties. Presently, confidential expenditures under this second procedure have been suspended; however, some exceptions are being granted after a personal review by the Assistant Commissioner (Compliance) to ensure that the Intelligence cases involve tax-related matters, and by the Assistant Commissioner (Inspection) to ensure that payments by Inspection are made only for matters within its jurisdiction.

Confidential expenditures of $597,000 were made in FY 74 primarily by the Intelligence Division ($565,000) and Inspection ($24,000). Charges to this account, however, also included the expenses of obtaining documents to be used as evidence, i.e., payments to banks for copying costs, microfilm costs, transportation, etc.

We do not have data on the number of cases initiated by information from confidential informants. A substantial portion of the confidential payments are for the purchase of information after an investigation has been initiated. Since the purchase of information is only a part of the entire case development, we have not accumulated this type of information for our statistical reports.

Senator BYRD. Mr. Alexander, will you be advising the Treasury Department of the additional legislative safeguards you see as necessary to preserve the appropriate degree of taxpayer and tax return privacy?

Mr. ALEXANDER. I certainly will, sir.

Senator BYRD. Thank you, sir.

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*See p. 43.

Thank you, Mr. Chairman.

Senator HASKELL. Commissioner, I understand that the Internal Revenue Service's view on private rulings is that prospectively they will be published, but that it would be a difficult administrative task to publish the, I think, 500,000 private rulings already in existence. Is that the Service's attitude?

Mr. ALEXANDER. The Service's attitude is that a distinction can be drawn between the past and the future, a distinction based not only upon the great administrative difficulties of trying to make available to the public the 400,000 or so private rulings issued in the past, having in mind the basic rights of those who submitted it to us; but also, the rules are being changed after the game has been played.

Senator HASKELL. I happen to concur that it might be difficult, and also that people might have applied in the past with the understanding that the information would not be made public. But in the future, I understand it is your policy, Commissioner, and if so I certainly commend it, that all rulings be made public?

Mr. ALEXANDER. That is a policy that we announced and that we intend to implement. Of course, in the past we were not free to decide the issue the way that we see it administratively. The courts have a say in this matter. Mr. Whitaker can describe the past, I think, better than I can.

Senator HASKELL. Is there some litigation involving past rulings, Mr. Whitaker?

Mr. WHITAKER. Yes, sir.

Mr. Chairman, you are familiar, I am sure, with the *Tax Analyst* case which was decided by the District of Columbia Court of Appeals. We have been litigating the same issue, or very substantially the same issue, in another case pending in another circuit. But I think the fact of the matter is that we are rapidly coming to the point where there is no way that we can slow the process and the Freedom of Information Act requests here in the District of Columbia, which could be appealed and would be appealed to the District of Columbia courts.

Senator HASKELL. Did the *Tax Analyst* case specifically say that you must disclose past rulings?

Mr. WHITAKER. Yes, sir. It applied to a very limited number of past letter rulings. That case did not solve all of the problems by any means, that is to say all of the legal problems. It solved very few, if any, of the administrative problems. But I think it is fair to state that, as we see it as lawyers, the issue is going to be taken out of our hands by the courts here in the District of Columbia.

Senator HASKELL. One last question, Mr. Alexander. The so-called sensitive case list has been abandoned, I gather?

Mr. ALEXANDER. That is correct. It has been indefinitely suspended, and we are not about to start a new system like that system.

Senator HASKELL. I think that the problem—and I wonder if you would agree with me—the problem in a so-called sensitive case, is that if a district director sends to the commissioner names of people who he thinks are prominent in the community and who are being investigated, some administration may say, aha, he is going to get off because he is prominent, and another may say, aha, he is going to be really gone after because he is who he is. Would you share that view of sending specific names on to the commissioner's office?

Mr. ALEXANDER. I share that concern that you embodied in your statement—the mere fact that taxpayer A's audit activities because of A's prominence is sent on to Washington while taxpayer B's, who is otherwise similarly situated but not prominent, is handled in the district would tend toward public misunderstanding even if everything were precisely the same within the agency.

So here we have competing needs. We have a need of those charged with the final direction of this agency to be kept reasonably advised of what they need to know to fulfill their responsibilities; but do they need to know about taxpayer A's audit? The answer is no; and accordingly the sensitive case program has been indefinitely suspended and it will not be resumed.

Senator HASKELL. I want to congratulate you, Commissioner.

Incidentally, in winding up your testimony, I want to express my appreciation for your frankness, for the completeness of your answers, and for your colleagues being present. We will keep the hearing record open for 2 weeks so that any Senator who wants to submit requests for further information for the record can be free to do so.

Thank you very much. I appreciate it.

Mr. ALEXANDER. Thank you.

Senator HASKELL. Our next witness is Judge Harold R. Tyler, Deputy Attorney General of the United States, accompanied by Mr. William Lynch.

Judge, I am sorry to keep you waiting so long. I did not realize that we were going to continue with the Commissioner as long as we did.

Judge TYLER. That is perfectly all right.

Senator HASKELL. I must say, I am not used to sitting here talking to a judge. I usually sit where you are.

STATEMENT OF JUDGE HAROLD R. TYLER, JR., DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY WILLIAM LYNCH, CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, DEPARTMENT OF JUSTICE

Judge TYLER. Mr. Chairman, I must say after 13 years of listening to witnesses, I think this is probably good for me to come up and be in a different role.

I am happy to be here this morning to appear before you and your committee about this important subject and to offer the views of the Department of Justice on an issue which is complex and difficult, but one on which we have, of course, a strong law enforcement view.

We are concerned, as you know, about the availability of Federal tax returns and tax return information in criminal investigations and prosecutions.

We recognize, of course, in so expressing that concern that there should be appropriate safeguards so that there is just not willy nilly or careless dissemination of tax returns for no good reason whatsoever.

Mr. Chairman, I have a prepared text which I intend to make available to you and the committee.

Senator HASKELL. Yes, sir.

Judge, that can be submitted for the record, and you can summarize it or talk from it—however you wish.

Judge TYLER. As you know, under section 6103 of the Internal Revenue Code, various Presidents have promulgated regulations dealing with the disclosure of tax returns for law enforcement purposes. As you also know, this has meant over the years that originals or copies of Federal tax returns are furnished to the Department of Justice with somewhat differing procedures.

For example, when the Department appears as counsel for the tax authorities in tax evasion cases, we have historically been able to obtain the necessary returns without written letters of application. In all other cases in which the United States is a party but which are not tax cases, there is a written application made to the Secretary or the Commissioner, and as you heard this morning, I believe, those written requests are signed by either the Attorney General or the Deputy Attorney General or an Assistant Attorney General, and in certain cases by a U.S. attorney.

During the 93d Congress several bills were introduced which we think would have severely restricted law enforcement efforts by unreasonably limiting the use of tax returns and tax return information at least from our statutory law enforcement viewpoint. And as you will recall, former Attorney General Saxbe sent over to you and your committee a detailed statement concerning the impact of these proposals on Department of Justice law enforcement activities as we see them.

The committee has before it at the moment two bills—S. 199 and S. 442. The first, of course, is referred to frequently as the Weicker-Litton proposal, and S. 442, is a different bill submitted by Senator Bentsen.

We think that these bills would have an unduly restrictive impact upon legitimate law enforcement activities, not only in regard to cases generally, but more particularly, in what I would call the areas of organized crime, corruption, and white-collar prosecutions.

Surely those of us who have been either prosecutors or defense lawyers know that very frequently, both in the investigative stage and in the trial stage, the availability to the prosecutor of tax return information can be of crucial importance. Indeed, in many instances what start out to be tax evasion prosecution investigations will lead to proof of violations of other serious Federal crimes. I would be less than candid if I did not say that this happens in many of our cases. What starts out as a tax evasion case will bring to the Government's attention facts which quite practically and properly lead the investigative team into other areas. This situation cannot be denied, and it occurs in part because of information which the Internal Revenue Service furnishes us.

Mr. Chairman, I do not want to repeat all of the things that were included in the materials furnished to you and the committee by Attorney General Saxbe. I do want to repeat that the partnership between the Internal Revenue Service investigative people and the Department of Justice have for many years been regarded by us as very fruitful and helpful. In saying this, I do not mean to say that this committee is wrong or ill advised to be concerned about proper protection and privacy of tax returns, even in the law enforcement areas generally. We, of course, stand ready to cooperate with this committee and Mr. Alexander and his people in any kind of new legislative approach which is concerned with this matter.

What we do wish to say and we do wish to urge upon the committee is that we do not want to have the partnership in legitimate law enforcement efforts cut off entirely. And unfortunately, we believe that the Weicker-Litton bill would virtually have this effect if it were passed in its present form. Indeed, we even think it would present problems in the prosecution and investigation of tax evasion cases as we traditionally know that type of case.

It can be argued that S. 199 would tend to divorce the Internal Revenue Service almost entirely from the law enforcement efforts that we are obliged by statute to make. Senator Bentsen's bill, S. 442, is less drastic, but even that bill would place undesirable and unduly restrictive roadblocks in the efforts to use information from tax returns in serious criminal prosecution.

Now I could allude to many cases, some of which are included in our prepared testimony. I would say, Mr. Chairman, that even before the increased usage of the strike forces in recent years, the tax people have furnished both tax return and related information to the regular U.S. attorneys and it has been very helpful.

If you will forgive me a personal note, years ago, in the early 1950's, when I was a young assistant prosecutor I tried a lengthy and substantial case which started out as a tax evasion case. However, in the investigation after we had received returns from IRS under then-appropriate regulations, the case grew into an obstruction of justice case. And I can tell you frankly as one of the two chief prosecutors in that case, which took 6½ months to try, that but for that information which we had received from the returns, it is perfectly clear to us that we would have never made the obstruction of justice case, which was a principal ground of conviction, and it was sustained on appeal. The name of that case for the record is *United States v. Hyman Harvey Klein et al.*, which did arise out of the tax scandals of the late 1950's.

Another good example of more recent vintage, which I know you are aware of, is the case involving former Judge Otto Kerner. Actually, that had its inception from information coming from the IRS to the U.S. attorney's office in Chicago and suggesting possible tax law violations of a criminal nature. However, the indictment which was handed down as a result of the investigation which utilized tax return information formally charged not only the tax evasion counts but conspiracy, bribery, mail fraud, perjury, and the like. And as you know, the former judge was convicted on substantially all of these charges. Again, this is an example of a situation in which but for the cooperation and transference of tax information, one could say that maybe the case would never have been made successfully.

On the other side of the coin is another case, referred to in my prepared testimony as the *San Diego Yellow Cab* case, where there was an IRS investigation in the early 1970's indicating that city councilmen had taken bribes from a local taxi company in connection with proceedings going toward granting a rate increase.

Unfortunately, because we could not turn over certain tax information to the local district attorney, who really had jurisdiction, the first defendant to go to trial, recognizing that there could be no IRS testimony from a special agent and no use of tax returns, was able to testify that he had never received the money in question. Therefore, the prosecution was totally unsuccessful.

Now in conclusion, Mr. Chairman, we cannot and do not appear here today to ignore the appeal of the arguments of those who say that there may have been abuses of tax return confidentiality.

As I think the proceedings this morning indicated and as I understood them at least, it is probably a question of balancing competing interests here, as most questions usually are. Surely the rights of privacy are such that I would hope that the Department of Justice would not support or condone irresponsible willy-nilly requests for tax return information.

On the other hand, I must repeat that we would be very concerned if the historical cooperation between the IRS and the Justice Department were totally cut off or so unduly restricted that information submitted to the tax authorities which might have a clear bearing on an investigation and prosecution of nontax Federal crimes would not be made available to us. This would have most serious consequences for the public as well as for the Department of Justice, the U.S. attorneys, and strike force representatives across the country. We think that a proper balance can be struck. We believe that this committee is well aware of that balancing problem and we stand ready to cooperate on any kind of meaningful progress in the legislative arena toward that end.

This completes my statement subject to amplification, of course, both by our written statement, Mr. Chairman, and any questions you care to ask.

I might say, if you would permit me, in listening to Commissioner Alexander, there is one subject that you and Senator Talmadge, I believe, raised which is somewhat important to us and I think we do know the answer.

Under existing section 7213, it is a violation of Federal law for a State revenue agent or official, to use the example you gave about the situation in Colorado, to mishandle Federal tax return information. I believe under that section as it is now written, the violation is a misdemeanor only.

Also, I would like to say that with respect to the concern voiced by other members of the committee this morning during the Commissioner's testimony about what seems to be a wide proliferation of tax returns in the hands of various persons such as insurance agents, investigative agents for law firms and private parties, I saw ample evidence of that in my years on the bench. I would have to say that a good deal of this use comes about because many plaintiffs in private litigation use tax returns of their own in order to prove something such as money damages. It is also true, however, that many, many courts—and I would have to include the judges, or many of the judges, on my court in New York—very frequently in pretrial discovery order one party or another to produce his or her tax returns to cover a period of, say, 2 or 3 years, whatever seems to the court to be relevant.

I would have to say that it would be a good guess that a great deal of information comes to the surface in those two types of situations.

Thank you, sir.

Senator HASKELL. Thank you. Judge Tyler. I am sure you are right. What we are trying to do is balance interests. We obviously do not want to hamper law enforcement. On the other hand, we do have

an obligation, it seems to me, to protect the right of privacy of an individual. For example, the Justice Department might want to look at somebody's tax return if he was a prospective juror to see what his bias would be.

What would be your reaction to a request on that basis?

Judge TYLER. That is a good question which I have thought about. I do know that when I was a young prosecutor this practice was, from what I could see, fairly widespread. In fact, I have to tell you I indulged in it myself.

Senator HASKELL. If you are a prosecutor, you use whatever is legally available, but is it desirable?

Judge TYLER. I think that the practice ought to be curbed. I realize from a prosecutor's viewpoint that it is nice to know about your jurors or your potential jurors, and everyone of us who is a lawyer, whether he is a prosecutor or a defense lawyer, always wants to do that.

But I think willy-nilly disclosure of tax return information for that purpose probably on balance is not as helpful as it has been thought to be. And I am not so sure that I personally would advocate that that be permitted.

Senator HASKELL. Then, of course, we move from that situation to another. Let us say I am the defense counsel and I am going to call a witness. I understand that from time to time the Justice Department asks to look at the returns of my witnesses. That is a practice I would appreciate having your views on.

Judge TYLER. Well, there I would take a two-part view. I know in my own experience as a judge I have seen a defendant take the stand in very important nontax criminal prosecutions and in Federal court and assume that he can testify about certain financial transactions and hope that the Government prosecution team does not have available——

Senator HASKELL. Excuse me, sir. I have not gotten to the defendant. I was talking about the witness.

Judge TYLER. I beg your pardon. I thought you were raising both. I will go to the witness.

I would think that where the Government has reason to believe that a witness will testify in such a way that tax return information would refute that witness's testimony, I think the Department of Justice should be empowered to ask for that tax return information with suitable safeguards to assure the Commissioner that we are doing it with reason and responsibility for that limited purpose so that he knows what we are up to and why. Otherwise, it seems to me we would be put in the position of having a witness in an important prosecution which is not, as I understand your example, a tax case as such.

Senator HASKELL. That is correct.

Judge TYLER. Offer testimony which, if unrebutted, might seriously undermine the prosecutive effort.

So I would prefer to handle that, if I may say so, by having the opportunity under legislation and regulations to specifically request that information.

Senator HASKELL. All right. Now then, I think I would know what your answer would be in the case of a defendant.

Judge TYLER. You are right, sir.

Senator HASKELL. I do not think I have to ask that question.

My understanding is that under the case of *United States* v. *Bisceglia*, the Internal Revenue Service has greater investigatory powers than almost any comparable agency. And if I am correct in that, can you describe to me the powers that the IRS has, let us say that the Department of Justice or the U.S. Attorney's Office does not have?

Judge TYLER. Well, I am frank to say that I am not familiar with the case which you are mentioning. Is that a——

Senator HASKELL. It is a Supreme Court case. Perhaps you could have your office look into that. My understanding is that the IRS does not have to show probable cause to ask for certain documents.

Judge TYLER. Oh, I see.

Senator HASKELL. Whereas, normally a U.S. attorney or a district attorney would have to make a showing of probable cause.

Judge TYLER. Well, what is curious about that is that where we have a grand jury working, the grand jury can ask for such information too, so that I am not totally certain that the Department is more inhibited or the United States is more inhibited in such areas than the tax people.

Senator HASKELL. Could you have your office examine this question and submit perhaps for the record a memorandum of either differences or similarities, as the case may be, because I think this would be very helpful.

Judge TYLER. Very good. We would be glad to.

[The following information was subsequently submitted for the record:]

1. THE INVESTIGATORY POWERS OF THE INTERNAL REVENUE SERVICE

In analyzing the investigatory powers of the Internal Revenue Service, it is important to note at the outset that the Internal Revenue Code and regulations promulgated thereunder provide that all taxpayers subject to the income tax must ". . . keep such permanent books of accounts or records as are sufficient to establish the amount of their gross income and deductions, their tax credits, or other matters required to be shown by such persons in any return of such tax or information". See 26 U.S.C. § 6001 and Regs. § 1.6001–1.

Paralleling these requirements are the sections which grant to the Service the authority to test the accuracy and sufficiency of income tax returns. This is the basic investigative function of the Service, and it is accomplished through the authority to administratively summon either the records specified above or persons having control of them.

A. *Statutory Authority.*—The powers of the Service described above are set forth in 26 U.S.C. § 7601 and § 7602.

§ 7601 provides that the officers and employees of the Service shall "proceed from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

§ 7602 authorizes IRS officials to issue summonses for the production of books, papers, and records and the taking of testimony. This section expressly limits the purposes of examinations conducted under its authority to "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or equity of any transferee fiduciary of any person in respect of any internal revenue tax, or collecting any such liability".

B. *Exercising the Summons Power.*—The administrative summons powers available to the Service are not without limits. In addition to the restrictions contained in § 7602 noted above, other sections of Chapter 78 operate to create a

framework for exercising the powers. § 7603 regulates the manner in which the summons shall be served and includes the requirement that materials called for must be described with "reasonable certainty". § 7605 contains certain additional restrictions which limit the time and place of examinations conducted pursuant to § 7602 by requiring that they be "reasonable under the circumstances". This section also limits the Service in regard to "unnecessary examinations and investigations" as well as the number of times that IRS officials may inspect a taxpayer's books of account in any taxable year.

C. *Enforcement.*—There are three basic methods provided in the Code for enforcing the administrative summons powers which are granted. First, the Service is authorized to bring an action in the federal district court where the person who is the subject of a summons resides or may be found for a court order compelling compliance with the terms of the summons. Jurisdiction for this purpose is granted in § 7402 and § 7604(a). A second method specified in § 7604 (b) empowers the Service to apply to a district judge or United States Commissioner for an attachment "as for contempt" against a witness who neglects or refuses to obey a summons. Upon a showing of "satisfactory proof", the contumacious witness may then be arrested and brought in for a hearing at which the judge or commissioner has power ". . . not inconsistent with the law of contempts, to punish such person for his default or disobedience". Finally, § 7210 makes "neglect" to appear or to produce summoned materials a criminal contempt punishable by a fine of not more than $1,000, or by imprisonment of not more than one year.

D. *Breadth of the Powers.*—The investigatory powers of the Service have generally been broadly construed by the courts. See e.g. *Falsone* v. *United States*, 205 F.2d 734 (5th Cir., 1953), cert. denied 346 U.S. 864; *DeMasters* v. *Arend*, 313 F.2d 79 (9th Cir., 1963); but cf. *United States* v. *Northwestern Pennsylvania Bank and Trust Co.*, 355 F.Supp. 607 (W.D.Pa. 1973). In fact, they have been held to be similar to those possessed by federal grand juries. See *United States* v. *Powell*, 379 U.S. 48, 57 (1964). Most important in this connection is that the Service is not required to meet the standard of "probable cause" to obtain enforcement of its process. Under the *Powell* decision, IRS must show only that ". . . the investigation is being conducted pursuant to a legitimate purpose, that the inquiry may be relevant to that purpose, that the information is in the taxpayer's possession, and that the administrative steps required by the Code have been followed". Id. p. 57–58.

E. *Third Party Summons.*—In exercising its power to inspect documents, the Service may, subject to certain limitations, compel the production of records of third persons. Those with whom the taxpayer has done business, for example, banks, insurance companies, stock brokers, customers, accountants, etc., are all subject to the subpoena powers granted in § 7602. See e.g. *Donaldson* v. *United States*, 400 U.S. 517 (1971), and *United States* v. *Armour*, 34 AFTR 2d 74–5302 (D. Conn. 1974). No notice to the taxpayer is presently required in such circumstances. See *Scarafiotti* v. *Shea*, 456 F.2d 1052 (10th Cir. 1972). Even if the taxpayer learns of the third party investigation and wants to object, the mere fact that the records relate to the taxpayer and his liability does not per se confer on him the standing to intervene, according to the *Donaldson* case. Furthermore, if the party summoned wishes to object or is willing to assert the taxpayer's objection, he may not have standing to rise objections or assert claims of privilege on behalf of the taxpayer. *Reisman* v. *Caplin*, 375 U.S. 440 (1964).

F. *Constitutional Protection.*—The investigatory powers of the Service are, of course, subject to limitations imposed by the Fourth Amendment and by the self-incrimination clause of the Fifth Amendment. The chief significance of the Fourth Amendment in tax matters lies in its use for the suppression of evidence already in the possession of the government rather than as a device for preventing the Service from obtaining evidence. On the other hand, the Fifth Amendment privilege is often used as a basis for preventing the government from obtaining documents or testimony.

The essence of the protection against the disclosure of records or the giving of testimony which is afforded by the Fourth Amendment is that the Service's demands under § 7602 cannot be "unreasonable". Thus, the Fourth Amendment cases arising where the taxpayer or a third party seeks to prevent the Service from obtaining documents have generally been concerned with the scope of summonses under § 7602. See e.g. *In re International Corp.*, 5 F.Supp. 608 (S.D.N.Y. 1934) and *Hubner* v. *Tucker*, 245 F.2d 35 (9th Cir. 1956). Extreme broadness in the

scope of the demand and the burden of complying have been factors upon which third parties have prevailed in these cases. But see *United States* v. *Armour*, 42 L.Ed. 2d 111 (1974).

The right of a person to assert his privilege against self-incrimination under the Fifth Amendment is clearly available in tax investigations, but has been held to be essentially of a "personal" nature. See *Couch* v. *United States*, 409 U.S. 322 (1973). The application of the Amendment to third party records is unsettled. See *United States* v. *White*, 477 F.2d 757 (5th Cir. 1973), cert. denied, 42 L.Ed. 2 111 (1974).

G. *IRS Investigations and Criminal Prosecutions.*—The authority to criminally prosecute violators of the tax laws is vested in the Department of Justice, and courts have consistently held that using the investigatory powers of the IRS to help build a criminal case is an impermissible abuse of process. See *United States* v. *Weingarden*, 333 F.Supp. 474 (6th Cir. 1973). Thus, where the "sole" purpose for the issuance of a summons under § 7602 was to aid in the prosecution of the taxpayer, the courts have refused to enforce the summons. See e.g. *United States* v. *White*, 326 F.Supp. 459 (S.D. Texas 1971) and *United States* v. *Fisher*, 352 F.Supp. 731 (E.D. Pa. 1972). At the same time, if the summons serves a "dual purpose" which happens to include assisting a criminal prosecution, it will be enforced. See *Donaldson* v. *United States*, 400 U.S. 517 (1971).

2. Investigatory Powers of the Department of Justice

The investigatory powers of the Department of Justice must be examined within the context of the Department's function as the chief law enforcement agency of the government. As such, they are embodied in several statutory authorities, and in the role of the Department and the United States Attorneys as the government's representative in grand jury proceedings.

A. *Statutory Authority.*—28 U.S.C. 533, providing for the Federal Bureau of Investigation, authorizes the Attorney General to appoint investigators and other officials "to detect and prosecute crimes against the United States; to assist in the protection of the President; and to conduct such other investigations regarding official matters under the control of the Department of Justice . . . as may be directed by the Attorney General". In addition, 28 U.S.C. 535 authorizes the Attorney General and the Federal Bureau of Investigation to "investigate any violation of title 18 involving government officers and employees". Both of these sections confer investigatory powers similar in nature to the general canvassing authority of the Internal Revenue Service in § 7601.

B. *Civil Investigative Demands.*—More analogous to the IRS administrative summons powers of § 7602 are two other statutes authorizing the Department of Justice to issue its own investigatory process for certain purposes.

The first is 15 U.S.C. § 1312, which provides for the issuance of civil investigative demands in antitrust investigations. Under this statute the Attorney General and the Assistant Attorney General of the Antitrust Division are empowered to serve on any company (or any other legal entity other than an individual) a written demand for the production of documents in its custody or control which are relevant to some civil investigation which the Department is carrying out. The demand must state the nature of the antitrust violation under investigation, and describe the classes of document to be produced with sufficient precision to enable them to be identified by the company.

The second of these statutes is 18 U.S.C. § 1968, which was adapted from the antitrust civil process provisions above with certain variations. It authorizes the Attorney General, in the course of a racketeering investigation and prior to the institution of any civil or criminal process, to serve a civil investigative demand upon any person or enterprise believed to have material relevant to such investigation. Unlike the comparable situation in the antitrust case the person served need not himself be under investigation before documents relevant to the investigation may be obtained from him.

Both statutes specify that the civil investigative demands authorized in each "may not set forth requirements which would be unreasonable, or seek information which would be privileged from disclosure, if contained in a subpoena duces tecum before a grand jury". See 15 U.S.C. 1312(c)(1) and 18 U.S.C. 1968(c)(1).

With respect to enforcement, both statutes provide for district courts to hear and determine cases involving their provisions, and both provide for punishment by contempt of court for disobedience of orders wtih respect to each. See 15 U.S.C. § 1514 and 18 U.S.C. § 1968(g)-(j).

C. *The Grand Jury.*—Under 15 U.S.C § 515, the Attorney General ". . . or any officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law" is empowered to conduct "criminal, including grand jury proceedings". Moreover, Rule 6(d) of the Federal Rules of Criminal Procedure specifically authorizes the presence of government attorneys before the grand jury.

The Fifth Amendment to the Constitution makes the grand jury an intergral part of the Federal criminal justice system, and the law has traditionally accorded grand juries broad powers of investigation. See *United States* v. *Morton Salt Co.*, 338 U.S. 632, 642–43 (1950). Thus, the Department of Justice, by virtue of this relationship with the grand jury, has special access to the investigatory powers of the grand jury. Among the most important of these are the power to conduct investigations without the necessity of establishing "probable cause" that any law has been violated, *Hale* v. *Henkel*, 201 U.S. 43 (1906); the power of subpoena, *Shillitani* v. *United States*, 384 U.S. 364, 370 (1970); and the power of enforcement of its process, *Cobbledick* v. *United States*, 309 U.S. 323, 327 (1940).

Historically, tax charges have not been investigated by grand juries, but instead, a summary of evidence already obtained by the Intelligence Division of the Service through the investigatory powers authorized in § 7602 was presented to a grand jury for indictment. In recent years, however, investigative grand juries such as those provided for in 18 U.S.C. 216 involving the Organized Crime Strike Forces have been quite active in subpoena usage for tax investigations and for related charges under Title 18 U.S.C., such as bribery, extortion and racketeering. Such grand jury subpoenas are free of most of the statutory restrictions on the administrative summons provided in § 7602, but they are still subject to constitutional and other procedural restraints.

3. Discussion of United States v. Bisceglia

In discussing *United States* v. *Bisceglia*, —— U.S. —— (1975), in the context of the Committee's request (Tr. at 104), it is important to recall that in several previous cases the Supreme Court had drawn the analogy between the investigatory powers of grand juries and those of both administrative agencies in general, *Blair* v. *United States*, 250 U.S. 273 (1919), *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 185 (1946), *United States* v. *Morton Salt Co.*, 338 U.S. 632 (1950), and the Internal Revenue Service in particular, *United States* v. *Powell*, 379 U.S. 48 (1964).

The *Bisceglia* case raised the question of whether an IRS agent, operating pursuant to 26 U.S.C. § 7601 (". . . to inquire after and concerning all persons who may be liable" for taxes) had statutory authority under § 7602 to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who had bank transactions suggesting the possibility of liability for unpaid taxes.

The District Court, after narrowing the agent's request for production of documents, had ordered compliance with the summons as modified. The Court of Appeals had reversed, holding that § 7602 "presupposes that the Internal Revenue Service has already identified the person in whom it is interested as a taxpayer". 486 F.2d 706, 710. (For a full discussion of this opinion and the state of the case law concerning "John Doe" summonses prior to the Supreme Court's decision see *United States* v. *Armour*, 376 F.Supp. 318 (1974).)

The Supreme Court, reading § 7601 and § 7602 as one, held that the language of § 7601 permitting the Service to investigate and inquire after "all" persons who "may" be liable to pay "any" internal revenue tax and the language of § 7602 authorizing the summoning of "any" person for the taking of testimony and examination of books which may be relevant for ascertaining the correctness of "any" return, determining the liability of "any" person, or collecting "any" such liability, ". . . plainly is inconsistent with an interpretation that would limit the issuance of summonses to investigations which have already focused on a particular return, a particular named person, or a particular potential tax liability".

In reaching the above result and thereby reversing the Court of Appeals, the Court reaffirmed its previous line of decisions culminating in *United States* v. *Powell* with respect to the nature of the investigative power conferred upon the Service in § 7602.

The Court said that the purpose of such investigations "is not to accuse, but to inquire", that "Of necessity, the powers are not limited to situations in which there is probable cause, in the traditional sense".

While recognizing that such authority could be abused, the Court concluded that "substantial protection is afforded by the provisions that an Internal Revenue summons can be enforced only by the Courts", citing § 7604(b) and *Reisman* v. *Caplan*, 375 U.S. 440 (1964).

Although the opinion makes clear that the holding is not intended to sanction "fishing expeditions" on the part of revenue agents, the decision clearly represents an expansion of the scope of the Administrative summons powers provided in § 7602. In this regard it is based upon a broader application of the rationale of *United States* v. *Powell* and earlier cases which view the investigatory powers of the Service under § 7602 as analogous to the subpoena powers possessed by grand juries.

Senator HASKELL. I do not know whether you have had an opportunity, Judge Tyler, to examine the statutes as they pertain to the criminal penalties for the improper disclosure of tax information, but if you have, do you have any observations as to their adequacy or inadequacy?

Judge TYLER. I am aware, of course, as we were discussing earlier, that section 7213 of title 18 sets up penalties which are for both State and Federal employees, and which provide for a misdemeanor when these employees misuse tax return information—in other words, a maximum penalty of 1 year or $1,000 or both, and the same is true, of course, in regard to shareholders who are allowed under section 6103, as it now reads, to get corporation tax return information.

In fact, all throughout section 7213, the maximum is what we would all call a misdemeanor-type sentence, but I am frank to say, Mr. Chairman, I have not really thought about this enough to answer the thrust of your question. In other words, as I understand it, you are really asking whether penalties of a misdemeanor nature are sufficient?

Senator HASKELL. Yes, that is really exactly what I am asking. Possibly, you could give that a little thought and submit your opinion for the record. I would appreciate it.

Judge TYLER. All right, sir.

[The following was subsequently submitted for the record:]

26 U.S.C. § 7213 exists to prevent the unauthorized disclosure of tax return information. Subsection (a)(1) makes it a misdemeanor, punishable by up to one year in prison, a $1000 fine, or both, together with the costs of prosecution, for any officer or employee of the United States to disclose in any manner not provided by law "the amount or source of income, profits, losses, expenditures, or any particular thereof disclosed in any income return, and to permit the inspection or copying of any return, book, or abstract containing such information, and the publishing of any return or part or source of income."

Subsections (a)(2) and (3) provide that the offense described above substantially applies to state employees who inspect returns under § 6103(b), as well as shareholders who examine corporate returns under § 6103(c).

Subsection (b) makes it a separate misdemeanor, punishable in the same way, for a federal officer or employee to divulge in any way the operations, processes, or apparatus of any manufacturer visited by him in the course of his official duties. Conviction under either (a)(1) or (b) also means the dismissal of the offender from government employment. The remaining subsections (c) and (d) deal respectively with reproduction of documents under § 7513 and covered employees to whom the section applies.

The crimes provided for do not require a *mens rea*; as public welfare legislation, it is consistent with the statutory language to impose absolute liability upon any disclosure other than those lawfully permitted.

With reference to the adequacy of the "penalties" (Tr. at 105) provided for in the statute, we would point out that S. 1 (H.R. 3907), the Criminal Justice Reform Act, now pending in the Senate Judiciary Committee, has incorporated the offense, in revised language, at a one-year "Class A" misdemeanor level in § 1524. The Brown Commission proposed an identical penalty. See § 1371, Final Report of the National Commission on Reform of Federal Criminal Laws 1971,

and Working Papers of the National Commission on Reform of Federal Criminal Laws, pp. 723–725. However, the bill would increase the maximum fine from the present $1000 limit to $10,000.

This represents a sizable increase but one which will be made on a uniform basis in § 2201 to all "Class A" misdemeanors.

S. 1 also proposes to retain the specific offense in 26 U.S.C. § 7213 at a six-month "Class B" misdemeanor level. The effect of this would be to create a lesser included offense which could be resorted to in the discretion of a prosecutor.

The Department of Justice supports these revisions with respect to § 7213, believing that, if enacted, they would result in more realistic penalties and yet flexible responses to offenses arising under the statute.

Senator HASKELL. Another thing that bothers me somewhat is this: You may have, from time to time, a misuse by any agency—and the Internal Revenue Service would be one of them—of its powers. In other words, you have a completely innocent citizen going happily about his business, and all of a sudden, the roof falls in and people are examining his tax returns and asking all sort of questions, and naturally there is a great deal of emotional as well as financial damage that occurs, and then, finally, at the end of the road, the agency, the IRS in this particular case, finds that they are wrong, or a judge finds that they are wrong, and then all they say is, gee whiz, I'm sorry. The powers of the Federal Government are pretty awesome when brought to bear on an individual.

I wonder if you have given any thought to the desirability or undesirability of some kind of civil remedy being for an individual who underwent this type of treatment without probable cause. Obviously, just because the agency was proved wrong, that would not be sufficient to raise a civil remedy, but assuming they engaged in this type of thing without probable cause, is it really adequate for them to say, "Gee whiz, we're sorry"?

Judge TYLER. I would respond, Mr. Chairman, by suggesting there are probably two approaches, either of which might be used to approach this, as I think you and the committee know better than I.

Prior to my coming down—several weeks ago, I believe—there was an interchange of correspondence in late March or early April between the IRS and the Department of Justice. The Tax Division of the Department contacted IRS with regard to tightening down, from an administrative point of view, the requests from the Department to the IRS for tax return information. In other words there was an effort to make sure that we do all we can to give them the proper information as to the reasons we need a return—what, why, and so on.

Senator HASKELL. I am really talking now about making the assumption that the IRS abused its power.

Judge TYLER. Oh, I see. I beg your pardon.

Well, then, as you say, consideration could be given as to whether or not a taxpayer who has been victimized by this should get some sort of injunctive relief or perhaps even damage relief. I would be very cautious and emphasize, Mr. Chairman, that I am not sure that it would be right to approach this in probable cause terms. That might be either too limiting or too harsh, depending on the facts of a given case.

Probable cause, as you know, is a term of art about which I am frank to say the courts have had considerable difficulties and still do, and, therefore, I would hate to see a civil servant proceeding in utmost good faith having to determine in each case——

Senator HASKELL. Perhaps there should be some other test. But you see the problem?

Judge TYLER. Yes, I certainly do, and I think except for that cautionary note, I think it is worth exploring because it might tend to dampen any tendencies to irresponsible excesses in handling this information.

Senator HASKELL. I wonder if we could have your views on this area submitted because I think it is an important area. Perhaps you could be helpful in coming up with some kind of test that would not unduly hamper the activities of the civil servant, as you say, and at the same time give a measure of protection to the citizen who is victimized?

[The following was subsequently submitted for the record:]

The Committee's request concerning Internal Revenue Service abuse and the Department's view of providing civil remedies (injunctive relief and/or damages) for persons who have been victimized thereby (Transcript 107, lines 13–16), are best discussed in the context of a careful analysis of the leading cases dealing with federal immunity; legal concepts which deal with the federal officer's scope of authority; and, concepts of duty encompassing the exercise of discretionary authority.

In this regard, the case most relied upon is *Bivens* v. *Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). The Supreme Court in Bivens recognized for the first time the federal common law right of an aggrieved person to sue for damages caused by a violation of the Fourth Amendment guarantee against unreasonable searches and seizures. Holding that the complaint stated a cause of action, the Court remanded the case to the United States Court of Appeals, Second Circuit, 456 F.2d 1339 (1972), to determine whether the acts of the Federal Narcotics agents are clothed with immunity, and, if not, to formulate the standard which judges and juries are to apply in deciding the issue of liability of such officers to pay damages to an allegedly wronged plaintiff.

On remand, the Court held that the agents and other federal police officers, such as agents of the FBI performing similar functions while in the act of pursuing alleged violators of the narcotics laws or other criminal statutes, have no immunity to protect them from damage suits charging violations of constitutional rights. A valid defense to such charges is to allege and prove that the federal agent acted in the matter complained of in good faith and with a reasonable belief in the validity of his acts.

It should be noted that an IRS agent would normally be clothed with federal immunity whenever (1) "acting within the outer perimeter of [his] line of duty", and (2) performing the type of "discretionary" function that requires the protection of immunity. *Barr* v. *Matteo*, 360 U.S. 564 (1959).

As the Supreme Court stated in *Bivens*, "the [federal] officer need not allege and prove probable cause in the constitutional sense. The standard governing police conduct is composed of two elements . . . the officer must allege and prove not only that he believed, in good faith, that his conduct was lawful, but also that his belief was reasonable". 456 F.2d 1339, at 1348.

When either of the above two elements is missing, i.e., an IRS agent is found to be acting outside the scope of his authority, or is performing a purely ministerial act which he should recognize as unreasonable, or does any act not in good faith, or does so with malice, then may the aggrieved individual bring a suit in the nature of a personal damage or tort claim against the federal officer.

26 U.S.C. § 7421, commonly known as the anti-injunction statute, has as its objective the efficient administration of agency business by agents of the Government and does not, therefore, provide for injunctive relief against the assessment or collection of taxes. Thus, with regard to injunctions as a civil remedy, they are not now available, and the Department of Justice would, in the interest of efficient tax administration, oppose injunctive relief ever becoming an available remedy in the context of this discussion.

It should be noted that for the fiscal year ending June 30, 1974, the Internal Revenue Service conducted examinations of 2,188,000 returns and the Intelligence Division of Internal Revenue Service conducted 7,215 criminal investigations. Annual Report of Commissioner of Internal Revenue, pp. 19 and 25. It is impossible to determine the number of citizens who were actually subjected to

"arbitrary or capricious" harassment. However, the absence of legal actions seeking damages from the Internal Revenue Service, under the rationale of *Bivens*, suggests there are relaitvely few who have actually suffered damages.

We recognize the case law cited in this response is not the entire body of law from which some theory of civil remedy may spring in the future. See e.g., Civil Rights Act, 42 U.S.C., § 1981, § 1985 and § 1986. We believe, however, that for the present, such remedies, coupled with the increased criminal penalties for unauthorized disclosure, provided by 18 U.S.C. § 1905 and 26 U.S.C. § 7213 as revised by S. 1, afford adequate protection to the citizen and are sufficient to "dampen down any tendencies to irresponsible excesses". Tr. at 108, lines 5-6.

Judge TYLER. Yes, it really goes hand in hand, I think, with your earlier question about the adequacy of these criminal penalties.

Senator HASKELL. It does. I have just one last question: In talking about the use of tax returns by the Department of Justice, there is another area where you possibly could use a tax return, and that would be where you took a tax return of a third party to impeach a witness' testimony. That is one step removed. How do you feel about that?

Judge TYLER. Well, I have to say I believe it is a fact that over the years that kind of thing has been very important and helpful in non-tax prosecutions, and I would hate to see any legislation which would absolutely cut off that opportunity.

I recognize that to say that you are going into a third party's concerns sounds as though it is going a little too far, but I think that the law enforcement effort shows that very often it becomes important to check out what the third parties have said or done, including tax information.

One good example of this, although I am quite confident it is not the only example, appears in my prepared testimony where we really got into third-party tax returns, and that is what is sometimes called the *West Virginia Road Corruption* case or the *Barron* case, using the name of the former Governor who was involved. There, it was necessary to check tax returns of Florida corporations which were set up at the instance of some of the defendants.

Now, you can say, therefore, that it was third-party tax return information, but I am sure without remembering the specific cases by name or number that this is a relatively frequent problem, where particularly the organized crime, white-collar, and corruption cases would be severely hampered if there was an absolute cutoff of information to the Department.

Senator HASKELL. I do have one further question. But, I think it could be submitted in writing.

What I am very curious to know in some detail is the working relationship between the Justice Department and the IRS with regard to strike forces. Are personnel interchangeable? What written request has to be made for information, or does it not have to be written? In other words the working relationship between the two in these strike force areas, I think should be part of the hearing record, and in view of the time I think it might be better if you could submit that in writing.

Judge TYLER. That is of course a very broad subject, but I would assume that you are concerned with what happens when in one of these strike forces where there is IRS agent involvement?

Senator HASKELL. Right.

Judge TYLER. And you would be concerned, for example, with what happens when the strike force as a whole wants to get tax return information?

Senator HASKELL. That is correct, yes. That would really be exactly it—and when it needs tax information for basically ancillary purposes as opposed to just tax-evasion purposes.

Judge TYLER. Yes, in other words, when you have, let us say, a bribery case.

Senator HASKELL. That is correct.

Judge TYLER. All right, sir.

[The following was subsequently submitted for the record:]

The Criminal Division of the Department of Justice has special responsibility for coordinating enforcement activities against organized crime, from the initial direction of an investigation by one or more of the various Federal investigative agencies, through the handling of the prosecution and appeal. For this purpose the Division maintains a number of "strike forces" located in metropolitan areas in which the influence of organized crime and racketeering is greatest.

The Strike Force is a team approach. The team concentrates the efforts of several concerned Federal agencies including the Federal Bureau of Investigation, Internal Revenue Service, Drug Enforcement Administration, U.S. Customs, Secret Service, Bureau of Alcohol, Tobacco and Firearms, and Securities & Exchange Commission on a single, visible organized crime syndicate or activity. Investigative information and intelligence are then pooled. Each agency participates in the planning and retains absolute control over its own operations, yet each contributes to the group strategy and operations conducted in the specialized area of responsibility. See *1973 Annual Report of the Attorney General*, page 80.

The Internal Revenue Service is represented on the Strike Forces by personnel from its Intelligence Division. Such personnel are assigned to and controlled by either a District Director or Regional Commissioner of Internal Revenue. The agent's function is to remain current and totally familiar with the intelligence picture in his assigned geographic area, whether developed by the other member agencies of the Strike Force or by the Internal Revenue Service. In addition, agents must be familiar at any given time with the cases IRS maintains in the Strike Force investigative inventory and, to a lesser extent, with the cases in the general program.

The intelligence acquired by the IRS agent from the other agencies is analyzed for possible tax violations. If they are found, the agent advises the Service of this fact so that tax investigations may be opened on the organized crime elements involved. Investigations and cases are also opened as a result of direct requests from the Strike Force attorneys-in-charge, when their analyses of situations convinces them that tax consequences are unavoidable. The Service may also open tax cases on suspected racketeers based upon referrals from its Audit Division in situations where evidence of tax fraud is found. In any of the three instances noted above, the IRS agents work in close cooperation with agents from other investigative authorities.

Regardless of the manner in which tax cases are opened, a request for disclosure of the returns and return information of the IRS is usually made *prior* to their incorporation into the Strike Force program. This request is made, pursuant to present regulations, by an Assistant Attorney General in a letter to the Commissioner setting out the reasons for the letter and all other matters presently required by regulation. See 18 U.S.C. § 6103. Regs. 301.6103(a–1(h)). Permission, when granted by the Service, is made on a "need-to-know" basis only in order to preclude improper use of the returns or the return information. 18 U.S.C. § 1905 and § 7213 make it a criminal offense to improperly disclose or use such information.

Once permission for disclosure has been granted by the Commissioner or his delegate, the IRS Strike Force, representative and the Revenue and Special agents from the Service actually working on the case can disseminate the particular information to investigators attached to the Strike Force who are working on the same case or related matters, and thus have a "need-to-know". Under this system, exchange of discovered information, whether purely of an intelligence nature or related to a substantive tax case, can be made in the context of adequate protection against improper uses of the information.

One exception to the above procedure occurs in the case of state or local officers attached to the Strike Forces. The regulations make no provision for disclosure to them, and this fact has created a strained relationship in some instances because the state and local officers believe they are being frozen out by

the Federal officers. This situation is particularly unfortunate in the "joint" strike forces which include state and local officers in their membership.

In sum, the disclosure of information developed by the Service is an essential part of the team approach unique to the Strike Forces. In this regard, it is important to note that only a small percentage of such exchanges involves tax returns themselves. By far most of what is exchanged consists of the reports or memoranda of IRS agents concerning their interviews with informants and third parties, and the documents received by the Service from third parties or public sources.

Once the decision is made to prosecute in cases involving tax offenses and some other criminal offense, the review proceeds with respect to both and wherever possible both are included in a single indictment. In these cases evidence in support of the non-tax charges is presented even if it was developed by IRS, while evidence on the tax case is presented even if it was developed by the FBI or other member agency.

If for some technical reason tax indictment is impractical, the information contained in the final report, or otherwise developed by IRS, is analyzed and used in related criminal cases.

Senator HASKELL. I then thank you very much for appearing, Judge Tyler. I look forward to receiving this information.

Judge TYLER. Very good, sir.

Senator HASKELL. Thank you, Mr. Lynch, for being here, and we will now recess until 2 o'clock.

[The prepared statement of Judge Tyler follows:]

TESTIMONY OF JUDGE HAROLD R. TYLER, JR., DEPUTY ATTORNEY GENERAL

Mr. Chairman: I appreciate the opportunity of appearing before you today to discuss a subject about which the Department of Justice feels very strongly—the availability of Federal tax returns and tax return information for use in criminal investigations and prosecutions.

Section 6103(a)(1) of the Internal Revenue Code provides that tax returns are "public records", but allows them to be disclosed only "upon order of the President and under rules and regulations prescribed by the Secretary [of the Treasury] or his delegate [the Commissioner of Internal Revenue] and approved by the President".

Presidents have approved regulations which, for many years, have provided that tax returns may be furnished to, and used by, attorneys of the Department of Justice when necessary in the performance of their "official duties" and/or for use in litigation in which the United States is interested in the result, or in the preparation of such litigation.

Originals or copies of returns are presently furnished to the Department of Justice without the necessity of written application if the litigation concerns the prosecution or defense of claims against the United States or its officers under the internal revenue laws and related statutes when such cases have been referred to the Department of Justice by the Treasury Department. In all other cases in which the United States is a party, the usual application is made to the Secretary of the Treasury or the Commissioner and signed by the United States Attorney or by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. The information which is acquired is restricted in its use and disclosure to the extent required by the matter in controversy.

During the 93rd Congress several bills were introduced which would have severely restricted law enforcement efforts by unreasonably limiting the use of tax returns and tax return information. The Department of Justice vigorously opposed enactment of these measures and near the close of the 93rd Congress, then Attorney General William B. Saxbe forwarded to members of this Committee a detailed statement concerning the impact of the proposals on the Federal law enforcement activities of the Department.

During the summer and fall of 1974 the Department worked with the Treasury Department and other interested departments and agencies in developing a legislative proposal on the subject of disclosure of tax returns. Since that time the enactment of the Privacy Act of 1974 has necessitated a fresh look at this problem. I would like to emphasize, therefore, that the Department does not oppose all legislation which would place limits on the disclosure of tax returns and tax return information. Quite the opposite, we think a measure should be developed

which would strike a proper balance between the rights of privacy of the taxpayer and the legitimate needs of society for the disclosure of the information. We would support such a measure and would be happy to work with all interested parties in its formulation.

Senator Weicker and Congressman Litton have reintroduced a limited revision of S. 3982, the bill which was before this Committee in the previous Congress. That measure is now pending before you as S. 199.

Both S. 199 and S. 442, a bill introduced by Senator Bentsen, would unduly restrict the availability and use of tax returns in criminal investigations and prosecutions not involving the tax laws. Let me briefly discuss the role of tax returns and return information in two areas of critical concern to us—corruption and organized crime.

I need not repeat what previous Attorneys General and other Department officers have told you concerning the threat of organized crime to this country. I am sure you are aware that the federal enforcement effort against that element of our society has included use of the criminal enforcement of our tax laws as a significant weapon. After all, the principal incentive for organized crime is financial. Experience has taught us that the organized criminal element does not follow the practice of breaking every other law and then docilely obeying the tax laws. They report on their tax returns only an amount sufficient to cover their net worth and expenditures, if that. In the last ten years we have found a similar tendency on the part of individuals involved in corruption.

For years Federal investigative and prosecutive agencies failed to deal effectively with this challenge, being reluctant to exchange what information they had acquired in regard to this element. In recent years, however, interchange of organized criminal intelligence between the affected agencies has become a reality, primarily through the Department of Justice's Organized Crime Strike Forces.[1]

The Internal Revenue Service has both made a substantial contribution to and received great benefit from the exchange. For investigations into organized crime activities or extortion or bribery invariably turn up tax violations as well as the underlying criminal activity. Similarly, the Revenue Service, in investigatng the tax affairs of racketeers or corrupt public officials, almost invariably turns up at least some evidence of the criminal activity which generated the income. Interchange of such information is thus both logical and vital to the law enforcement activities of the Federal Government. It has resulted in a sustained, unremitting and coordinated attack against organized criminal and corrupt elements.

It has also resulted in much greater efficiency on the part of the Federal investigative establishment in general and the Revenue Service in particular. There is probably no harder case to perfect in the Federal criminal law than the tax evasion case. For this reason, many cases which are thoroughly investigated are not brought to prosecution for some technical reason totally dependent on some quirk in the tax laws. Under the present system of interchange, the evidence developed in the course of such a tax investigation can be examined to see if some other violation of the Federal criminal law has occurred. In many instances, such is the case, and a prosecution for that violation can then be undertaken. As a result, there is then no need for other agencies to rework plowed ground.

S. 199 would divorce the Internal Revenue Service entirely from the remainder of the Federal investigative community. S. 422, while considerably less drastic in its effect, would place undesirable and we believe unnecessary roadblocks in the efforts to obtain and use tax returns and return information.

S. 199 absolutely prohibits the use of tax returns in non-tax prosecutions. I fail to see the reason why a tax return should not be available for use in the prosecution of the taxpayer for any serious criminal offense against Federal law. Those of you who have served as prosecuting attorneys are well aware of the tendency of the guilty criminal defendant to bolster his defense by weaving it around known fact; and the less known fact the Government has available, the more freedom he has in concocting his story. If his story is at odds with what he told the United States under penalties of perjury in his tax return, why should the jury not be advised of that fact? This Department might have lost many prosecutions had such facts been withheld.

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[1] The Strike Force is a team approach. The team concentrates the efforts of all concerned Federal agencies on a single, visible organized crime syndicate or activity. Investigative information and intelligence are pooled. Each agency participates in the planning and retains absolute control over its own operations, yet each contributes to the group strategy and operation through investigations conducted in its specialized area of responsibility.

I know from my own prosecutive and judicial experience that these problems are not by any means rare. They arise almost daily in many Federal criminal cases, not only in regard to criminal defendants but as to witnesses. It frequently occurs that the resolution of questions of fact in order to properly administer justice involves the impeachment or corroboration of witnesses' testimony on the basis of tax returns that are filed.

Additionally, the Weicker approach forbids exchange of information which is contained on a tax return. A competent IRS Agent is never content with taking the suspect taxpayer's word for the details of any business transaction.

He verifies the reported item by examining third party records, public records and interviewing persons who did business with the suspect taxpayer. Under S. 199 this information would be denied to the Department of Justice even if the investigation proved that the taxpayer *falsely* reported the transaction in question. I see no reason at all to suppress this information developed from sources other than the taxpayer.

Finally, it is often the case that the review of a tax prosecution uncovers other indictable offenses by which the money was acquired. Likewise, review of other offenses prior to indictment sometimes reveals an indictable tax evasion offense.

Therefore, the Department sees no valid reason why these offenses should be indicted and tried separately. Yet, S. 199 forbids any spillover from a tax prosecution to a non-tax prosecution. We believe that this is both illogical and wasteful in terms of judicial and prosecutive resources.

I believe the dangers of which I have spoken can best be appreciated by reference to a few specific examples.

THE BARRON CASE

In the mid 1960's, IRS Agents in West Virginia opened an investigation of numerous State officers—both elected and appointed—as a result of allegations of official corruption. Many income tax cases were made, but the case with the greatest impact developed against the then-Governor, two of his appointees to the State Roads Commission, and two additional political cronies. Because one of the allegations involved reports that the Governor had accepted bribes from syndicate racketeers to allow operation of illegal mob casinos within the state, attorneys from the Justice Department's Organized Crime and Racketeering Section participated in the development of the case by the IRS Agents. The Justice Department lawyers were instrumental in pointing the IRS Agents toward evidence needed to sustain Federal bribery charges and assisting where necessary with an investigative Grand Jury.

There emerged from the joint investigative efforts of IRS and Justice a picture of widespread system of corruption with respect to state purchases of road paint and related paraphernalia. In order to conceal the underlying bribes from the people of West Virginia, the money had been funneled into several Florida "consultant" corporations under the control of the then-Governor's political cronies. Only after the State officials left office was the money placed in a new Florida corporation, with the various parties to the scheme, including the former Governor, having equal shares.

Because all of the bribe income had in fact been reported on the returns of the Florida corporations, it was determined that no grounds existed for a criminal tax prosecution, although a large amount of tax was due the United States. Because of the participation and awareness of Justice Department personnel, however, an indictment was obtained against all participants in the scheme on the bribery evidence developed in the joint investigation. The trial resulted in jury verdicts of guilty as to all the defendants except the former Governor, who was later convicted and sentenced to twelve years custody for bribing the foreman of the jury. A thoroughgoing reform of West Virginia purchasing practices resulted.

Had the proposed restrictions on exchange of information been in effect, Justice Department personnel would never have been advised of the developing situation and could not have made the appropriate inquiries. The case, having arrived in the Justice Department would never have been referred to the Criminal Division once the tax prosecution had been declined—since while the tax investigation "spilled over" into the bribery case, such spill-over would be precluded. As a result, no prosecution would have ensued; no convictions would have been obtained; expenditures of great amounts of manpower by the Internal Revenue Service would have been wasted in that only civil collection and not criminal prosecution would have resulted; and West Virginia purchasing practices would have continued to defraud the citizens and line the pockets of corrupt politicians.

THE DORFMAN CASE

A significant example of the kind of major prosecutive opportunity which would be wasted if these measures were to be enacted is the 1972 Allen Dorfman case. Dorfman, a major labor racketeer, was identified as the recipient of substantial kickbacks paid in return for union pension fund loans by a witness developed during the Revenue Service's investigation of skimming from a major Las Vegas casino. His indictment and conviction in New York City followed.

Had such exchange information been forbidden, this witness would never have been made available to the United States Attorney in New York, and Dorfman could still have been enriching himself at the expense of the working people of this country during this one year he served in jail.

THE KERNER CASE

In the late 1960's the United States Attorney in Chicago was informed by the IRS of possible criminal violations committed by a former State Governor then sitting as a Federal Court of Appeals judge. These violations centered around the former Governor's acceptance of bribes from certain horse racing interests. His tax return showed a transaction which, on further investigation, turned out to be a disguised bride. The IRS interview of the former Governor produced many false statements, as did his later Grand Jury testimony.

The joint IRS-Justice investigation resulted in an indictment containing four tax evasion counts and fifteen non-tax counts, including conspiracy, interstate bribery, mail fraud, perjury and false statements to a Government agent. Former Governor Kerner was convicted on substantially all charges.

Had restrictions on exchange of information been in effect, the United States Attorney would never have been apprised of the situation until the tax case was forwarded to his office for prosecution. Had any reviewing official in either the IRS Regional Counsel's Office or the Tax Division taken exception to the *tax* aspects of the case, the related criminal allegations would not have been called to the attention of the United States Attorney at all. The non-tax counts developed by the Internal Revenue Service would not have been included—thus weakening the case—and conviction on the tax counts alone may have led to a significantly lesser sentence. The Kerner case is an excellent example of the close interrelationship of both tax and non-tax criminal violations.

THE DUARDI CASE

In 1972, the FBI investigated the attempt of two Kansas City syndicate members to expand their vice and prostitution operations into Northeast Oklahoma. Part of this attempt involved the bribery of an Oklahoma County District Attorney.

As the District Attorney felt the pressures of the investigation, he approached the IRS and pretended to become their informant, claiming that he was cooperating with the racketeers only to enable the IRS to make its tax cases on them. In fact, however, the District Attorney told the IRS nothing about bribes received prior to the time he approached the Federal agents.

The District Attorney's half-hearted cooperation was subsequently to form his defense at the bribery trial. Fortunately, the IRS brought this information to the Federal prosecutor, who was then able to anticipate this defense. The District Attorney, confronted with his duplicity, did not take the stand in his trial and offered no defense to the charge.

Had restrictions on exchange of information been in effect at the time, the IRS probably would never have alerted the prosecutor, and he would not have been prepared to show the falsity of the defense. The defense would have been offered at trial and very possibly could have resulted in the acquittal of the District Attorney.

Following an article appearing in the Wall Street Journal in 1971, an investigation was initiated and an indictment for bribery, conflict of interest and conspiracy was obtained by the United States Attorney's office in Manhattan against then Congressman Podell. The basic allegation revolved around his alleged representation of an airline before the Civil Aeronautics Board. The issue was clouded by the claim that two separate law firms were involved—the Congressman was clearly affiliated with one but claimed he was not affiliated with the second. He contended that only the second firm represented the airline.

IRS review of the relevant tax returns showed quite clearly that the second firm—which Podell contended represented the airline—was in fact nothing more than a paper creation to mask his involvement. This information developed by the IRS was made available to the Federal prosecutor. The cross-examination of Podell on the basis of this return proved sufficiently effective that he entered a plea of guilty almost upon leaving the stand.

Had such use of returns been forbidden, the prosecutor would never have seen the return, much less cross-examined on the basis of it. As a result, the defendant might never have been convicted.

THE YELLOW CAB CASES

The San Diego Yellow Cab cases demonstrate the need of law enforcement agencies for information gathered by the IRS to challenge spurious defenses and to impeach witnesses.

In 1970 and 1971, an IRS investigation of the City Council of San Diego, California, revealed that many of the Councilmen had accepted bribes from the local Yellow Cab Company to allow the cab company, which had a limited monopoly, a rate increase. During the course of the investigation, the Councilmen had admitted to the IRS investigating agent that this money had been received.

Because many more bribes had been handled on an intrastate rather than interstate basis, the case was turned over to local authorities for prosecution. No Federal tax evasion case ever resulted from the investigation.

The State District Attorney took the necessary actions under present IRS regulations to secure the testimony of the IRS agent who had developed the case. The then IRS Commissioner, exercising the discretion vested in him under the current law, denied this request.

Once assured that the IRS agent could not testify, the first Councilman to go on trial falsely testified that he had never received the money. Thus, the Federal investigators and prosecutors were forced to stand by helplessly while a corrupt public official was acquitted of a provable bribery offense by the use of blatant perjury.

POLITICAL CONTRIBUTIONS CASES

In 1969 and 1970, the Internal Revenue Service completed investigation into alleged tax offenses resulting from illegal political contributions made by corporations. The investigations did not produce many cases which were prosecutable for tax offenses, but did develop cases supporting prosecution for violation of the election campaign laws. The tax cases were not viewed as prosecutable because the resulting tax deficiencies were *de minimis* in comparison with the taxes reported on the tax returns. Political contribution cases were developed against Fluor Corporation, National Brewing Company, American President Lines, and Clougherty Packing Corporation, among others. Under the provisions of some pending bills, none of these cases would have been developed nor prosecuted.

OTHER CONSEQUENCES

In addition to the consequences I have outlined, S. 199 would apply to *all* returns filed under the Revenue Code, rather than merely income tax returns. Thus, returns and related information as to taxes on liquor dealers, dealers in firearms (both licit and illicit) and gallonage liquor taxes would be included under its provisions—in sum, virtually the entire universe of Federal firearms and liquor violations. These are presently matters of direct referral, at the regional or district level, from the Treasury Department's Bureau of Alcohol, Tobacco and Firearms to the appropriate Justice Department attorneys. S. 199, however, would force referral of responsibility in these generally routine matters up to the level of the IRS Commissioner and the Attorney General, with no provision for delegation. Aside from the needlessness of this procedure, it is not efficient use of executive manpower.

ARGUMENTS OF THE PROPONENTS

Surely there is superficial appeal in the arguments of the proponents of broad confidentiality of tax returns. The principal argument appears to be that the "right of privacy" outweighs or should outweigh any considerations of "efficiency in Government." While respecting the goal of privacy, I believe both S. 199 and S. 442 go much too far.

Although it is contended that these privacy measures would remove "politics" completely from influence in tax affairs, restricting the use of returns does not wholly answer this problem.

In fact, enactment of such legislation could produce an opposite result from that intended by its proponents—facilitating official corruption by frustrating its detection and prosecution.

CONCLUSION

The privacy to which a taxpayer, or for that matter *any* citizen dealing with his Government, is entitled, is that the Government will not indiscriminately make known to the general public the information furnished by the taxpayer. It is highly doubtful that any taxpayer believes that the information he submits may not be used in developing cases against either himself or third parties. As I previously mentioned, the Department would gladly support legislation which would further define and safeguard privacy rights of American taxpayers so long as appropriate provision is made for the vital law enforcement needs.

[Whereupon, at 1 p.m., the subcommittee was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator HASKELL. The subcommittee hearing will recommence, and this afternoon the first witnesses are James L. Pate, Assistant Secretary of Economic Affairs, Department of Commerce; accompanied by Vincent P. Barabba, Director of the Bureau of Census; Morris Goldman, Deputy Director of the Bureau of Economic Analysis; and Shirley Kallek, chief of the economic census staff.

We are very pleased to have all of you. You may proceed in whatever way you wish. Whether you give them in full or not, your statements will be included in the record.

STATEMENT OF JAMES L. PATE, ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE, ACCOMPANIED BY VINCENT P. BARABBA, DIRECTOR, BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE; MORRIS GOLDMAN, DEPUTY DIRECTOR, BUREAU OF ECONOMIC ANALYSIS; AND SHIRLEY KALLEK, ASSOCIATE DIRECTOR FOR ECONOMIC FIELDS, BUREAU OF THE CENSUS

Mr. PATE. Thank you, Mr. Chairman. Mr. Chairman, we appreciate this opportunity to consider with you proposed legislation which, if enacted, would cut off the use of tax return information by the Department of Commerce in the preparation of important statistical series and economic analyses. S. 199 and S. 442 restrict access to tax return information to very limited circumstances.

Senator HASKELL. Now one thing. Let us be quite informal, since we do not have to worry about time, there not being any other committee members present.

When you say "cut off the use of tax return information," I did not realize those bills did that. I am sure they cut off the name of the individual, but aggregate information. Do they cut off aggregate information?

Mr. PATE. Not aggregate information, sir, but it would cut off essential individual tax return information which is essential.

Senator HASKELL. Let's take it from there. Under the bill you could not get Floyd Haskell's tax return. Is that right?

Mr. PATE. I am sorry, sir. I did not hear the question.

Senator HASKELL. I say under the bill would you be able to get my tax return? Are you able to get my tax return now?

Mr. PATE. Yes, we are able to get the individual information.

Senator HASKELL. With my name on it?

Mr. PATE. Yes, sir. Some of the information that we receive does have individual's names, much of it involves corporate names.

Senator HASKELL. All right. Why is it necessary to have the individual's name on it?

Mr. PATE. Sir, if you would like for me to depart from my statement at this time, I will refer your question to Mr. Barabba.

Senator HASKELL. Go right ahead, sir.

Mr. PATE. Neither bill provides for the essential and continuing use of identifiable tax information solely for statistical purposes by the two component agencies of the Department of Commerce's Social and Economic Statistics Administration—the Bureau of Economic Analysis and the Bureau of the Census. We are very deeply concerned with the truly far-reaching implications of these bills. The heart of the entire Federal statistical system is truly at stake.

The Department of Commerce shares your concern for the protection of the privacy of individuals and the further concern that information used to make decisions about individuals be accurate. The Privacy Act of 1974 effectively guarantees both. Here we are concerned primarily with business information and solely with the use of information in basic statistical and economic analyses.

The Department of Commerce through the Bureaus of the Census and Economic Analysis has long been responsible for the collection, analysis, and dissemination of very important and critical statistics on the functioning of the economy and the Nation. They must, we submit, have continuing access to selected tax return information in order to produce statistical information on which legislative and executive policy makers depends daily. Prohibition of this access would severely cripple the Government's basic statistical programs.

These agencies of Commerce are authorized by law to solicit the same information directly. Years ago they did use direct canvass. But that duplication is costly and it is also needlessly burdensome on respondents, particularly upon small business. Cutting off the IRS source would abrogate neither the need for, nor the use of, the information in question. It would simply force reversion to duplicative, direct canvass. We appreciate the commendation of Senate Select Committee on Small Business which said:

"To its credit, over the years, the Census Bureau has been developing and improving techniques designed to reduce the burden on business census respondents."

For over a quarter of a century, since 1944, in fact, the Department's statistical and economic information programs have been made increasingly effective and efficient because of the use of selected tax return information furnished by the Internal Revenue Service in accordance with present law and under regulations of the Department of the Treasury.

There has never been a single instance in which these strictly statistical uses have violated the privacy of any taxpayer or the confidentiality of any tax return information. All such information furnished to Census and to BEA is protected by strict and specific legal safe-

guards against either improper use or disclosure. These safeguards are set forth in section 9 of title 13 and in section 176(a) of title 15 of the U.S. Code. The officers and employees of these agencies know, through experience, that the furnishing of both personal and corporate information to the Government depends on a contract of trust and a record of fidelity.

The imperative need for continuing access to tax return information for statistical purposes was only recently affirmed by the Congress in the transfer exemptions included in the Privacy Act of 1974. They expressly and specifically provide for the transfer of information about individuals to Census. The Privacy Act also reflects the fundamental principle on which SESA's confidential use of selected tax return information is based, that a statistical record is one maintained solely for statistical research purposes and not used in making any determinations about identifiable individuals.

Every iota of identifiable information received by the Bureau of Economic Analysis and the Bureau of the Census is used solely for statistical purposes with two exceptions relating to census information returned to the individual who furnished it and information preserved by the National Archives. No other identifiable information is ever disclosed, whether it comes from a person, a corporation, or any other source, including the Internal Revenue Service and the Social Security Administration.

Another very important principle is stated in the Federal Reports Act which declares it to be the policy of the Congress that:

> Information needed by Federal agencies shall be obtained with a minimum burden upon business enterprises, especially small business enterprises, and other persons required to furnish the information, and at a minimum cost to the Government. Unnecessary duplication of efforts in obtaining information through the use of reports, questionnaires, and other methods shall be eliminated as rapidly as practicable.

This policy has been implemented for the gathering, analysis, and reporting of statistics through the increased use of administrative records, including tax return information, in order to: First, reduce the reporting burden on respondents, second, minimize the costs of obtaining information, and third, make very significant improvements in the accuracy and timeliness of census and survey data, key statistical indicators, and related economic analyses.

It has taken over a quarter of a century to develop our present sophisticated and integrated system of economic, demographic, and social statistics which is now based in material part on the use of tax return information. These developments, including the reliance on tax return data, have been noted in many statements to and appearances before congressional committees. This means of providing better economic data, faster, and at less cost has consistently been encouraged by committees directly concerned with the quality of Government statistics and the reporting burdens placed by Government on the business community.

Senator HASKELL. Mr. Pate, if I may interrupt, I do not think anybody objects to your getting statistical information but why do you need my name? Could you not say we want to know how much money lawyers make in Colorado? Why do you need the name Floyd Haskell so much?

Mr. PATE. Mr. Chairman, here with me today are Mr. Vincent Barabba, Director of the Bureau of the Census, to my right, and Mr. Morris Goldman, Deputy Director of the Bureau of Economic Analysis, on my left. If I might please refer that question to Mr. Barabba.

Senator HASKELL. All right, fine.

Mr. BARABBA. Senator, there are two types of information I think we should attempt to distinguish. That is information of a personal nature which is about yourself as an individual. And then there is information about legal entities, businesses, and enterprises of that nature.

I would like to, if I might first, explain why we need information about the individual legal entities as it relates to our economic programs and then I think we can discuss the extent to which we need the personal income tax information for the demographic programs.

With your permission I would like to do it that way.

Senator HASKELL. Sure.

Mr. BARABBA. The first chart——

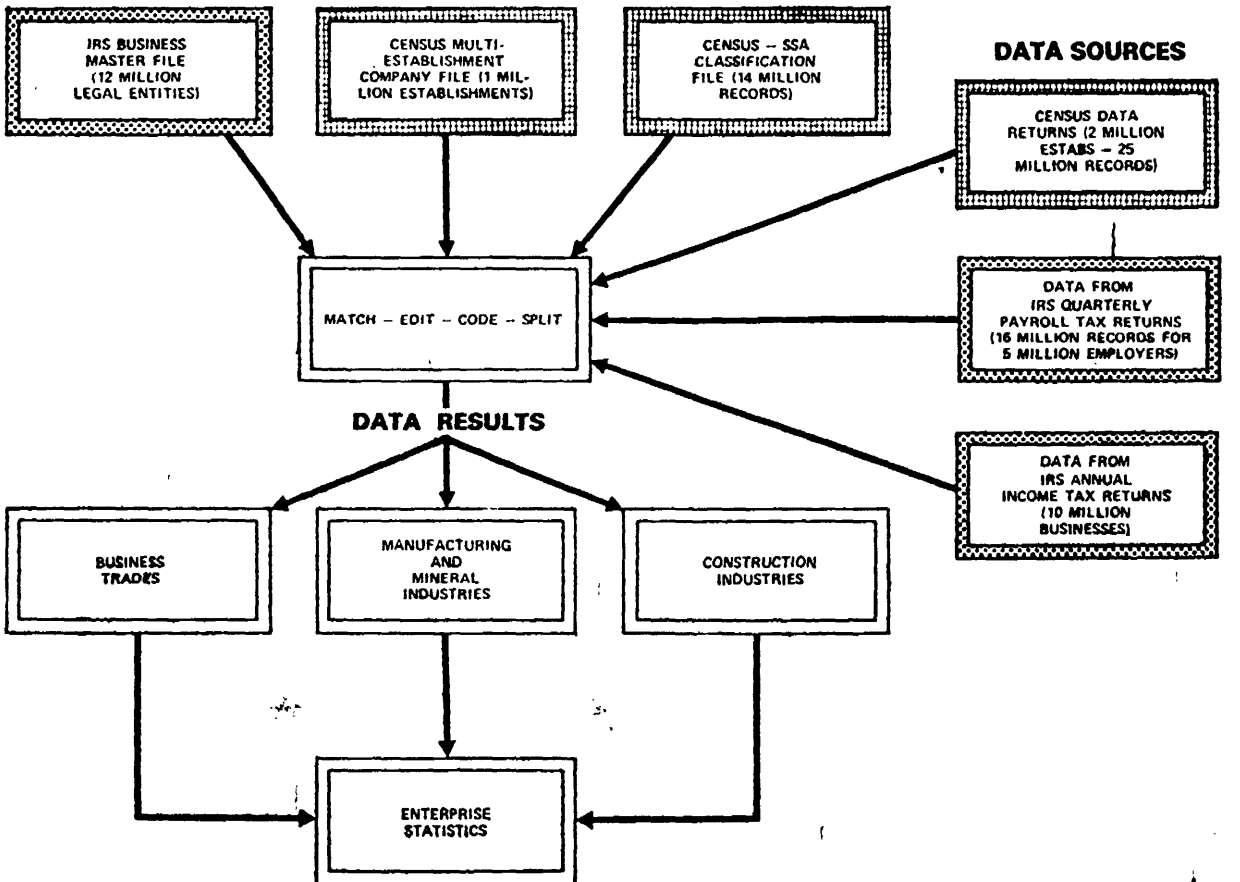
Senator HASKELL. I am going to need some binoculars to read that.

Mr. BARABBA. You have a copy. I think there are copies up there of this chart.

Senator HASKELL. All right, good.

1972 ECONOMIC CENSUSES OVERVIEW

ESTABLISHING THE UNIVERSE



Mr. BARABBA. The first chart is a 1972 economic census overview. The point I want to make deals with three aspects of this bill which would impinge on our ability to conduct our operations. One relates to the quality of the statistics, the second to response burden, and the third to our ability as a bureau to react to specific requests of our Government.

This first chart emphasizes primarily the quality of the statistics. It is important to note that the source of establishing the universe of all businesses in the United States for a complete census. We have three sources of information: the IRS business master files, some 12 million legal entities; the Census multiestablishment company file; and the combination of the Census, Social Security Administration's classification files, some 14 million records.

I should point out that assembling in IRS business master file, we do not collect economic information at that point. Simply the name and the address of the establishment is on tape. It is not the IRS form. The file contains only the information that is required to establish the file.

The second piece of information relates to the census multiestablishment company find, this is of the approximately 1 million establishments which are really made up of some 200,000 legal entities. These are the very, very large firms. It is important to note that the IRS only has the legal entity information, not establishments information within the legal entity on their information base.

Senator HASKELL. The establishments within the legal entity—what do you mean by that?

Mr. BARABBA. In other words, if it was a large holding company, IRS would have information about the tax reporting unit, not for the establishments that make up that unit.

Senator HASKELL. What do you mean by establishments?

Ms. KALLEK. Any establishment is an activity at a distinct physical location. If, for example, a company has a warehouse, a paint factory and three retail stores, we actually collect individual reports for each one of those locations in order to have accurate industry figures.

Senator HASKELL. Where do you get that information from?

Mr. BARABBA. We will show here where we get this information, Senator.

Senator HASKELL. All right.

Mr. BARABBA. This information is brought together and included in a central control list. Based on the information in this control list, we send out report forms to those firms from which we require information.

Most of the information comes from the census returns, the report forms that we send out to firms which have included in the list. For those companies that are relatively small, we use the information obtained from IRS records instead of mailing a form we get both the IRS quarterly payroll tax data and selected items from the IRS annual tax records.

Now, again, we do not get the actual tax form. We obtain selected information which is abstracted from the tax forms through a request from the Secretary of Commerce to the Secretary of the Treasury for the specific information required and indicate the people who will see it. I think you have in front of you, Senator, a copy of a letter which is an example of how this information is requested from one Secretary to the other.

[The letter referred to by Mr. Barabba follows:]

MARCH 6, 1975.

Hon. WILLIAM E. SIMON,
Secretary of the Treasury,
Washington, D.C.

DEAR BILL: Pursuant to Treasury Decision 6547 and Executive Order Number 10911, your authorization is requested to permit the Bureau of the Census to obtain a copy of the Business Master File (BMF) entity tapes as of June 30, 1975, in Employer Identification Number sequence, and a microfilm copy of the Business Master File Taxpayer Name Directory as of the same date in alphabetic sequence by Internal Revenue District. Also requested are the monthly tapes and microfilm copies of the corrections and additions to the BMF entity records for the period July 1975 through June 1976 and the Form 941 total payroll information on tape for each of the four liability quarters of 1975.

As you know, the Bureau has utilized such materials in carrying out its mandated statistical programs for many years. With reference to the Form 941 request, the Bureau has previously used this information in connection with the Economic Censuses. However, in order to provide continuity with other data series, and to continue exploring possibilities of modifying its County Business Patterns Report program, the Bureau needs the total payroll data as compiled by the Internal Revenue Service on a quarterly basis. Discussions on the above matters have been held between representatives of the Bureau of the Census and the Statistics Division of the Internal Revenue Service. The costs for the materials provided will be borne by the Bureau of the Census.

The names and titles of those supervisory and technical staff members who will have prime responsibility for examining the statistical data furnished by the Internal Revenue Service are listed in the enclosure. All persons processing the files will be sworn Census Bureau employees. The material obtained from the Internal Revenue Service will be processed clerically and by computers in our Suitland, Maryland and Jeffersonville, Indiana offices.

All persons having access to the materials will be instructed and cautioned officially as the confidentiality of the information contained there in and as to the penalty provisions of Section 7213 of the Internal Revenue Code and Section

1905, Title 18, United States Code, regarding unauthorized disclousre of such information. It should also be noted that tax return information in the Bureau's custody is further protected by the stringent safeguards of Section 9, Title 13, United States Code.

The support and cooperation of the Internal Revenue Service over a period of years in making available requested tax data to the Bureau of the Census for development and maintenance of its economic statistical program have been most noteworthy. Your early and favorable consideration of this request will be most appreciated.

Sincerely,

_____,

Secretary of Commerce.

Enclosure.

BUREAU OF THE CENSUS EMPLOYEES WHO WILL HAVE PRIMARY RESPONSIBILITY FOR EXAMINING DATA FURNISHED BY THE INTERNAL REVENUE SERVICE

Business Division.—John Wikoff, Acting Chief; Tyler Sturdevant, Assistant Division Chief; Michael Farrell, Assistant Division Chief; Heyward Glisson, Chief, Current Sample Surveys Programming Branch.

Industry Division.—Arthur Horowitz, Assistant Division Chief, Eugene Wendt, Assistant to Division Chief; Howard Hamilton, Assistant Division Chief; Mary Johnson, Chief, Industry Programming Branch.

Construction Statistics Division.—Alan Blum, Assistant Division Chief.

Statistical Research Division.—George Minton, Mathematical Statistician.

Data Preparation Division.—O. Bryant Benton, Division Chief.

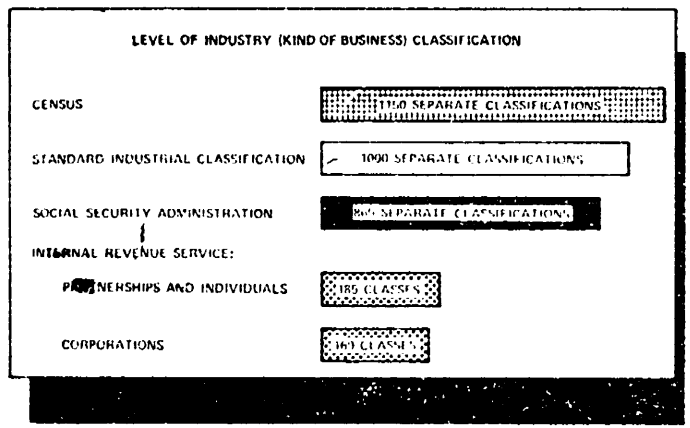
Economic Surveys Division.—Roger Bugenhagen, Acting Division Chief; Andrew Grieco, Assistant Division Chief; Samuel Schweid, Special Assistant; William Wade, Special Assistant; James Aanestad, Chief, Directory Development Branch; Robert Schiedel, Chief, County Business Patterns Branch; Robert Brand, Chief, Directory Surveys Branch; Charles Venters, Chief, Programming Branch; Paul Poissant, Chief, Directory Systems Branch.

Economic Census staff.—Melvin A. Hendry, Jr., Acting Chief; Donald E. Young, Special Assistant.

Mr. BARABBA. As this information is gathered it comes back to the Census Bureau. The data from various sources are matched together in a control file which permits us to integrate information from the tax returns and the survey forms which we send out. The information is edited for correctness of data and industry classification. The information is then split into the various economic sectors of our society, whether it be business trades, manufacturing and minerals industries, or the construction industries. These then are the basic economic tools that we use to measure the activity in the economic side of our society. After the establishment information is tabulated by the economic sectors it is recombined into enterprise structure statistics. This is used to study the changes in the industrial structure of our economy, concentration patterns and industrial diversification.

This next chart is a continuation of the example of the quality of statistics and emphasizes the need for the individual tax data and also relates to response burden.

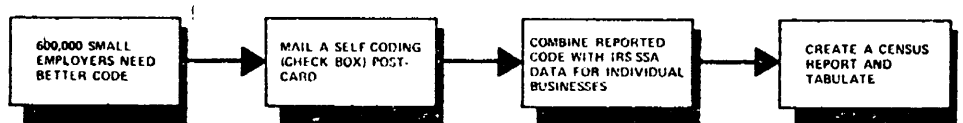
PROBLEM OF INDUSTRY CLASSIFICATION



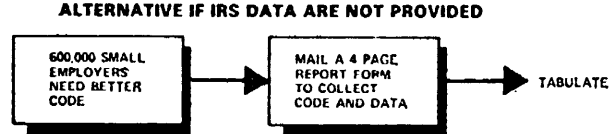
EXAMPLE OF CENSUS DETAIL COMPARED TO IRS:
EATING AND DRINKING PLACES

CENSUS CODE	TITLE	IRS CODE: PARTNERSHIPS & INDIVIDUALS	IRS CODE: CORPORATIONS
581210	RESTAURANTS AND LUNCHROOMS	5812	5800
581220	CATERERS		
581230	CAFETERIAS		
581240	REFRESHMENT PLACES		
581250	CONTRACT FEEDING		
581260	ICE CREAM/FROZEN CUSTARD STANDS		
581300	DRINKING PLACES	5813	

PRESENT PROCESS



ALTERNATIVE IF IRS DATA ARE NOT PROVIDED



Mr. BARABBA. One of the things that happens is that the various agencies of Government set up industry classifications which meet their needs. The Internal Revenue Service, for example, has only 169 industry classes for corporations and only 185 classes for partnerships and individuals. Social Security Administration uses 865, whereas the standard industrial classification has 1,000 different codes. But the Census Bureau, because of the needs of its data users, has established some 1,150 separate industry classifications.

For example, IRS classifies eating and drinking places in one category, code 5800. At Census, because the data needs of our users require more information, we break this category into restaurants and lunchrooms, caterers, cafeterias, refreshment places, contract feeding, ice cream, frozen custard stands, and drinking places and have separate codes for each category.

This information for the separate categories is not available on the IRS data tapes. We therefore mail to about 600,000 small employers which need a better classification, this little postcard, which simply requires a check next to the industry classification that best describes their activity. We combine that information with the IRS and SSA data for the firm and create a census report which can be tabulated together with all other Census records.

If we were not able to do that, because we did not have access to the individual records, each of those 600,000 small businesses would have to get a form of this size.

Senator HASKELL. Who do you send that form to?

Mr. BARABBA. This large form would have to go to the 600,000 small employers if we cannot get the information needed from IRS. If we can get the information from IRS, we need only use the small card in order to classify them correctly.

Senator HASKELL. I may be getting mixed up here. Do those 600,000 small employers get that big form that is in your left hand?

Mr. BARABBA. No; right now they get the postcard.

Senator HASKELL. And who gets the big form?

Mr. BARABBA. The larger companies. This only goes to larger companies.

Senator HASKELL. Why can you not do the same thing with large companies that you do with small companies?

Mr. BARABBA. In concert with the Federal Reports Act and the concerns of Senator McIntyre's Committee on Small Businesses, we are always attempting to reduce respondent burden. We find that we can gather sufficient information about small companies from data which are already in the IRS files. When sufficient detail for industry classification is not on the IRS files, we ask companies just to classify

themselves in greater industry classification. We need much more information than is available from IRS files. We therefore collect this information directly from the larger companies. We draw a relatively small sample from the smaller companies and use the detailed information from that small sample to estimate the other items needed for the small companies. In addition to the 600,000 firms to whom we mail classification cards, we use selected IRS data for 2.9 million other small firms.

Senator HASKELL. I see. So you send out to a sample of the 600,000 small fellows the big form.

Mr. BARABBA. That is correct.

Senator HASKELL. And then you just extrapolate from that and make an assumption of the averages.

Mr. BARABBA. That is correct. But each of the 600,000 firms has to classify themselves according to this detail.

Senator HASKELL. And so I can see that your coding and the IRS coding are different and you are getting it from the IRS and then breaking it down. I suppose if the IRS classified the same way you did there would be no problem.

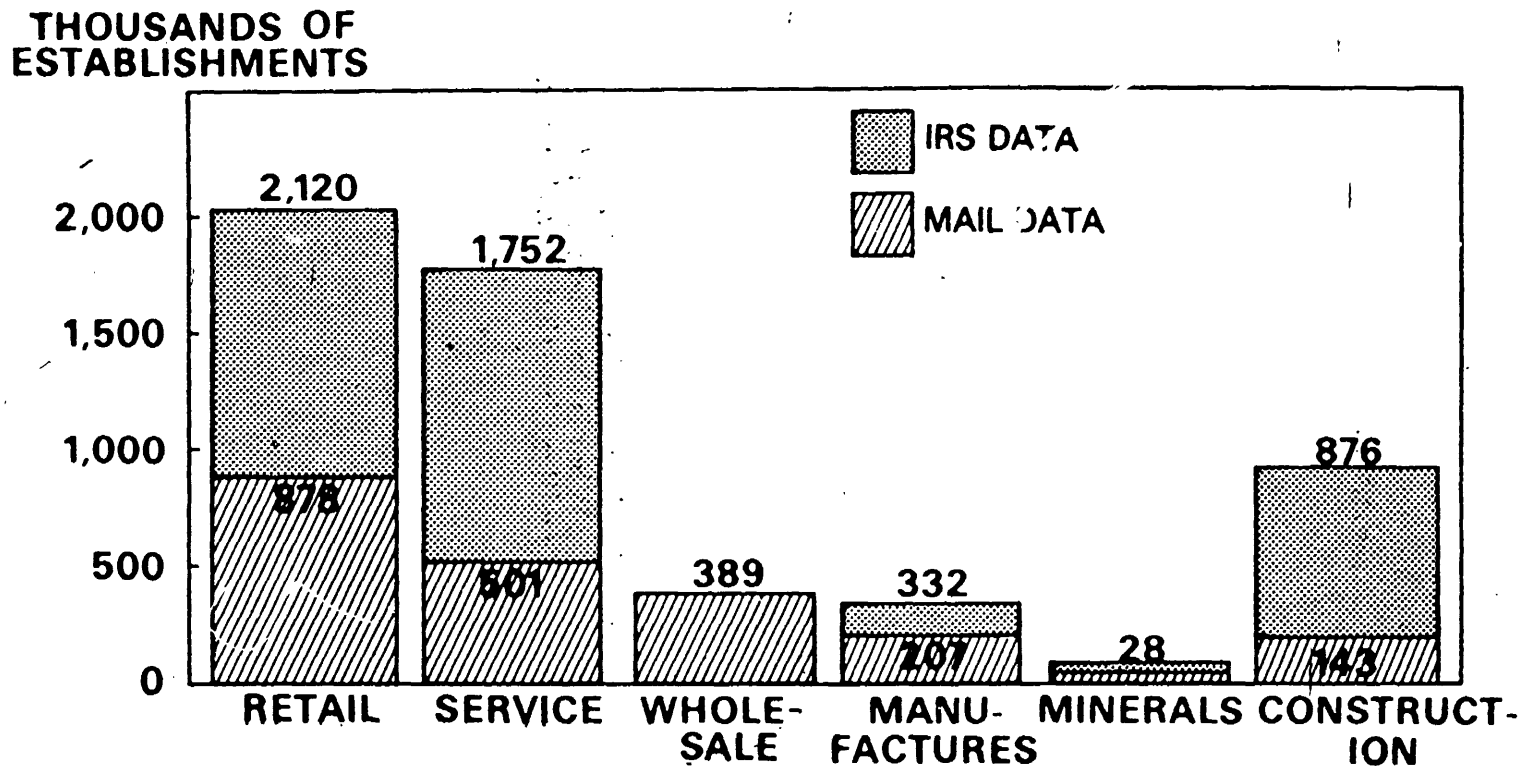
Mr. BARABBA. It would be less of a problem because there are other facets to the problem. This is just one element of the problem that we are identifying here at this point.

Senator HASKELL. Would you go ahead, sir?

Mr. BARABBA. Now, if we could have the next chart.

1972 Economic Censuses

IRS Data In Lieu of Direct Reporting



U.S. DEPARTMENT OF COMMERCE – Bureau of the Census

Mr. BARABBA. To give you an indication of the magnitude this has. In the 1972 economic census, we used IRS data in lieu of direct reporting for 3.4 million establishments of the 5.5 million firms. Only 2.1 millions of these 5.5 million firms received this larger type report form.

Senator HASKELL. The big forms.

Mr. BARABBA. The big forms; 3.4 million of these firms, all of those indicated in the yellow area, were firms which did not have to report in detail to the Census Bureau because we were able to obtain sufficient information from IRS records to meet the requirements of the economic census.

This gives you an indication of the magnitude of this task if access to IRS records were not made available and you had to mail report forms to all these firms.

Senator HASKELL. So what you are saying is if IRS information was not available you would have to send the material out to 3.4 million additional firms.

Mr. BARABBA. That is correct, sir.

Senator HASKELL. OK. Now in this other form you showed me——

Mr. BARABBA. Senator, this is if we had access to their mailing lists as well. I mean if we did not get the data, if we just got the mailing list with no data on it.

Senator HASKELL. No; I was just saying that if you did not have the IRS data, you would have to canvass 3.4 million additional forms.

Right?

Mr. BARABBA. That is correct.

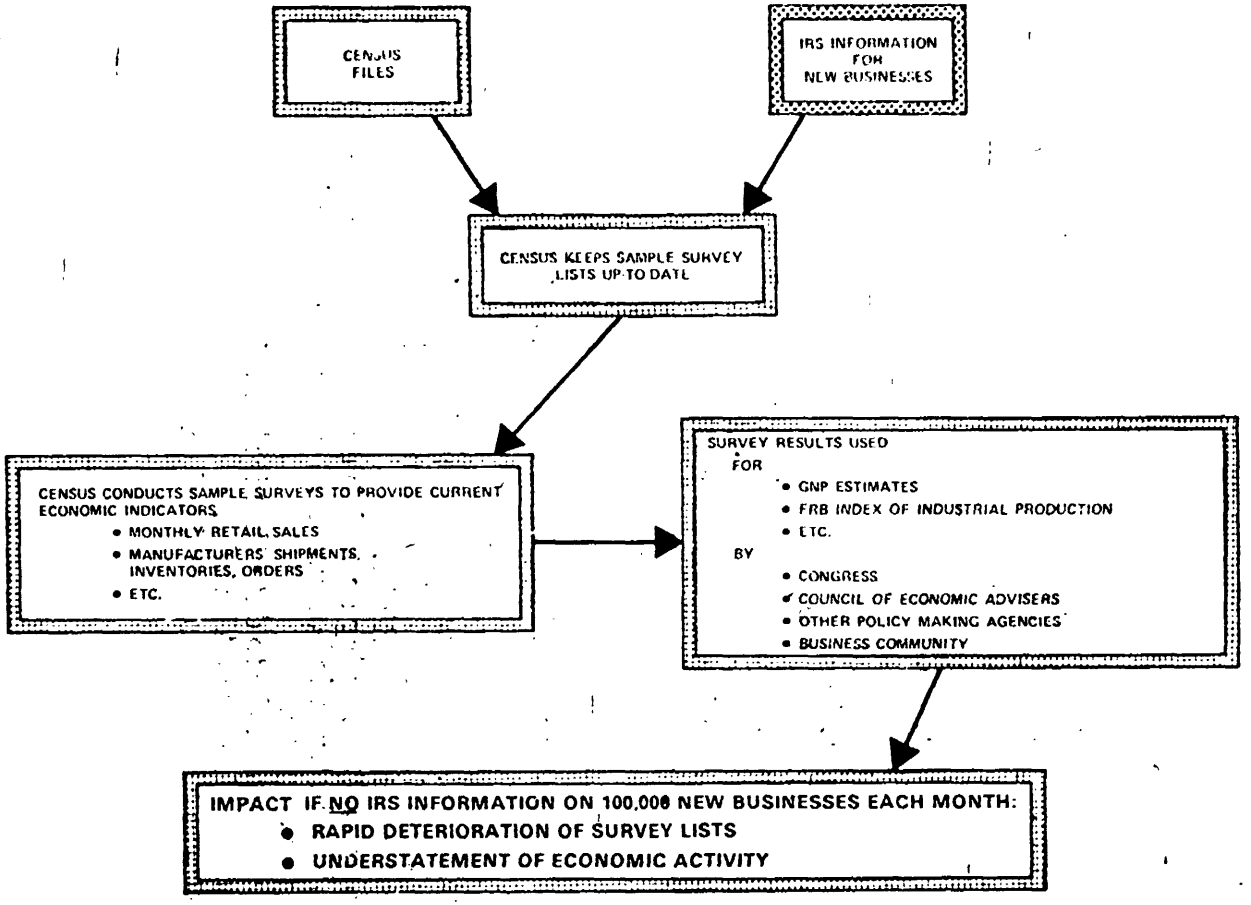
Senator HASKELL. OK. And the reason that you would have to canvass them is that their coding is not as detailed as your coding.

Mr. BARABBA. That is one of the reasons.

Senator HASKELL. What is the other reason?

Mr. BARABBA. We will get into that now, Senator.

IMPACT OF TAX RECORD LOSS ON CURRENT ECONOMIC INDICATORS



U.S. DEPARTMENT OF COMMERCE – Bureau of the Census

Mr. BARABBA. In addition to the economic census which we conduct every 5 years we compile and publish weekly, monthly, quarterly, and annual reports. These reports are based on samples of all total business establishments in the United States. These samples are selected from a list which is made up of our regular complete census files. This list is updated from IRS information of new businesses.

We have, at the end of each census an up-to-date list of all of the firms available. Every month we get information about all new businesses. Samples are used to conduct monthly and quarterly studies regarding retail sales, manufacturers' shipments, inventories, orders, and other economic indicators. These results are used for GNP estimates by the Federal Reserve Board, by Congress, Council of Economic Advisers, et cetera.

If we did not get this information on a monthly basis, the quality of this list would soon deteriorate.

Senator HASKELL. Now that information you get on a monthly basis is basically how many people sell shoes in——

Mr. BARABBA. No. It is the name and the address of the new firms.

Senator HASKELL. The new firms, that is all it is, the firms in the shoe-selling business?

Mr. BARABBA. Yes.

Senator HASKELL. OK.

Mr. BARABBA. This averages about 100,000. If we were not updating this list, the quality of the list from which we were drawing the sample would soon deteriorate and we would have a deterioration of survey results with a resultant understatement of total economic activity.

This is another reason why we have to get access to individual records.

Senator HASKELL. Now that record you would get on a monthly basis obviously would have little or no financial information in it, because if it is a new business it has not got a financial history; so all it is is a name and address, right?

Mr. BARABBA. We would not need economic information; just the name and the address of the new information.

Senator HASKELL. Right.

So up to date, as far as we have gone so far, your only need for the individual return is because IRS does not classify in the same detail that you classify.

Mr. BARABBA. Up to date, that is right, sir.

Senator HASKELL. All right.

Let us see it we can go any further.

SPECIAL POST CENSUS SURVEYS AND TABULATIONS

- **TO MEET NEW DATA NEEDS**
- **TO HELP SOLVE CURRENT ECONOMIC PROBLEMS**
- **TO MEET NEEDS OF CONGRESS, GOVERNMENTS AND BUSINESS**

CENSUS HAS FOR EACH ESTABLISHMENT:

- NAME AND ADDRESS
- INDUSTRY CODE
- COMPLETE DATA FROM IRS AND CENSUS REPORTS

CENSUS DID SPECIAL SURVEYS OF:

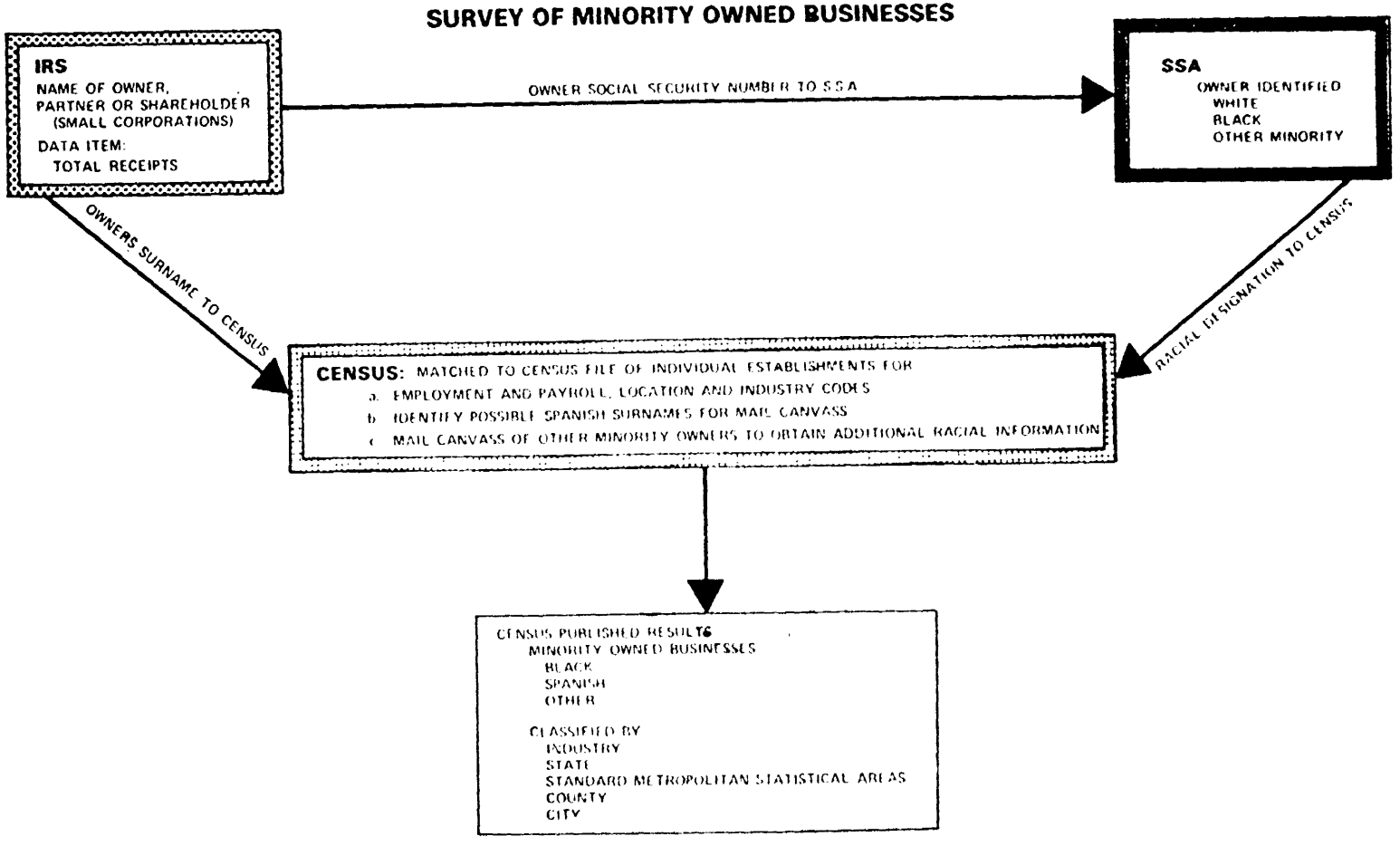
- OIL AND GAS PRODUCERS
- MINORITY OWNED BUSINESSES
- CATTLEHIDE PRODUCERS AND DEALERS (TO DETERMINE EXPORT POLICY)

CENSUS PREPARED SPECIAL TABULATIONS FOR:

- SENATE SELECT COMMITTEE ON SMALL BUSINESS
- DEPT OF AGRICULTURE
- TVA
- UNIVERSITIES
- PRIVATE BUSINESSES

WITHOUT COMPLETE INFORMATION FOR INDIVIDUAL ESTABLISHMENTS THESE SURVEYS AND TABULATIONS COULD NOT HAVE BEEN PREPARED.

SURVEY OF MINORITY OWNED BUSINESSES



WITHOUT INDIVIDUAL IRS TAX RECORDS, THIS INFORMATION CANNOT BE OBTAINED

Mr. BARABBA. One of the problems with getting aggregated data with the Internal Revenue Service is that it would not be possible to provide other special tabulations at a later date since the basic record files would not be available.

We could tabulate census data with IRS but we are precluded by law, title XIII of the United States Code, of transferring any information that we collect in identifiable form to any other agency of Government or any other person. There could be no integration of data results from the Internal Revenue Service about a firm with the data which we collected about a firm. This would prevent us from conducting some very significant special surveys as well as providing special tabulations. Primarily we have done special surveys of oil and gas producers, surveys of minority-owned businesses, cattlehide producers and dealers. This last was a problem related to the determination of Government export policy. Since we had access to IRS information and could maintain a complete list, we were able to do a survey very quickly and provide the information needed to make the policy decision.

We do special tabulations for the Senate Select Committee on Small Businesses after each census, giving them information about small businesses. I am sure you are familiar with this Senator, from your own work in that committee relative to this particular sector of our economy. We do special tabulations for the Department of Agriculture, TVA, other Government agencies, universities, and private businesses. Without the complete information for individual establishments, these surveys and tabulations could not have been prepared.

Senator HASKELL. All right.

Again, we are still back where we were before. On certain small businesses you need the individual information. We are not talking about financial information. Still the only reason that you need it is that they do not break down on a name basis; that they do not classify the way you classify.

Mr. BARABBA. On this particular case, it also says that, if you remember the first chart, some of the information came from the Internal Revenue Service; and even if it was in the level of specification, industry classification that we use, it was not the total amount of information that was received about that company. So, for us to do a tabulation——

Senator HASKELL. You mean you were cross-checking your own information?

Mr. BARABBA. In the case of the larger companies, the basic information comes from the Census form.

Senator HASKELL. The big form that you just showed me?

Mr. BARABBA. Among many, yes, sir.

The information which comes from the Internal Revenue Service and that which comes from the Census forms, is brought together, in one record. If we got IRS information in aggregated form, there is no way to take the IRS portion and relate the information for that particular company to that portion of the information that was on this questionnaire.

Senator HASKELL. So, your questionnaire would have to be bigger, is that it?

Mr. BARABBA. No, it could be the same size, except we would not be able to relate information that we get on the questionnaire with information that we would get from the Internal Revenue Service, be-

cause one comes in in total aggregate, and the other comes on the basis of individual companies.

Senator HASKELL. So basically you are cross-checking the information to be sure that it is accurate. Is that right?

Mr. BARABBA. That is one thing. But more importantly, we ask for additional information. We do not ask them for the information which they already provided the Government on the IRS form. But the IRS form does not include sufficient information needed for the total scope of the economic census. We have to get additional information from these companies.

Senator HASKELL. So you are using the IRS to collect certain bits of information. You have your own form to collect too?

Mr. BARABBA. That is true. For small businesses IRS provides most of the information, if not all. In large businesses they provide a very, very small part of the information.

Senator HASKELL. Because you want a lot more information about big businesses?

Mr. BARABBA. That is correct. The IRS form is designed for the collection of taxes; our form is designed for the measurement of economic activity, which are not necessarily related.

Senator HASKELL. In small businesses you forgo the detail that you get from big businesses, right?

Mr. BARABBA. No, we do not necessarily forgo it. We estimate it.

Senator HASKELL. Oh, by that sampling procedure?

Mr. BARABBA. That is correct. It is such a small portion of the total economic activity.

Senator HASKELL. OK, good. I understand.

Thank you.

Mr. BARABBA. That deals generally with the economic area.

On the personal records side we do two things: one, we get the total tax file, and in this case without a person's name on it, only a social security number, for two tax periods, and we match a person's social security number over time and we identify whether that person moved from one area to another. The purpose of this statistic is so that we can bring in a migration component into the other components of births and deaths and immigration into the United States, so that we can give the Office of Revenue Sharing an estimate of the total population of the 39,000 places eligible for revenue sharing.

The only other time we would ask for a person's name relative to his tax form is when we do an evaluation study relative to the accuracy or the quality of the data we collected in the decennial census on income. What we do is we run a match survey of our current population survey, which is basically the one that is used for the unemployment statistics, the decennial census, and then we go and ask for those people who were on both surveys, we ask IRS for their tax record, and then we compare those three measurements of economic activity to help us determine how accurate our statistic is. That information is available in a printed report, Senator for our 1960 evaluation. Our 1970 evaluation is coming up shortly.

Mr. PATE. Mr. Chairman, if you will permit, I believe I will abbreviate my statement.

Senator HASKELL. All right.

It will be received and reproduced in the record in full.

Mr. PATE. Thank you very much, Mr. Chairman.

We have attempted to demonstrate the Internal Revenue Service could not meet the requirements of Census and BEA simply by providing tabulations or aggregations of data. That simply would not be a workable substitute for direct access to selected identifiable tax information. The use of tax data is an organic part of a whole mix, which includes confidential data not available to IRS, specialized technical and analytic skills, and other resources fully dedicated to program requirements.

Only serious deterioration of the basic statistical and economic product of Census and BEA could result from endeavoring to fragment what has always been an integrated responsibility. Such deterioration would be of immediate and vital concern to the Congress, the President, the Council of Economic Advisers, the Federal Reserve Board, the Domestic Council, the Treasury and Labor Departments, and other agencies, as well as the private sector.

The statistical programs of the Bureau of Census and Economic Analysis, internationally respected and widely emulated, provide lawmakers, administrators, and the business, labor, and agricultural communities with accurate and timely information on: First, the status and direction of the economy in general; second, the level and trends of activity in selected key business and industry sectors; third, the agricultural area; and fourth, the social and economic characteristics of the population.

While most of the Census Bureau's uses of tax return information relate business-based statistics, access to the tax returns of individuals is also necessary to enable the Census Bureau to prepare the population and per capita income estimates required for the allocation of Federal revenue-sharing funds. These estimates are required for all States, counties, and local units of general purpose government.

In addition to using selected income data derived from IRS forms 1040 and 1040A, information on the residence of taxpayers is used in preparing data on the movement of persons from one jurisdiction to another. The 1972 1040 and 1040A forms were modified to provide the needed information on place of residence of taxpayers to assist the Bureau in developing the data used by Treasury in allocating funds.

Senator HASKELL. All you would need there is John Jones, who used to live in Kansas City and who now lives in Denver, Colo. You do not need John Jones' tax return.

Mr. PATE. Mr. Barabba.

Mr. BARABBA. That is to identify the population.

Senator HASKELL. What he is talking about now.

Mr. BARABBA. That is to identify the population component.

Another variable of the revenue-sharing formula is per capita incomes estimates as well, and that is why we need the additional economic data, because we have to measure the change in per capita income.

Senator HASKELL. Would it not be sufficient for your purposes to know that five people moved from Wichita, Kans., to Portland, Maine, who had an income of such and such. Would you need to know John Jones and Jane Smith moved?

Mr. BARABBA. We could probably do it with that information. However, we know we can do it this way, and developing this capability is a rather lengthy process.

Mr. PATE. The function of Census and BEA is solely statistical. They do not regulate. They do not tax. They do not promote. They do not finance. They make no determinations which affect any person or any business, and they already, and necessarily, have the authority to collect the information in question. The case is one of a kind.

May we submit that if a measure such as S. 199 is to be enacted, a specific exemption relating to the Bureau of the Census and the Bureau of Economic Analysis should be added. Exempting language will be submitted for your consideration.

President Ford requested the Secretary of Commerce last fall to review and document the long-accepted needs for tax return information for these basic statistical programs and to forward a report to the Congress. The Secretary submitted in November a comprehensive paper to the committees of both Houses concerned with tax legislation. That paper, which has now been updated and somewhat abbreviated, describes in further detail the reasons why enactment of legislation prohibiting our controlled access to limited tax return information for statistical purposes would have a shattering impact on government statistics. We have copies of the revised paper for you, and we hope that it can be made part of the record.[1]

Thank you, Mr. Chairman, that completes my abbreviated statement.

Senator HASKELL. Thank you, Mr. Pate.

Mr. PATE. Excuse me, Mr. Chairman.

Senator HASKELL. Yes?

Mr. PATE. May I ask that Mr. Goldman from the Bureau of Economic Analysis explain the importance of this issue to the Bureau of Economic Analysis very succinctly?

Senator HASKELL. Yes, sure, but I wanted to ask some questions.

Mr. PATE. Excuse me, sir.

Senator HASKELL. Mr. Barabba, you know, tax returns are scattered all over the landscape. This morning, for example, we found over 60 million tax returns were dished out to the States, just all over the place. There is no desire to hamper your agency in any way, shape or form, but the more you scatter, the more chances there are for unauthorized folks to get hold of these. So we are looking for ways not to scatter them as broadly. I think I understand your problem with smaller companies. I think that possibly could be met by just a little bit more detailed breakdown in the Internal Revenue form as to category of doing business. From looking at your charts here, I think I missed you. I do not think I quite understood why you felt you had to have an individual's tax returns.

I think I missed your point there.

Mr. BARABBA. If I might give you another example, Senator, of how we blend data from the various organizations and why we have to have individual data to do it.

One of the concerns that many Members of the Congress have expressed is the lack of information about minority involvement in the private business sector. Various agencies came to the Bureau of the

[1] See p. 107.

Census to see if we could conduct a survey of minority business enterprises. This is how the survey is conducted—we get from the Internal Revenue Service the name of the owner, partner, or shareholder of small corporations, data items, and total receipts. The total receipts of the firm are identified as a piece of information we get from the IRS. and the owner's surname is also sent to the Census Bureau.

We get also the social security number of the individual involved, and that is blended with the Social Security Administration's information about whether the owner is identified as white, black, or other minority. That information is not on the Internal Revenue Service form. This racial designation of white, black, or other minority is then sent to the Census Bureau where the information is blended with the company information collected by the Census Bureau and with that obtained from the Internal Revenue Service.

We have employment and payroll, location and industry codes. We identify possible Spanish surnames on the basis of a matching algorism. We have a list of all—not all, but most—of the Spanish surnames from which we can match one. If the surname matches a name in the Spanish dictionary, the person is identified as a Spanish surname minority.

A canvass is made of all other minority owners, to obtain additional racial information. All of this information is combined and tabulated to obtain information on the minority-owned businesses of blacks, Spanish, and others. The data are classified by industry, State, standard metropolitan statistical areas, county and city. There is no way we could generate this report unless we could have access to individual data of each company. And the extent to which reports like this are important——

Senator HASKELL. The key to the whole thing is social security information?

Mr. BARABBA. In this particular study, Senator, the difficult thing, I would imagine, to grasp is the complexity of our economic sector. The tabulations requirements alone are really quite significant because you not only have to deal with the number of firms, but then the various areas. As in the case of Colorado, where the business community wants to have detailed information about each of the major retail centers to determine the level of economic activity, what the growth patterns would be, et cetera. These kinds of things are very complex, and it really requires a statistical thrust.

This approach has evolved over some 30 years, and I do not think you can just transfer that kind of statistical capability and then hopefully with limited statistical aggregates generate the kind of information that is now available.

I am sensitive to your concern, but I would really like to reinforce that when that information is with the Census Bureau, it is under provisions of confidentiality which are as tight as are the provisions for the Internal Revenue Service under laws established by Congress.

Senator HASKELL. Well, thank you; I think you have made it clear to me.

Now Mr. Goldman?

Mr. GOLDMAN. Mr. Chairman, the Bureau of Economic Analysis is responsible for estimating the gross national product, balance of payments and various other aggregate economic measures and the

interpretation of economic developments in the light of these measures.

Now, for the most part we work with tabulated, published information. We rely, to a significant extent, on the Bureau of the Census totals. We also use as a very important source the Internal Revenue information as tabulated by the Internal Revenue Service. We need access to the individual company information—and here I want to emphasize that we are concerned with business firm returns, not with individual returns—in basically two categories of cases. One category is where the definitions that the Internal Revenue Service uses for the collection of taxes are not appropriate for gross national product measures. The definitions, the concepts, are somewhat different. We therefore have to go back to adjust the tabulated totals that the Internal Revenue Service prepares to conform these totals to what is needed for gross national product purposes.

As an example of this type of case, I can cite, the following: For gross national product purposes, we want receipts for the income of business measured on the basis of deliveries. Now, for tax purposes, some large retail firms will report installment sales on the basis of collections. Therefore we go back and we subtract the receipts on the installment basis and add back an estimate which we have obtained from other sources of the value of deliveries.

Now, this is one kind of situation. We may have an adjustment made for one large retail store in a certain industry. Regardless of whether Internal Revenue Service made this adjustment for us or we make it as we now do, the information for this one company would be available to us merely by subtraction. If we had the old figures and the new adjusted figures, the difference would be the adjustments for the one company.

So, there is no way to escape the fact that the individual company's information would be available to the analyst in the Bureau of Economic Analysis in making this kind of adjustment.

The other kind of use that we make of individual income tax information is when there is an unexpected, a peculiar movement in some of the figures from one period to another. For example, in looking at the corporate profit totals that come out of the Internal Revenue-tabulated information, and looking at those totals in connection with totals that we have ourselves estimated for investment or various other measures, the corporate profit movement may look unusual. We therefore go back to the tax return information for the particular industry to see if we can explain what happened. If it is a real economic change, the profits actually change that way, then that is the way we use it.

Occasionally, though, we find that the change is a result of a change in accounting practice, not a real economic change. When we locate this we then can make the adjustments so that we have comparable information from one period to the next. An example of this kind of thing would be that profits are changed because the company adopted a new depreciation technique, or went from one inventory accounting method to another.

Senator HASKELL. Yes; I understand.

Let me just interrupt you for just a moment to ask you a question. Do you rely thoroughly on the information from tax returns in assembling this information?

Mr. GOLDMAN. Not exclusively. We rely on many sources—most of the sources that we use are aggregate totals which we get from the Bureau of Census, from the Department of Labor, from the Agriculture Department, from various regulatory agencies. There is a very wide variety of sources for the statistics that go into estimating the gross national product. Internal Revenue is just one of our sources, but it is a very important source, and it is mainly used in the estimating of business income, corporate profits.

Senator HASKELL. Is it principally because there is no other way to find out whether profits increased?

I mean, let us take a change of accounting practice. Can you find that out only through the examination of tax returns? You do not have any other source for that?

Mr. GOLDMAN. The alternative would be to conduct a survey, an original survey, with all of the companies that are reporting in this industry to the Internal Revenue. Even then we would have the problem of whether the information we were getting was completely consistent with the information that was being reported to the Internal Revenue, because we would be trying to adjust Internal Revenue information based on answers to specific questions that we collected ourselves.

Senator HASKELL. Do you need the name of the firm?

Mr. GOLDMAN. Yes; we need the name of the firm. In the case of the adjustment to our definition, there we often start out with some information that we may have from some other source—a published source, a Federal Trade Commission report, a stockholder's report—that it is using a definition other than what we want.

So we go to the Internal Revenue files with the name of the company, and we locate the tax return for that company. In the case of looking for explanations of movements, we are just going through the file of returns. In many cases we do not actually use the returns. We use what they call the transcript cards, which are cards made up for each tax unit, that contain key information from the return. But we are looking at the individual tax information which does include the name and identification of the unit.

Senator HASKELL. It may or may not be necessary to have that name.

Mr. GOLDMAN. In the case of looking for the peculiar movement, it might not be necessary to have the name, but you do need the company by company data.

Senator HASKELL. I understand, yes.

Mr. GOLDMAN. But in the other case we would need the name because we are starting with the name, and we are looking for the information on the tax return for a specific company.

Senator HASKELL. Thank you.

Senator Dole, these gentlemen are from the Department of Commerce.

Senator DOLE. I am sorry I am late, but I had to make a speech at 1 o'clock, and we ran behind time, so you have been saved.

Senator HASKELL. Gentlemen, this is a very complex subject, as I become educated, and I wonder if Mr. Pate, you and your associates, might make yourself available to work with the committee staff to see what changes could be made that would obviate the necessity for

individual company, and individual-persons', returns, and yet not hamper you.

This is not the kind of thing I think that you can discuss in any great detail in a hearing like this, because it is far too complex. But I think the "old college try" ought to be made, anyway.

So, I would ask if you gentlemen, and members of your staff, would make yourselves available to the committee staff, to the end that I mention?

Mr. PATE. Mr. Chairman, my office will be happy to cooperate fully with your staff. And we would further invite your staff to tour the Bureau of the Census and observe the safeguards that are applied to protect the confidentiality of the data.

Senator HASKELL. I appreciate that, Mr. Pate, and I appreciate all three of you being here. Thank you, very much.

Mr. PATE. Thank you, Mr. Chairman.

[The prepared statement of Mr. Pate with attachment, follows. Hearing continues on p. 118.]

STATEMENT OF MR. JAMES L. PATE, ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS DEPARTMENT OF COMMERCE

Mr. Chairman, we appreciate this opportunity to consider with you proposed legislation which, if enacted, would *cut-off* the use of tax return information by the Department of Commerce in the preparation of important statistical series and economic analyses. S. 199 and S. 442 restrict access to tax return information to very limited circumstances. Neither bill provides, however, for the essential and continuing use of identifiable tax information solely for statistical purposes by the two component agencies of the Department of Commerce's Social and Economic Statistics Administration— the Bureau of Economic Analysis and the Bureau of the Census. We are very deeply concerned with the truly far-reaching implications of these bills. The heart of the entire Federal statistical system is truly as stake.

The Department of Commerce shares your concern for the protection of the privacy of individuals— and the further concern that information used to make decisions about individuals be accurate. The Privacy Act of 1974 effectively guarantees both. Here we are concerned primarily with business information— and solely with the use of information in basic statistical and economic analyses.

The Department of Commerce through the Bureaus of the Census and Economic Analysis has long been responsible for the collection, analysis, and dissemination of very important and critical statistics on the functioning of the economy and the Nation. They must, we submit, have continuing access to selected tax return information in order to produce statistical information on which legislative and executive policy makers depend daily. Prohibition of this access would severely cripple the Government's basic statistical programs.

These agencies of Commerce are authorized by law to solicit the same information directly. Years ago they did use direct canvas. But that duplication is costly— and it is also needlessly burdensome on respondents, particularly upon small business. Cutting off the IRS source would abrogate neither the need for, nor the use of, the information in question. It would simply force reversion to duplicative, direct canvass. We appreciate the commendation of Senate Select Committee on Small Business which said—

"To its credit, over the years, the Census Bureau has been developing and improving techniques designed to reduce the burden on business census respondents."

For over a quarter-of-a-century—since 1944—the Department's statistical and economic information programs have been made increasingly effective and efficient because of the use of selected tax return information furnished by the Internal Revenue Service in accordance with present law and under regulations of the Department of the Treasury.

There has never been a single instance in which these strictly statistical uses have violated the privacy of any taxpayer or the confidentiality of any tax return information. All such information furnished to Census and to BEA is protected by strict and specific legal safeguards against either improper use or

disclosure. These safeguards are set forth in section 9 of Title 13 and in section 176(a) of Title 15 of the United States Code. The officers and employees of these agencies know, through experience, that the furnishing of both personal and corporate information to the Government depends on a contract of trust and a record of fidelity.

The imperative need for continuing access to tax return information for statistical purposes was only recently affirmed by the Congress in the transfer exemptions included in the Privacy Act of 1974. They expressly and specifically provide for the transfer of information about individuals to Census. The Privacy Act also reflects the fundamental principle—on which SESA's confidential use of selected tax return information is based—that a statistical record is one maintained solely for statistical research purposes and not used in making any determinations about identifiable individuals.

Every iota of identifiable information received by the Bureau of Economic Analysis and the Bureau of the Census is used solely for statistical purposes with two exceptions relating to census information returned to the individual who furnished it and information preserved by the National Archives. No other identifiable information is ever disclosed—whether it comes from a person, a corporation, or any other source—including the Internal Revenue Service and the Social Security Administration.

Another very important principle is stated in the Federal Reports Act which declares it to be the policy of the Congress that—

"Information needed by Federal agencies shall be obtained with a minimum burden upon business enterprises, especially small business enterprises, and other persons required to furnish the information, and at a minimum cost to the government. Unnecessary duplication of efforts in obtaining information through the use of reports, questionnaires, and other methods shall be eliminated as rapidly as practicable. . . ."

This policy has been implemented for the gathering, analysis, and reporting of statistics through the increased use of administrative records, including tax return information, in order to—

First, reduce the reporting burden on respondents,

Second, minimize the costs of obtaining information, and

Third, make very significant improvements in the accuracy and timeliness of census and survey data, key statistical indicators, and related economic analyses.

It has taken over a quarter-of-a-century to develop our present sophisticated and integrated system of economic, demographic, and social statistics which is now based in material part on the use of tax return information. These developments, including the reliance on tax return data, have been noted in many statements to and appearances before Congressional Committees. This means of providing better economic data—faster—and at less cost has consistently been encouraged by Committees directly concerned with the quality of Government statistics and the reporting burdens placed by Government on the business community.

The bills here under consideration incorrectly assume that the Internal Revenue Service could meet the requirements of Census and BEA simply by providing tabulations or aggregations of data. That simply would not be a workable substitute for direct access to selected identifiable tax information. The use of tax data is an organic part of a whole mix—which includes confidential data not available to IRS—specialized technical and analytic skills—and other resources fully dedicated to program requirements.

Only serious deterioration of the basic statistical and economic product of Census and BEA could result from endeavoring to fragment what has always been an integrated responsibility. Such deterioration would be of immediate and vital concern to the Congress, the President, the Council of Economic Advisers, the Federal Reserve Board, the Domestic Council, the Treasury and Labor Departments, and other agencies—as well as the private sector.

The statistical programs of the Bureaus of Census and Economic Analysis, internationally respected and widely emulated, provide lawmakers, administrators, and the business, labor, and agricultural communities with accurate and timely information on—

First, the status and direction of the economy in general,

Second, the level and trends of activity in selected key business and industry sectors,

Third, the agricultural area, and

Fourth, the social and economic characteristics of the population.

The Bureau of the Census conducts surveys and publishes annually, quarterly, and monthly statistics concerning activity in retail, wholesale and service trade businesses—as well as the construction, manufacturing, and transportation sectors of the economy. The availability from IRS of a complete and up-to-date list of business employers, classified by size and industry, makes it possible to develop and maintain reliable and current samples for these surveys. The volatility of the business universe requires continuous knowledge of new businesses and business failures.

That sort of information can be obtained far more accurately from the administrative tax records than from other directories or lists which are neither as complete nor as current. If resort to such other sources were required, rapid deterioration of the current economic indicators would result. The statistics developed would be understated to an unknown degree. Trends compiled would reflect information gaps in this updating process, rather than valid indications of real change. Within a short time, it would become impossible to continue preparation of these key economic indicators.

The economic and agricultural censuses required by Title 13 of the Code provide comprehensive statistics at five-year intervals. The results of the economic censuses provide the necessary foundation for most of the Government's statistical series.

First, the censuses provide the industrial and product weights for the Federal Reserve Board's Index of Industrial Production.

Second, they are integral to the Bureau of Labor Statistics' Index of Wholesale Prices.

Third, they provide the basic data for revising the GNP accounts from the input-output tables.

Fourth, they provide sampling frames and control totals for current economic indicator surveys which are essential to understanding current economic activity.

Fifth, the results provide a valuable inventory of information for defense preparedness planning.

In the 1972 economic censuses, about 3 million small firms were excused from filing reports. That was possible because the limited data obtained from tax records could be used in lieu of, and in fact improved upon, Census collected data. Another 6.5 million firms were thus entirely excluded from reporting because it could accurately be determined from tax records that they were not within the scope of the economic census program. There is no other centralized information base from which we could develop a procedure to identify and exempt these firms.

While most of the Census Bureau's uses of tax return information relate to business-based statistics, access to the tax returns of individuals is also necessary to enable the Census Bureau to prepare the population and per capita income estimates required for the allocation of general revenue sharing funds. These estimates are required for all states, counties, and local units of general purpose government.

In addition to using selected income data derived from IRS Forms 1040 and 1040A, information on the residence of taxpayers is used in preparing data on the movement of persons from one jurisdiction to another. The 1972 1040 and 1040A Forms were modified to provide the needed information on place of residence of taxpayers to assist the Bureau in developing the data used by Treasury in allocating funds.

Turning now to the Bureau of Economic Analysis, its responsibility is to provide a clear and comprehensive picture of the economy through the preparation and interpretation of the national economic accounts and other related economic information. These include the gross national product and balance-of-payments data.

These accounts provide a quantitative view of the economic process in terms of production, distribution, and the use of the Nation's output.

They focus systematically on the institutions and transactions that determine the economy within a framework of interrelated credits and debits.

The accounts are also a primary tool in the formulation and execution of fiscal, financial, international, and other economic policies concerned with stability, growth, and distribution of national income.

To construct the national economic accounts, BEA uses mainly summary statistical information collected by other agencies. A substantial portion of the primary data is derived from the economic statistics program of the Bureau of the Census.

The data compiled by the IRS in its *Statistics of Income* publication series are also essential building blocks in the construction of the gross national product estimates. The summary data from the *Statistics of Income* publications are the basic source for the estimates of corporate profits and related measures.

Although the Statistics of Income provides most of the data needed for corporations, important use is made of selected information in the underlying tax records of not more than 1,000 of the largest U.S. corporations. This information is needed for several purposes.

First, to conform the IRS published statistics to the concepts and definitions of the GNP and to the data series which are used to update the IRS statistics.

Second, to keep abreast of the latest developments in tax reporting in order to analyze and adjust for their impact on the GNP estimating methods.

Third, to be fully informed as to the factors underlying the trends indicated by the *statistics of Income* totals. This is essential because BEA is not only responsible for the preparation of GNP estimates, but also for their interpretation.

Examples of the types of information BEA obtains from the tax records are—

First, information reported by large companies whose industry classification has changed as a result of mergers, acquisitions, or other changes in company organization.

Second, measures of the impact on the tabulation totals arising from changes in tax law.

Third, information as to how, when and with what effect companies introduce new accounting procedures into their tax computations.

The function of Census and BEA is solely statistical. They do not regulate. They do not tax. They do not adjudicate. They do not promote. They do not finance. They make no determinations which affect any person or any business—and they already, and necessarily, have the authority to collect the information in question. The case is *sui generis*—one of a kind.

May we submit that if a measure such as S. 199 is to be enacted, a specific exemption relating to the Bureau of the Census and the Bureau of Economic Analysis should be added. Exempting language will be submitted for your consideration.

President Ford requested the Secretary of Commerce last fall to review and document the long accepted needs for tax return information for these basic statistical programs—and to forward a report to the Congress. The Secretary submitted in November a comprehensive paper to the Committees of both Houses concerned with tax legislation. That paper, which has now been updated and somewhat abbreviated, describes in further detail the reasons why enactment of legislation prohibiting our controlled access to limited tax return information for statistical purposes would have a shattering impact on Government statistics. We have copies of the revised paper for you, and we hope that it can be made part of the record.

STRUCTURING THE GOVERNMENT'S BASIC ECONOMIC TOOLS

TABLE OF CONTENTS

PART III—THE BUREAU OF THE CENSUS

A. Use of Selected Tax Data in the Operations of the Bureau of the Census.
B. Impact of Tax Record Loss on the Economic Program.
C. Impact of Tax Record Loss by Function—Economic Programs.
D. Alternatives to Use of IRS Data.
E. Demographic Statistics Programs.
F. Conclusion.

THE UNITED STATES DEPARTMENT OF COMMERCE.
Washington, D.C., April 17, 1975.

STRUCTURING THE GOVERNMENT'S BASIC ECONOMIC TOOLS

Enactment of such measures as S. 199, S. 442, H.R. 616 and H.R. 4433 would:
Seriously impair the quality of both the Economic and Agricultural Censuses.
Materially deteriorate the reliability of such critical economic tools as the Gross National Product and Balance of Payments accounts.
Significantly delay the availability of essential economic data.
Force discontinuation of the current economic indicators.
Necessitate devising new revenue sharing controls.
Substantially increase the cost of inferior statistical and economic products, and
Impose burdensome multiplicity of reporting on the full spectrum of the business community.

Loss, impairment, and delay of these basic economic tools—at this particularly critical time in our economic history—would result from the cut-off of the nucleus of tax return information which has been built into the Government's advanced and sophisticated statistical and analytical methodology over the last three decades.

While agreeing that *any* misuses of tax return information should be summarily stopped and severely punished, surely we must not deny to Congress itself, the President, the Council of Economic Advisers, the Federal Reserve Board, the Domestic Council, the Treasury Department—as well as industry, agriculture, labor, and economists—the best economic tools available, timely provided. Given over a quarter-of-a-century of use of essential tax information by the Bureaus of Census and Economic Analysis ("Census" and "BEA") of the Department of Commerce's Social and Economic Statistics Administration ("SESA")—with not a single instance of either misuse or disclosure of one fragment of tax data—now is not the time to cut off this key ingredient source of sorely needed economic data.

In fact, the imperative need for this critical ingredient tax information in our basic statistical formulations was affirmed by the Congress only weeks ago in enactment of the Privacy Act of 1974, specifically in the inclusion of clause (4) of paragraph (b) of section 552a of the United States Code. The bills here of concern would now reverse that action by endeavoring to transplant basic statistical and analytical functions, and presumably personnel, from the Department of Commerce to the Internal Revenue Service ("IRS").

That simply cannot work because an integration of non-disclosable SESA data with tax data is inexorably involved, and disclosure of SESA data is prevented by Titles 13 and 15 of the Code. Moreover, if these inhibitions were concurrently removed to permit transfer of confidential information from right to left, rather than from left to right, only a new hat would be worn because the same skilled and trusted professionals and technicians would be needed to handle the work. That action would only rob Peter to pay Paul in shortchange.

The purpose of this paper is two-fold: *first*, to inform the Congress about the complex and integrated statistical and economic responsibilities, methodologies, and functioning of Census and BEA and the far-reaching consequence of their product and, *second*, to explain in detail why provision by the IRS of only aggregated and unidentified data would serve little purpose and seriously deteriorate the basic economic tools which these Commerce agencies provide.

PART I—OVERVIEW

A. *Protection of Tax Return Information and Rights of Individual Privacy.*—The historic uses of limited tax data required by Census and BEA in structuring, preparing, and interpreting basic census data and economic tools are dependent largely—but not exclusively—on corporate tax data; and the product is exclu-

sively aggregated data which discloses no information identifiable with any taxpayer.

Title 13 of the United States Code authorizes direct, compulsory solicitation of all information requisite to production of the several mandated censuses reviewed in this paper. Limited use of tax return information—rather than full across-the-board direct solicitation—is made in fulfilling these responsibilities. That (a) effects material economies, (b) eliminates repetitious, needlessly burdensome and harassing solicitation, and (c) assures a high degree of accuracy—all in keeping with the policies of Congress clearly enunciated in the Federal Reports Act.

Moreover, the tax data involved are entirely business data in the case of BEA and primarily so in the case of Census. BEA is concerned with tax detail as to less than 1,000 of the largest corporations, and in most of those cases uses only information which does not include tax liability. In addition, BEA requires control lists for its periodic surveys of foreign investment. Census uses larger samplings of segments of returns of businesses in order to (a) make costly, two-way burdensome, and duplicative reporting unnecessary; (b) increase accuracy of results; and (c) assemble reliable control lists for its census and survey responsibilities.

Thus, these well-guarded statistical and economic uses of selected tax return information in no way erode the protections of individual privacy which are of paramount concern to the Congress, to the President, and to the Domestic Council Committee on the Right of Privacy.

B. *The Roles of the Bureau of the Census and the Bureau of Economic Analysis.*—The Bureau of the Census is charged by Congress with responsibility for the Census of Manufactures, dating from 1810, Retail and Wholesale Trade and the Construction Industries, dating from 1929, and, since then, censuses of Service Industries, Warehousing, and Transportation—in addition to the basic Decennial Censuses conducted since 1790. Census is also charged with the development of the control data necessary to the equitable and effective administration of Federal funds allocation and distribution under increasingly consequential revenue-sharing legislation.

The Bureau of Economic Analysis is charged with responsibility for the design, compilation and interpretation of the National Economic Accounts. They include the core data of the National Income-and-Product Account—the "GNP"—and the critical Balance-of-Payments Account. The necessity for the comprehensiveness, accuracy, and timeliness of these Accounts is self-evident. They are the *economic tools* which control the formation of a wide-range of governmental, industrial, labor, and agricultural policies which, in turn, direct the deployment and use of resources and the apportionment of obligations and benefits—in short, the pattern and direction of our entire complex economic and social structure. These economic tools are utterly indispensable in periods, like the present, of a troubled economy and profound and many-faceted economic change worldwide.

C. *Historic and Current Use of Circumscribed Tax Data in Economic Analyses.*—The structuring, preparation, verification, and constant updating of the GNP data, the Balance-of-Payment facts, and related key economic indices have, for a quarter-of-a-century, required strictly confidential access by a small core of top BEA professionals, less than 25 of them, to selected tax return data of no more than 1,000 of our largest corporations.

BEA and its predecessor agencies, including the Bureau of Foreign and Domestic Commerce, have such circumscribed tax data over the years without breach of confidentiality.

BEA relies heavily, too, on data published by Census and upon information derived from many other sources. While its products are thus a synthesis of multi-sourced intelligence, there is no substitute for the limited but critical reliance upon tax return information in creating these basic and reliable economic indices. So far-reaching are the consequences of their use in our society that compromising their quality for any reason is unthinkable.

Census, too, has produced—over decades—ever more comprehensive, accurate, and timely statistical data for the use and guidance in policy formulation and execution by the Congress, the Executive and the business, labor, and agricultural communities. With the ever increasing complexity of our economy, Census, too, found need, 25 years ago, for the greater efficiency and the materially improved accuracy which is achieved through use of some income tax data—again without breach of confidentiality or suggestion of misuse.

D. *Authorities and Safeguards.*—The tax data supplied to census and BEA are subject to rigorous confidentiality safeguards. Title 13 of the U.S. Code, pertaining to Census, absolutely prevents any disclosure or transfer of Census information—whether directly solicited or transferred from another agency—which is identifiable with any individual or business entity, except for the limited discretionary provision of section 8 which is not germane to tax information. The little tax data used by and essential to the product of BEA is subject to similar confidentiality provisions of Title 15 of the Code.

Section 9 of Title 13 provides in pertinent part that—

"Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title—

(1) Use the information furnished under the provisions of this title for any purpose other than the statistical purpose of which it is supplied; or

(2) Make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) Permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports."

Confidentiality is mandated by section 176a of Title 15, which requires that—

"Any statistical information furnished in confidence to the Bureau of Foreign and Domestic Commerce [now BEA in this context] by individuals, corporations, and firms shall be held to be confidential, and shall be used only for the statistical purposes for which it is supplied. The Director of the Bureau of Foreign and Domestic Commerce shall not permit anyone other than the sworn employees of the Bureau to examine such individual reports, nor shall he permit any statistics of domestic commerce to be published in such a manner as to reveal the identity of the individual, corporation, or firm furnishing such data."

The statute is applied to all information including personal data, whatever the source.

Both Census and BEA are subject to Section 201.610 3(a) of the IRS Regulations, which provides as respects tax data provided for use by Census and BEA that—

"Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer."

The high sensitivity concerning, and the tight security precautions imposed upon the use of, confidential and personal information by BEA and Census has created a trust and reliance which is clearly recognized by both Houses of Congress. The Privacy Act of 1974 specifically authorizes the transfer of data identifiable with persons to Census for statistical and analytical uses. Of course, no individual rights or liabilities are affected by the strictly confidential use of identifiable data in the agglomeration and publication of statistical aggregates.

The historic and unblemished record of both BEA and Census in assuring the integrity and privacy of both tax and all other confidential input was accepted in the Treasury Department's bill, S. 4116 and H.R. 17285 of the Ninety-Third Congress. While such a codification is not necessary to the protection of tax information used by SESA (Census and BEA), that approach is quite agreeable to the Department.

Provision was made in the Privacy Act of 1974 for the transfer of identifiable personal data to Census because Census, working with BEA, serves as the general purpose source of statistical information based on personal information for many other agencies of the government as noted herein. Use of SESA, which is the primary statistical arm of the Government, for such broad statistical purposes avoids unwanted dispersion of personal and tax information while at the same time minimizing respondent burden.

E. *Pending Legislative Proposals to Deny Use of Tax Data in Statistical and Analytical Processes.*—In some past ancillary uses of tax information there have, unfortunately, been either insensitivities or abuses which quite understandably resulted in proposals such as S. 3982 and H.R. 16602 of the Ninety-Third Congress and S. 199, H.R. 616 and others which are now before us. Unfortunately these bills would—unlike the Treasury bill—severely degrade the basic economic tools on which Congress, the Executive, the economy, and the world rely heavily. These bills would foreclose use of all identifiable tax data by Commerce, forcing either (a) reliance on pre-digested analyses and aggregates to be prepared by the IRS or (b) needless duplicate solicitation of essentially

the same information. That would only retard the updating of these essential tools; materially impair their accuracy; substantially increase the cost; and, in ramification, cost untold multiples of the present expense.

Neither alternative is necessary. Neither could produce results satisfactory to Congress—or to anyone else. There is, as noted in the more detailed reviews of the Census and BEA functions and services which follow, simply no way to bifurcate their highly specialized and technical economic analyses and reporting through surgically severing parts of integrated procedures and grafting them onto the IRS as a wholly new dimension for the tax collecting arm. Intricate and delicate blendings, extrapolations, cross adjustments and weighting, encompassing econometric models and other highly sophisticated and always evolutionary statistical and analytical techniques and methods are involved. At each progressive stage these procedures interrelate selected tax information—primarily corporate—with data from many other sources. There is no separable tax-related function or records system, and there is simply no way to fragment the assignment.

To require IRS, which is basically a revenue collecting instrument, to assume and to exercise at this stage essentially indivisible segments of the Commerce statistical and economic analysis functions would be tantamount to a monumental governmental reorganization. Surely that is not desirable; and Treasury neither seeks nor endorses such untimely and unrealistic realignment, as is evident in its sponsorship of the Treasury bill.

By statutory mandate, these Bureaus—Census and BEA—are a prime repository of confidential information required for national economic analyses. Their mechanisms for safe-guarding the privacy of respondents—including taxpayers—are tried and proven over decades. Their record is unblemished, and their reputation for security of data is a prime source of public confidence in these basic statistics. Inputs are neither more nor less confidential because they are elicited by mail census, derived from the IRS, obtained by enumerators, or provided by the Social Security Administration. If problems are perceived—and none have been noted—in the security of confidential information which is essential to the efficiency of these statistical processes, they would not be cured simply by partial transplant.

PART II—THE BUREAU OF ECONOMIC ANALYSIS

Because the implications of S. 199, H.R. 616 and similar bills are far-reaching but not in all respects readily apparent, the balance of this paper provides a more detailed review of these statistical and analytical operations and of the absolute need for use of some identifiable tax information.

A. *The Bureau of Economic Analysis.*—The Bureau of Economic Analysis has evolved through the Bureau of Foreign and Domestic Commerce to its present keystone position as, in essence, "the machine tool works" of National economic policy.

BEA is charged with provision of clear portrayals of the state of the U.S. economy on a continuing basis through the preparation, development and interpretation of the core National Economic Accounts. These accounts provide a quantitative analysis of the economic process in terms of the production, distribution, and use of the Nation's output. They include the critical (a) National Income and Product Accounts, focusing on the Gross National Product and providing a bird's-eye view of the economic process and (b) the Balance-of-Payments Accounts which provide detailed information on international transactions.

These accounts and the various forecasting devices which supplement them have become the primary tools for practically-oriented economic analysis and decision making.

B. *BEA Serves the Policy Makers.*—BEA does not itself make economic or social policy; but governmental policy and commercial decisions at all levels and of unending variety are now dependent upon its product in the management and direction of the economy and of our society. Neither does BEA formulate answers or antidotes; importantly, it provides, with ever greater sophistication, the blocks of economic knowledge from which they are built. The complex processes involved do not entail the application of a closed and transferable science or completed body of knowledge. The process is evolutionary, ever-adapting, ever-penetrating. And no one has greater need for all available tools than the toolmaker.

The economic positions and decisions of the Council of Economic Advisors, the Federal Reserve Board, the Treasury Department, the Office of Management and

Budget, The Domestic Council—of the Executive establishment across-the-board—depend upon this foundation product—these tools—provided by BEA. They are used in the formulation and execution of fiscal, financial, international, wage-price, and other economic policies concerned with stability, growth and distribution of income.

The Congressional need for these tools is the greater, as basic policy directions are framed on the Hill. This constituency includes particularly the Joint Economic Committee; the Joint Committee on Internal Revenue Taxation; the House Committees on Ways and Means, International Relations, Labor and Education, and Public Works; and the Senate Committees on Banking, Housing, and Urban Affairs; Finance; Foreign Relations; and Public Works.

The consequence of accuracy, timeliness, and adaptability of these National Economic Accounts to the private sector—to labor; to banking; to the equity and bond markets; to industrial decisions on capital investment, product lines, and inventory policy; and to far-reaching foreign trade, investment, and exchange decisions—is self-evident. The National Economic Accounts data are equally essential to the increasingly consequential fiscal and resource use decisions and actions of state and local governments.

State and local governments use GNP data to develop and evaluate programs for industrial development and to forecast economic activity as a basis for anticipating and controlling state and local government expenditures and determining revenue requirements.

Business firms use GNP data to develop sales programs and marketing strategies, to plan production schedules, to fix investment in plant and equipment, to evaluate the demand for potentially scarce materials, and to compare costs and profits with industry data.

Labor organizations use GNP data to analyze the patterns of profits, wage costs, and productivity changes and to evaluate changes in living standards in terms of personal consumption expenditures, earnings, tax burden and savings.

Universities and research organizations use GNP data in a wide range of economic studies and analyses.

C. *Circumscribed and Limited Use of IRS Data by BEA.*—BEA draws on many sources for essential ingredient information, but its primary sources are Census and, in a limited but very important way, the Internal Revenue Service. BEA conducts its own surveys in only a limited number of cases, as in the case of the Balance-of-Payments and international investment analyses.

The Gross National Product estimates provide the basic framework within which economic conditions are analyzed, economic policies are made, and their effectiveness if subsequently judged. IRS tabulations are BEA's primary data source for the estimation of corporate profits, income of unincorporated enterprises, net interest, depreciation, and rental income. These data are also used to estimate other major components of the GNP, as well as to prepare the input-output data needed for tracing industrial repercussions of alternative policies and economic movements.

Although the "Statistics of Income" series provide much of the tax data needed as to corporations, important selective use is made of information in the underlying tax records. Thus, a number of the largest retail firms report to IRS on a cash collections basis—sales on credit are recorded as installments are paid. For national income purposes, however, sales and profits must be defined to coincide with delivery of the merchandise. The published profits for retail establishments are therefore adjusted annually from a cash to an accrual basis by reference to a sampling of tax data of individual companies.

BEA also requires access to tax data of a sample of individual large firms so that industry extrapolators can be prepared for estimating purposes by weighting publicly available information for individual companies against data from scientifically selected samples of tax returns. In some industries, while individual company data are not needed, a sampling of data on companies in the IRS industry total is essential for comparison with the composition of extrapolators available from other sources.

Periodically BEA must construct new benchmark estimates (a point of reference for data construction and analysis) based on complete and accurate data for the plant and equipment expenditures survey. In constructing this benchmark, BEA uses census data for the industries covered in the quinquennial Economic Census, i.e., manufacturing, mining, trade, construction and selected services. In other industries a combination of data reported in the plant and equipment survey and IRS data is used. Basically, IRS data on gross depreciable assets are used to inflate the sample to universe industry totals by size class estimates for

the benchmark year. Reference to IRS data may indicate, for example, that the plant and equipment survey is based on a consolidated report for an enterprise which has filed several reports with IRS, classifying subsidiaries in different industries than that of the parent. The deciphering of such problems can only be handled by economists specialized and experienced in the definitions, estimating methods, and uses of the series on plant and equipment expenditures.

The denial of access to IRS records in the benchmarking process would result in a very serious undermining of the quality of the estimates of investment expenditures by industry and distort their relationship to industry output and other measures. Furthermore, since such adjustments have been made in past benchmarks, denial of access now would produce material distortion in the trends between benchmarks.

BEA is responsible for both the preparation of GNP estimates and their interpretation. This responsibility makes it imperative that BEA be fully informed as to the causal factors underlying trends indicated by the published "Statistics of Income" totals. Understanding is required as to—

(a) Impact on the historical comparability of tabulated industry totals resulting from changes in classification of large companies arising from mergers, acquisitions, and other structural changes in organization,

(b) Impacts on data stemming from changes in tax laws and their interpretation,

(c) Unusual movements in economic indicators and the reasons therefor, and

(d) The use of new accounting procedures in tax computations and the effects of that on economic data.

It is essential for BEA to be apprised of developments in tax reporting through access to tax information in order to distinguish changes due to shifts in underlying economic developments from those which reflect only changes in tax reporting practices. To provide a meaningful analysis of economic conditions, BEA must distinguish changes in profits which are due to structural and tax changes from those which result from changes in the relationship between prices and costs, decline or growth in sales volume, and other real economic factors.

Estimates of corporate profits on a current basis are prepared initially from information of the types provided to shareholders and the Federal Trade Commission. There are, however, material differences in the types and timing of income as shown in shareholder and FTC reports on the one hand and, on the other, as reported to IRS. To correct these discrepancies, it is necessary to analyze the relationship between book and tax accounting procedures; this requires use of basic data. Based on these analyses, effective estimating methods are developed to anticipate differences between book and tax profits and to adjust early estimates of profits so as to approximate the later and more accurate IRS data.

BEA expects presently to conduct the second complete enumeration of U.S. private investments abroad; and the Foreign Investment Study Act of 1974 requires a full survey of foreign investment in the United States. To conduct these surveys, BEA requires from IRS the names, addresses and industry codes of all U.S. companies with more than ten percent foreign ownership and of all U.S. companies with overseas investments.

D. *Alternatives to IRS Data and Their Costs.*—A denial of access to IRS corporate tax return information would seriously imperil BEA's analytical capability and hence the reliability of the critical GNP and related data. A serious loss of efficiency would result in estimating and survey activities which would substantially increase the cost for an inferior product.

IRS could undertake timely preparation of the essential special tabulations which REA now assembles from individual corporate tax records. These tabulations cover such items as foreign taxable income, expropriation losses, and "book" versus "tax" net income. These tabulations are, however, only the beginning of the process essential to the preparation of reliable NP estimates. Under the present system, BEA examines corporate tax information to determine the reasons for marked changes, such as mergers and acquisitions or splits, new industry classifications, new accounting practices, and so on. Thus, if use of IRS information were denied to BEA, IRS would, in addition to preparing the required tabulations, be required to analyze and explain atypical developments. That now requires detailed analysis of selected returns by experienced BEA economists who are expert in the complex underpinnings of GNP statistics.

Moreover, absent that access, it would become necessary for BEA to institute an annual "profits" survey to supplement the IRS "Statistics of Income" information for use in compilation and analysis of the critical GNP accounts. That would require business firms duplicatively to report data already provided to IRS.

E. *Conclusion.*—These many negative consequences of denying BEA access to corporate tax data would not only substantially increase BEA's costs—but there would be incalculable indirect costs to both government and industry in the resulting deterioration of basic economic data. Personal privacy is not at stake in any event; and there is no indication that the restriction would in fact add to the confidentiality of corporate tax data.

PART III—THE BUREAU OF THE CENSUS

A. *Use of Selected Tax Data in the Operations of the Bureau of the Census.*—To accomplish the several Congressional objectives listed above, tax records have been made available to Census since 1944 under a series of Executive Orders and subject to the statutory restraints noted. An evaluation study completed in 1950 established that Census could achieve both substantial economies and a high order of accuracy by use of information extracted from tax returns in preparing lists for its censuses and surveys and as proxy reports in lieu of direct reporting in the case of many business firms. This procedure was first applied in the 1954 Economic Censuses and Census has, over the years, developed a highly sophisticated methodology for its current statistical and enumeration programs based on the use of selected data from tax records. This affords a high level of accuracy not previously attainable and has achieved a marked reduction in small business reporting burden.

All censuses for which these selected tax data are used are mandated by Title 13 of the U.S. Code, and all surveys so conducted are either required or authorized by Title 13. A principal stress of Title 13 is that of the confidentiality of individual census returns. Information provided by IRS is accorded the same full measure of confidential protection; and, in addition, it is handled in accordance with IRS approved procedures.

With the successful use of the tax data in the Economic Censuses program, similar techniques were developed for the Census of Agriculture and for providing local government population estimates as required by the general revenue sharing provisions of the State and Local Fiscal Assistance Act. In addition, demographic evaluation studies aimed at improving measures of income and its distribution have used tax data since the 1950 Census of Population and Housing.

As part of the 1972 Economic Censuses program, Census obtained from IRS on computer tape corporate employment, payroll and receipts data, together with a series of identification items such as name, address, Employer Identification Number, legal form of ownership, and time in business. Data on corporate receipts, inventories, and assets are obtained for a sample of 113,000 corporate tax returns which were representative of the total of 1,757,000 corporations covered. That enabled Census to tabulate the essential statistical link between its Economic Census publications and the Statistics of Income data which is reported by IRS. The publication of this link report materially enhances both sets of data by permitting the analysis of the relationships between financial and operating data. This linkage is essential to the GNP estimates.

In preparing for the 1975 Census of Agriculture, tax information of sole proprietors of farms was obtained as a base for determining what types of agricultural units should be included in the census. These data were limited to identification material and a receipts size code.

In the demographic area, administrative tax records are used to develop updated estimates of population and per capita income for all 38,000 general purpose governments, including states and counties. These data are essential in fixing the distribution pattern for over $5 billion per year under the State and Local Fiscal Assistance Act, as well as serving the needs of state and local governments for intrastate allocations.

To restrict this circumscribed and invaluable access to tax records would set our national statistical processes back to the more crude results of 30 years ago. It would drastically weaken most Census programs. In the case of economic programs (Economic Censuses, Agriculture Census, Current Economic Indicators, and special economic reports) any alternative would add greatly to costs and, more importantly, severely impair the quality of these central indicators of economic activity and trends.

B. *Impact of Tax Record Loss on the Economic Program.*—1. *The Economic Censuses.*—The Economic Censuses, conducted every five years, covering manufacturing, mining, retail and wholesale trade, selected service industries, construction, and transportation, are the primary source of facts about the structure and functioning of the Nation's economy. Without the firm and accurate statistical

base now provided by these censuses, the statistical framework needed by policymakers—both public and private—would be severely impaired.

The census results provide the necessary foundation for most of the Government's statistical series.

(a) The censuses provide the industrial and product weights for the Federal Reserve Board's Index of Industrial Production.

(b) They are integral to the Bureau of Labor Statistics' Index of Wholesale Prices.

(c) They provide the basic data for revising the GNP accounts from the input-output tables.

(d) They provide sampling frames and control totals for current economic indicator surveys which are essential to understanding current economic activity.

(e) The results also provide a valuable inventory of information for defense preparedness planning.

Tax lists are the basis for (a) identifying establishments within the scope of the Economic Censuses, (b) classifying establishments by size and geographic location, and (c) excusing smaller businesses from filing census reports. These smaller businesses represent a very large segment which, prior to the substitution of tax information, had a high reporting delinquency rate and a record of inferior reporting quality.

In the 1972 Economic Censuses, about 3 million small firms were excused from filing reports. That was possible because the limited data obtained from tax records could be used in lieu of, and in fact improve upon, census collected data. Another 6.5 million firms were excluded from reporting because it could accurately be determined from tax records that they were not within the scope of the Economic Censuses program. There is no other centralized information base from which Census could develop a procedure to identify and exempt these firms.

Without access to such tax information, Census would have to resort to less efficient and less accurate methodologies which would be more costly to both the Government and the respondents.

2. *The Census of Agriculture.*—The Census of Agriculture, also taken every five years, is the only source of agricultural statistics which provides data at detailed geographic levels and on a nationwide basis. Facts about the Nation's agriculture provide guidance to Congress and the Executive Branch for legislation action, policy decisions, and program planning and execution. Legislation uses Census of Agriculture data as part of the basis for distribution of funds by the Department of Agriculture and other agencies. These census results serve, too, as inputs to the Gross National Product accounts and the input-output measures.

Extensive use is made of the Agriculture Census results by state and local governments in irrigation and soil conservation programs. Manufacturers and sellers of farm equipment and supplies, food processors, and many other businesses use the Census of Agriculture data in order effectively and efficiently to serve this market. Agricultural colleges use these data to tailor their curriculums and research to meet current and evolving needs.

Through the 1964 Census of Agriculture, data were collected by field enumeration. Increasing difficulties in identifying farm units and in obtaining the necessary degree of accuracy, the constantly higher personal enumeration costs, and the response burden forced a review of that methodology. In result, in the 1969 Census of Agriculture tax record information, supplemented by Department of Agriculture records, was used. That enabled Census, for the first time, to undertake the enumeration entirely by mail. That resulted in markedly reducing the undercount and improving the quality of information obtained. The 1974 Census of Agriculture is also using full mail collection procedures.

3. *Current Economic Indicators.*—Census conducts a broad series of weekly, monthly, quarterly, and annual sample surveys in the distributive trades and industrial areas to measure current performance and economic trends.

The monthly retail sales data are essential in developing estimates of consumer expenditures, a major component of GNP.

Early indications of changes in the economy are also discerned through the monthly statistics on manufacturers' shipments, orders, and inventories; and these data are the basis of the investment component of the GNP.

The surveys on manufacturing production supply the data used as basic inputs to the Federal Reserve Board's Index of Industrial Production.

Statistics on department store sales are issued every month for some 250 localities throughout the country. These and data published for about 5,000

products of manufacturing plants are used extensively in production and marketing decisions.

The availability from IRS of a complete and up-to-date list of business employers, classified by size and industry, makes it possible to develop and to maintain reliable samples for these surveys. These samples are updated periodically on the bais of Economic Census results. The volatility of the business universe requires continuous knowledge of new businesses and business failures. That information can be obtained more accurately from administrative tax records than from other directories or lists which are neither as complete nor as current. If resort to those sources were required, rapid deterioration of the Current Economic Indicators would result. The statistics developed would be understated to an unknown degree. Trend data would reflect information gaps rather than valid indications of real change. Within months, the release of key economic indicators would have to be suspended.

If, as an alternative to use of tax information, a personal canvass of businesses were substituted, the statistical reliability would suffer substantially because "area samples" are considerably less efficient than samples based on size information. The "area sample" procedure was used in compiling retail and service industry data until 1968. When mail sampling based on IRS list sources was substituted, the sampling error data was cut in half (from 1.1 to 0.6 percent) and collection costs were substantially reduced.

4. *Survey of Minority-Owned Business Enterprises and County Business Patterns.*—If Census were denied access to tax record data, other highly useful programs would have to be abandoned because the costs of alternative means would be prohibitive or the quality of the results would be unacceptable. The Survey of Minority-Owned Business Enterprises, for example, is almost entirely dependent upon the use of data derived from tax records. This survey was first undertaken in 1969 for the Small Business Administration, the Department of Housing and Urban Development, the Office of Economic Opportunity, the Department of Labor and the Economic Development Administration. The survey was repeated in 1972 as part of the regular Economic Censuses.

The heavily used County Business Patterns series which provides annual industry data at the county level would be another victim. The data in this report are derived largely from administrative records. There is no other source for obtaining this information on time—with a satisfactory degree of reliability—and at a reasonable cost.

C. *Impact of Tax Record Loss by Function—Economic Programs.*—1. *Parallel Reporting Burden.*—Use of administrative data is one of several techniques developed for reducing reporting burden and for which Census has been commended by both the Congress and the business community. In its recent report on the Federal Paperwork Burden, the Subcommittee on Government Regulation of the Senate Select Committee on Small Business, stated—

"To its credit, over the years, the Census Bureau has been developing and improving techniques designed to reduce the burden on business census respondents. Although these techniques fall short of eliminating criticism of census reports, they have resulted in substantial savings to both government and business."

2. *Quality.*—Modern Census programs depend materially on the use of tax information. Absent such information, the quality of the data would suffer a marked decline. Administrative tax data is the only source of a virtually complete list of companies engaged in all types of economic activity. Although incomplete lists are available from other sources they lack classification information for specific locations, and they are almost completely devoid of information on smaller firms.

The experiences of statistical organizations of other countries confirm the utility of tax records use in strengthening basic statistical programs. Canada, France, Germany, and Sweden all use this approach. In England, however, where income tax data are not used for statistical purposes, so important a series as that on retail trade can be published only in index form, and even that series is most unreliable in tracking new business entities and old business quits. Consequently, the U.K. GNP figures require significant revisions because of the inadequacies of the input data.

3. *Timing.*—Census ability to provide economic data on a timely basis depends upon the speed and efficiency with which the ingredient data are processed and analyzed. Absent tax data, processing procedures would change and publications would be materially delayed. The Economic Censuses would be delayed by nine to fifteen months and the Agriculture Census would be delayed a year. Any

delay in the Economic Censuses, which are used as the foundation for Current Economic Indicators, would impair their quality and usefulness. Time is of the essence.

D. *Alternatives to Use of IRS Data.*—All of the alternatives to use of tax data have serious defects on the counts of respondent burden, cost, quality of results, and timing.

1. *Development of Census Mailing Lists.*—Absent tax data, basic mailing lists would have to be developed from various purpose lists procured from a number of both private and public sources. Use of multiple sources would be required in order to develop as complete lists as feasible. Thorough processing would be required to weed out duplications, and a field canvass would be necessary to determine the extent of error. Reporting requirements would be increased several fold because all firms, regardless of size, would then have to respond to a precanvass survey. The precanvass survey would determine the companies to be included in the subject survey of census.

Alternatively mailing lists could be developed by attempting to enumerate all places of business, including farms. Extensive area samples conducted by field enumeration or canvass would be necessary for current economic surveys. This procedure, in addition to being very costly, would result in significant undercounts. It would also seriously delay results.

Another alternative would be that of universal registration with Census. This would be similar to and essentially a duplication of the IRS system of Employer Identification Numbers. However, Census has no enforcement mechanism, and it is unlikely that a registration program could operate effectively without full assistance of law enforcement agencies. Census has found, however, that despite its present authority to require responses, good and rapid reporting depends heavily on cooperation based on respondent trust. Enforcement and litigation would be destructive of that trust, and they would be the least efficient methods of obtaining accurate information rapidly.

2. *Use of IRS Tabulated Totals.*—The pending bills anticipate that IRS would assume key functions of the Census process, acting in effect as a service agency for Census. They anticipate that IRS would provide Census with tabulated totals of tax records based on Census specifications. Such a bifurcated arrangement would severely cripple many Census services. Obtaining tabulations from IRS would not meet many of the statistical excellence objectives attained under present procedures which have evolved from long experience with the approbation of Congress.

Census collects numerous information items from larger companies. A scientifically designed sample of smaller companies is also canvassed. The results from this sample are related to (a) employment, (b) payroll, and (c) receipts information which are provided by IRS. That is necessary to develop factors which are used to estimate such items as cost of materials, inventories, manhours, rental payments, capital expenditures, and assets of companies for which only administrative record data are used.

There would be no way to select the sample or to develop the critical adjustment factors which are necessary to relate Census and IRS data if the identity of the taxpayer and the data items for the sample cases were not made available to Census. Moreover, these imputations depend upon comparisons with Economic Census data which identify individual firms and are available under present law only to selected Census employees.

The only available information for keeping critical samples up-to-date is the IRS Master Business File. These updates also permit new specialized Census samples to be drawn quickly when required. Without IRS information on business changes, Census could not respond to such requests with accurate and rapid results.

Records from reporting companies and information estimated from administrative record sources are sorted and tabulated as a combined set of records by industry, by size, by degree of concentration, by detailed geographic area, and other characteristics. Although many sorts could be pre-specified, extensive special tabulations prepared by Census could not be. Thus, for example, upon completion of the most recent Census of Manufactures, Census prepared special tabulations for the Senate Select Committee on Small Business for use in the analysis of small business activity. This sort of request could not be met without the full range of data sorted on an establishment-by-establishment basis IRS could not handle such specialized tabulations unless Congress changed the law so as to give IRS access to the full backup detail of the Economic Census files.

Tax records are maintained by IRS on a legal entity basis, whereas Census

collects and tabulates its data on an establishment basis. That is necessary in the case of conglomerates and other multi-plant concerns to the preparation of product-line, geographic, and other data tabulations long provided by Census. The 200,000 multi-estblishment firms, out of a total of 5.5 million included in the last Economic Census, account for a major share of economic activity; they employ 75 percent of all persons engaged in manufacturing. Because this Census-collected data on multi-establishment firms duplicates a portion of the information included in the IRS tabulation of legal entities, such duplication must be eliminated by substituting such Census establishment data for IRS legal entity data. To do that, either (a) IRS would have to identify to Census the firms included in its tabulations or (b) Census would have to disclose to IRS identifiable data which is now inhibited by statute.

The sum of it plainly is, first, that today's rapid, quality, sophisticated Governmental statistical data cannot be produced without a mix of both Census and IRS information, and second, that this product can be had only through integrated, rather than splintered, responsibility lodged in statistical and demographic experts. The cake is not to be had, and eaten, too.

The concern of the bills before us is that of political abuse of confidential data, whether it be tax or Census data. In over 25 years of integrated Census service there has been not one instance of misuse of either Census or Tax information.

E. *Demographic Statistics Programs.*—The Demographic Statistics Programs are essential to the operation of the State and Local Fiscal Assistance Act, which requires Census to furnish population and per capita income estimates as to all units of local governments for the purpose of allocating general revenue sharing funds which now run over $5 billion per year. Census has developed a complex methodology for meeting this objective through the use, largely, of data selected from the IRS files. Although IRS could furnish the data aggregates required, the Census developed methodology and its service is efficient and integrated with other Census responsibilities dependent upon the use of tax information as herein described.

Unlike the Economic Statistics Programs which depend on tax records of establishments and firms, the compilation of population and per capita income estimates necessarily uses selected address, income and demographic items from individual tax returns. Only through the resource of tax data can Census estimate the migration of persons over time and develop population and income data as required by statute for all units of local government.

Census also uses data from a sample of individual tax records in evaluating studies to improve measures of income and its distribution. Improvements in this area are a primary objective of the Federal statistical system. They require the comparative analysis of income data from several sources, including both Census survey data and IRS data. These studies are conducted within the confidentiality provisions of Title 13 and, therefore, could not now be performed by persons who are not Census employees. While confidentiality restrictions of Title 13 of the Code may be too rigid for agencies with administrative and enforcement functions. Census is unique in that its sole function is statistical in nature. Census is the government's statistician.

F. *Conclusion.*—In summary, Census has, over the years, developed a highly efficient and internationally respected statistical program which depends significantly on the confidential use of selected data from tax records. Use of these data enables Census to fulfill both economic and demographic needs on an efficient and timely basis—with marked improvement of quality and with a minimum of intrusive and costly reporting burden upon the public and upon the business and agricultural communities in particular. The need for timely statistical and economic tools of the highest quality available is self-evident. Denial of use of relevant tax data on a strictly confidential basis would place serious impediments upon—and degrade—essential statistical output. These data are fundamental to an understanding of the economy and of the Nation itself. None of the alternatives to the present partial dependence on tax information would be satisfactory in terms of either the quality, cost, and timing of the product or respondent burden.

Senator HASKELL. Our next witness is Mr. Frederic Scherer, Director of Economics, the Federal Trade Commission.

Mr. Scherer, we are very pleased to have you here and we look forward to hearing what you have to say.

STATEMENT OF FREDERIC M. SCHERER, DIRECTOR, BUREAU OF ECONOMICS, FEDERAL TRADE COMMISSION

Mr. SCHERER. Thank you very much, Senator Haskell. I am grateful for this opportunity to testify before you today. I do not intend to read my statement, but simply submit it for the record.

Senator HASKELL. It will be received and reproduced in full.

Mr. SCHERER. Let me just summarize very briefly the problem we have. It concerns the Federal Trade Commission's Quarterly Financial Report. This is quite an uncomplicated operation compared, say, to the Census Bureau.

Our problem is rather different, too, from that of the Census Bureau. In brief, we need in order to compile our Quarterly Financial Report no direct access of any sort to tax returns. We also need no access whatsoever to individual tax returns, but only information from corporate tax returns.

The Quarterly Financial Report of the Federal Trade Commission, and I have given a couple of copies to your committee staff, is published four times a year. It provides up-to-date information on the financial status of a broad cross section of American industry.[1]

It is based on questionnaires that we at the Federal Trade Commission send out to various American business corporations. The connection, however, with the Internal Revenue Service is this.

We do not have any kind of up-to-date list of who the manufacturing and retailing and wholesale trade and mining corporations of the United States are. The Internal Revenue Service helps us out by providing information by means of which we can draw our sample, and then we go out and do our own survey job.

In other words, the information that the IRS provides from its tax return files is information merely for sample drawing purposes. What happens, in detail, is the following:

The Internal Revenue Service goes through its corporation tax files. It winnows out a subsample of those files—in many cases, a very small subsample. It then completes a card, a copy of which I have submitted for the record, that gives us name, address, date incorporated, what industry the company operates in, whether it files a consolidated or unconsolidated return, its sales, profits, and assets, and whether it is a final return or not, and then some information by which the IRS keeps track of its own internal file information.

ACCOUNTING PERIOD	FTC SERIAL NUMBER	CHANGED	DATE 72
		CHANGED	DATE
NAME		CHANGES	
		TYPE	DATE
NUMBER AND STREET			
CITY, STATE, ZIP CODE			
DATE INCORPORATED	INDUSTRY CODE (4 digits)	CONSOLIDATED RETURN YES ☐ NO ☐	
NET RECEIPTS ($000'S)	NET INCOME ($000'S)	TOTAL ASSETS ($000'S)	
SAMPLE CODE (2 digits)	FINAL RETURN YES ☐ NO ☐		PREVIOUS SERIAL NUMBERS
PAGE NO.	EMPLOYER IDENTIFICATION NO. (9 digits)		FTC CONTROL NUMBER
DOCUMENT LOCATOR NO.			
IDENTIFICATION NO			

[1] A copy was made a part of the official files of the committee.

Mr. SCHERER. This is all we get. We then take these cards which do include names, and we draw a subsample from that sample of cards. Now we need this information, including names, rather badly, in order to keep our files up to date. We do not otherwise have any way of making sure that our survey is representative of the entire population of business firms.

Senator HASKELL. This is quite limited information, if I am looking at the right card.

Mr. SCHERER. That is, sir, yes. It is quite limited information. That is really all we need the help of IRS for, which is to draw our sample to find out who these corporations are, and especially the smaller firms on which no information exists.

We then take a sample of the smaller firms. For example, 1 in 40 for the smaller manufacturing firms, roughly 1 in 125 or 200 for the smaller retailing firms. And we send out our own questionnaires in order to get the kind of information we need.

We do not, again, have access to the IRS files directly—the IRS tax returns. IRS gives us the information strictly for purposes of sample drawing.

Senator DOLE. You never receive the return itself?

Mr. SCHERER. That is right, Senator.

Senator DOLE. Only the information on the card? And I assume that is treated confidentially? Is this a confidential record, then, as far as the FTC is concerned?

Mr. SCHERER. It is treated confidentially. It is never, itself, published. It is strictly used for our sampling purposes. Moreover, the information we get through our own surveys is also treated confidentially. We do not publish financial statistics for individual corporations. We publish information only for groups of corporations put together by size category or by broadly defined industry category.

Again, we do not publish information on individual companies. It is published on a consolidated basis.

Senator DOLE. Is the Quarterly Financial Report supplemented, then, by your "Line of Business" authority, where you get additional information not from IRS? I mean is that included in this, also?

Mr. SCHERER. It is kind of a second cousin, Senator, in the sense that the Line of Business survey, which is new, develops more detailed information broken down by individual industry categories, only for a small sample of the largest corporations. To the best of my knowledge, we do not use the material we get from IRS for purposes of drawing that sample.

Senator DOLE. That comes from the corporations themselves, through questionnaires?

Mr. SCHERER. That is right, sir, yes.

Senator DOLE. So that there is no connection between that program and any information from IRS?

Mr. SCHERER. The only possible connection I can imagine is that IRS might once in a while make known to us the existence of a corporation—a large corporation—of which we were unaware, and that might cause that corporation to be included in our Line of Business sample.

I would think that would be a very rare case, because we do know the larger companies. The big problem is trying to get a representative cross section of the small businesses in the United States so that we can reflect for the Federal Reserve Board, for the Department of Commerce, and for other users of our survey, an up-to-date picture of their financial status.

Senator HASKELL. Thank you, Mr. Scherer.

Senator DOLE. Could I ask one question?

Senator HASKELL. Yes, sir.

Senator DOLE. Do you ever furnish anything to the IRS?

Mr. SCHERER. I am relatively new in my job. I do not know of any such case. Certainly it is not done normally.

Senator DOLE. I cannot foresee any reason, but there may be one. There may be an exchange of some kind?

Mr. SCHERER. Well, there is this. The Quarterly Financial Report statistics, in an aggregated form, are used by the IRS in order to estimate tax receipts. That is one sense, but we do not feed back information of a detailed sort to IRS, to the best of my knowledge.

Let me, Senator, if I may, just point out one important thing? And that is that the question of names is particularly important for us because it is the names we need, in order to draw our sample, and it is on this point that we have some difficulty with S. 199.

Senator HASKELL. Now whose bill is that?

Mr. SCHERER. I do not really know, sir.

Senator DOLE. That is Weicker-Litton, I think.

Senator HASKELL. In other words, this is pretty limited. Your understanding, Mr. Scherer, is that the bill would prohibit the distribution of information called for on this card? Is that correct?

Mr. SCHERER. It specifically precludes IRS giving out the names of taxpayers. And, of course, it is the names that we primarily need for our specific purpose; namely, to choose a representative sample of American businesses.

We have no desire to get access to the returns themselves.

Senator HASKELL. We just had the Bureau of the Census here. I wonder if they do not have the information that you need?

Mr. SCHERER. They are precluded by law, which I cannot cite exactly, but which Mr. Barabba cited in his testimony, from giving names out to anyone. And, indeed, they get their names from the IRS, also.

Senator HASKELL. They get some of them, as I gather, and as you probably did in listening to the testimony.

Mr. SCHERER. Yes.

Senator HASKELL. All right, sir, Senator Dole, do you have any further questions?

Senator DOLE. No, sir.

Senator HASKELL. We appreciate your coming, and if we have further questions we will keep the hearing record open for 2 weeks.

Mr. SCHERER. Thank you, very much. We would be glad to have any of our staff consult with your staff on technical questions.

Senator HASKELL. Thank you, very much.

The hearing, then, will be adjourned.

[The prepared statement of Mr. Scherer follows:]

TESTIMONY OF FREDERIC M. SCHERER, DIRECTOR, BUREAU OF ECONOMICS, FEDERAL TRADE COMMISSION

Mr. Chairman, on behalf of the Commission I would like to thank you and the other members of the Committee for the opportunity to testify today.

Let me say at the outset that the Commission endorses the goals sought to be accomplished by S. 199 and similar bills. We would hope, however, that the extension of more confidential treatment to tax returns and return information not be bought at the price of eliminating certain valuable statistical programs whose continuity depends decisively on access to return information. My purpose in being here today is to bring to the attention of the Committee one such program which is of vital interest to the Commission and which would be adversely affected were S. 199 or similar proposals to be enacted as presently drafted.

The Federal Trade Commission wishes to call to the attention of the Subcommittee an implication of S. 199 which threatens the continuation of the FTC's Quarterly Financial Report (QFR) program.

The Quarterly Financial Report is a statistical publication series which provides profitability, other income statement, and balance sheet information four times annually covering U.S. corporations engaged in manufacturing, mining, and wholesale and retail trade. The corporations surveyed account for nearly half of the U.S. national income.

The program is based upon stratified random samples of corporations for the relevant industries. Internal Revenue Service files relating to corporate income tax returns have been and continue to be the only reliable source of data from which the sample of companies receiving quarterly questionnaires is drawn. Access to the requisite IRS information was granted by Executive Order issued in 1947, 1949, 1954, and 1961.

Information obtained from the IRS is not published or otherwise disclosed; it is used solely for sample-drawing purposes.

As we understand subsection (e)(2) of S. 199, the Commissioner of Internal Revenue would be authorized to furnish statistical information to such agencies as the Federal Trade Commission, but no information on the identity of a taxpaying corporation could be disclosed. This language would prevent the Internal Revenue Service from providing the FTC information needed for sample-drawing purposes.

Carrying out its continuing responsibility to publish the Quarterly Financial Report, the FTC has again asked IRS to assist in drawing a QFR sample from information for the 1974 tax year. However, on February 15, 1975, the IRS Commissioner informed the Chairman of the FTC that "In view of the various legislative proposals to restrict Government agency access to tax records, we do not feel we can make any long term commitments until we get a more definite indication of what direction these proposals will take."

The present situation leaves the QFR program in limbo. The QFR publication can be produced through the spring of 1976 with the sample currently being completed at IRS. Beyond that point, and unless access for drawing new samples is granted, a representative picture of financial developments in manufacturing, mining, and trade can be maintained only if the sample now being used is continued. Retaining the same sample presents two major problems. First, the small firms which, to spread the burden, would normally be rotated out from the sample after being included for two years, will be forced to continue to report indefinitely. Second, as new firms enter, other companies exit, and still others change the nature of their activities over time, the reliability of QFR industry data will gradually decrease. The older the sample, the less representative it will be of the current population, and the less likely it will be that the sample can yield reliable, up-to-date financial information.

NATURE AND USES OF THE DATA

The Quarterly Financial Report form obtains information on 22 income and retained earnings financial items and 42 balance sheet financial items. National aggregates for these items are not available on a current basis from any other source. They are essential to non-government as well as government users. These national aggregates are made public approximately 75 days after the end of the first, second, and third calendar quarters and approximately 95 days after the end of the fourth calendar quarter.

At the inception of the program in 1946 and continuously since that date, the QFR reporting form has been reviewed and revised by an Interagency Committee on Financial Statistics, on which have been represented the QFR's principal government users. Among the major users are the Bureau of Economic Analysis in the Department of Commerce (for estimating national income and gross national product); the Board of Governors of the Federal Reserve System (for estimating sources and uses of corporate funds and determining current monetary and fiscal policy); the Department of the Treasury (for estimating current corporate tax liability and future tax receipts); and the Joint Economic Committee of the Congress and the President's Council of Economic Advisers (for analyzing current business conditions and evaluating the current financial position of small business). In addition, several thousand non-government users subscribe to the QFR publication.

Because of the needs of these and other users, and at their specific request made through the Interagency Committee on Financial Statistics, the Commission's QFR program has been expanded recently to include retail trade corporations, wholesale trade corporations, and mining corporations, in addition to the previously surveyed corporate manufacturing segment of the economy. Users such as the Bureau of Economic Analysis and the Federal Reserve Board consider the QFR data to be an important input into their economic analyses.

COVERAGE

The current manufacturing industry sample consists of (1) approximately one-fortieth of all manufacturing corporations with total assets under $1 million, (2) approximately one-fourth of all manufacturing corporations with total assets of $1 million to $5 million, (3) approximately three-fourths of all manufacturing corporations with total assets of $5 million to $10 million, and (4) all manufacturing corporations (3,625 in the third quarter of 1974) with total assets of $10 million and over. The total sample of approximately 11,000 includes about five percent of the total population of 200,000-plus U.S. manufacturing corporations. The sample is designed so that the standard deviation of the estimate for the item "net income before Federal income taxes" for all manufacturing corporations amounts to approximately one-half of one percent of that estimated aggregate. A lower degree of precision is accepted for other items.

The sample survey of mining corporations, on which estimated national aggregates are being made available for the first time this year, consists of fewer than 1,000 corporations out of a total population of 15,000 U.S. mining corporations. The proportion of wholesale and retail trade corporations being surveyed is much smaller. The trade sample includes approximately 4,000 corporations, or less than one percent of the more than 500,000 wholesale and retail trade corporations, many quite small, operating in the United States.

LEGAL BASES AND CONFIDENTIALITY RULES

Executive Order 9809, dated December 12, 1946, transferred to the Federal Trade Commission the functions of the Financial Reporting Division of the Office of Price Administration. Prior to World War II, these functions had been lodged in the FTC (e.g., FTC published for the year 1940 profit and related corporate financial information for each of 86 industry groups).

On the same day Executive Order 9809 was issued, the Commission approved and adopted a resolution authorizing the "collection of quarterly and annual financial reports from industrial and commercial corporations . . . to provide an overall current quarterly and annual financial picture of the American industrial economy." Simultaneously, it was agreed by FTC and the Securities and Exchange Commission, with the approval of what was then the Bureau of the Budget, that reports for registered corporations would be collected by SEC and that reports for other corporations would be collected on a sample basis by FTC. This arrangement was continued for 24 years.

On November 23, 1970, the Director of the Office of Management and Budget "approved the Federal Trade Commission's request for approval of the transfer to the FTC of the Securities and Exchange Commission's responsibility for collection of the Quarterly Financial Report data from registered corporations" so that "much needed improvements will be made in the QFR and in Federal financial statistics in general through this consolidation of responsibility for this series."

In lieu of a costly complete canvass of all manufacturing corporations (slightly over 100,000 in 1946 and well over 200,000 in 1975), the FTC was given access to draw from corporate income tax returns a random sample, stratified by industry and asset size. Inspection of corporate tax returns was and still is to this day the *only* complete and definitive source from which a reliable and valid statistical sample can be drawn by corporate name and address, industry code, gross receipts, and total assets. Authority for the confidential inspection of corporate tax returns by FTC was granted by Executive Order 9833 dated March 7, 1947; Executive Order 10090 dated December 6, 1949; Executive Order 10544 dated July 12, 1954; and Executive Order 10908 dated January 17, 1961, which is still operative. In accordance with IRS regulations, the information obtained from inspection of the tax returns is treated as confidential by the FTC. No individual corporation's name, address, or other information is disclosed. Indeed, the data received from IRS are used *only* for sample drawing purposes. The aggregated financial statistics published in the QFR come from the forms completed by corporations specifically for the FTC.

In addition to satisfying these IRS confidentiality safeguards regarding information pertaining to any single corporate taxpayer, the FTC has promulgated rules and procedures for the use of confidential individual company data collected in connection with the Commission's Quarterly Financial Report program. The Commission's resolution dated December 12, 1946, which first authorized QFR data collection, directed that the reports collected be used "for the purpose of preparing and publishing statistical compilation thereof without in any case identifying in such compilations the specific results of or the figures appertaining to the operation of any individual corporation."

According to the FTC's statement of QFR confidentiality rules published in the Federal Register, September 18, 1973, p. 20102: "Access to and use of individual company data within the FTC is restricted to members (of two specified organizational units within the FTC) which have no involvement in any investigative or regulatory functions of the Federal Trade Commission." . . . "Under no circumstances may the individual company data reported on the QFR schedule be used for, or in the course of, any enforcement action of enforcement investigation."

The current Quarterly Financial Report form, moreover, starts with this notation: "This report . . . will be used only in combination with reports from other corporations to estimate national totals. It will be received in and afforded confidential status and will not be available for use in any Commission adjudication or in connection with any investigation for the purpose of initiating adjudicative proceedings except as they relate to legal action for failure of a corporation to submit a timely and acceptable report."

CONCLUSION

The Federal Trade Commission urges the Subcommittee to adopt language in S. 199 which will permit the use of IRS files by the FTC and other appropriate Federal statistical agencies for purposes of drawing samples for their own statistical surveys. This would not lead to the public disclosure of any taxpaying corporation's IRS file information, nor would the individual company data be used in FTC antitrust or consumer protection actions. Access to corporate tax returns makes possible valid reliable, and representative samples, particularly of small corporations and privately-owned corporations whose securities, are not traded on a national stock exchange. The only source from which such efficient survey samples can be drawn is the set of confidential corporate tax returns filed with the Internal Revenue Service. The Federal Trade Commission has had access to these corporate tax returns for 28 years. Maintaining the representativeness of the QFR surveys necessitates the continuation of that access.

[Whereupon, at 3:05 p.m., the subcommittee recessed to reconvene at 10 a.m., April 28, 1975.]

FEDERAL TAX RETURN PRIVACY

MONDAY, APRIL 28, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION OF THE
INTERNAL REVENUE CODE,
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m. in room 2221, Dirksen Senate Office Building, Senator Floyd Haskell presiding.

Present: Senators Haskell, Harry F. Byrd, Jr., and Dole.

Senator HASKELL. The hearing of the Subcommittee on the Administration of the Internal Revenue Code will commence.

[The Committee on Finance press release follows:]

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE ANNOUNCES FURTHER HEARINGS ON FEDERAL TAX RETURN PRIVACY

The Honorable Floyd K. Haskell (D.-Colo.) said today that five former commissioners of the Internal Revenue Service will testify on Federal tax return privacy during continued hearings April 28 before the Finance Subcommittee on Administration of the Internal Revenue Code.

The hearing will begin at 10:00 a.m. in Room 2221, Dirksen Senate Office Building.

"We learned during the first day of hearings April 21 that information from more than 61 million Federal tax returns was released last year to States or to other Federal agencies," said Senator Haskell, subcommittee chairman.

"Now we hope these former commissioners can tell us what IRS practices were during their tenures and if they think taxpayer privacy is adequately protected," the Senator said.

The former IRS commissioners scheduled are: T. Coleman Andrews, commissioner from February 1953 to October 1955; Mortimer M. Caplin, February 1961 to July 1964; Sheldon S. Cohen, January 1965 to January 1969; Randolph W. Thrower, April 1969 to June 1971; and Johnnie M. Walters, August 1971 to April 1973.

Also testifying will be Senators Joseph M. Montoya (D.-New Mexico) and Lowell P. Weicker (R.-Conn.), and Representative Jerry L. Litton (D.-Mo.), all of whom have introduced legislation restricting access to tax return information. The Montoya and Weicker bills, as well as a bill introduced by Senator Lloyd Bentsen, are now pending before the Finance Committee.

Senator Haskell said additional subcommittee hearings are planned and that the dates will be set as soon as possible.

Requests to Testify.—Persons desiring to testify during these hearings must make their request to testify to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, by April 30, 1975. Of course, persons who have already requested to testify need not submit any additional request. Witnesses will be notified as soon as possible after this cutoff date as to when they are scheduled to appear. Once the witness has been advised of the date of his appearance, it will not be possible for this date to be changed. If for some reason the witness is unable to appear on the date scheduled, he may file a written statement for the record of the hearing in lieu of a personal appearance.

52-603—75——9

Consolidated Testimony.—Senator Haskell also stated that the subcommittee urges all witnesses who have a common position or with the same general interest to *consolidate their testimony and designate a single spokesman* to present their common viewpoint orally to the subcommittee. This procedure will enable the subcommittee to receive a wider expression of views than it might otherwise obtain. Senator Haskell urged very strongly that all witnesses exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—In this respect, he observed that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Senator Haskell stated that in light of this statute and in view of the large number of witnesses who desire to appear before the subcommittee in the limited time available for the hearing, *all witnesses who are scheduled to testify must comply* with the following rules:

(1) A copy of the statement must be filed by the close of business on April 25, 1975.

(2) All witnesses must include with their written statement *a summary of the principal points included in the statement.*

(3) The written statements must be typed on letter-size paper (not legal size) and at least *50 copies* must be submitted before the beginning of the hearing.

(4) *Witnesses are not to read their written statements* to the subcommittee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

(5) Not more than ten minutes will be allowed for the oral summary. *Witnesses who fail to comply with these rules will forfeit their privilege to testify.*

Written Statements.—Witnesses who are not scheduled for oral presentation, and others who desire to present their views to the subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building not later than May 9, 1975.

Senator HASKELL. This morning we continue our hearings on tax return privacy. Last week the subcommittee had the benefit of the testimony of Commissioner Alexander, currently Commissioner of Internal Revenue; Deputy Attorney General Tyler; Assistant Secretary of Commerce, Mr. Pate; the heads of the Bureau of the Census and the Bureau of Economic Analysis; as well as a representative of the Federal Trade Commission.

The testimony of these witnesses was of tremendous value to me, and I am sure to other members of the subcommittee who were present at that time.

We are engaged in exploring an extremely complex area in which there are competing needs. The first is the need for Congress to protect the taxpayer's rightfully expected privacy. Second, there is a need to not unnecessarily inhibit the law enforcement functions of the Federal Government. Third, there is a need to prevent political misuse of our revenue-raising system, and finally there is a need to continue and foster certain vital statistical services which our Government provides.

The purpose, of course, is to locate the proper point of balance, without, in any way compromising the fundamental right of privacy of American people.

Today, we have a number of extremely distinguished witnesses. Senators Montoya and Weicker, of course, bring great depth of experience to this problem in their capacity as members of Senator Ervin's Watergate Committee. We have Congressman Jerry Litton of Missouri

who has been concerned and working on this problem as long as anybody in Congress. And we shall hear from a panel consisting of all five living former Commissioners of Internal Revenue. I am sure they will be able to contribute a great deal to the record based on their collective experience.

Last week, this subcommittee touched on scattered abuses which have taken place over the years and attempted to develop facts as to the extent to which returns are or were disseminated. At my request, the Joint Committee on Internal Revenue Taxation has prepared an illustrative sample of transfers of tax information from the Service to the White House based upon evidence adduced during the last few years by Senator Ervin's committee, which I shall include in the record. I want to make it abundantly clear that I am submitting these instances only as examples of what happened. I am not forming any judgment as to their legality or illegality, as our purpose is only to explore the facts and then to determine whether any legislation is needed in this particular area.

[The material referred to follows:]

1. Mr. Mortimer M. Caplin (formerly Commissioner of Internal Revenue) has stated in a memorandum to Mr. Robert H. Knight (formerly General Counsel of the Treasury) that he permitted Mr. Carmine Bellino (formerly Special Consultant to the President) to inspect the tax returns and other IRS documents pertaining to several persons. (Memorandum from Mortimer Caplin to Honorable Robert H. Knight dated May 23, 1961.)

[Printed in the Congressional Record for Apr. 16, 1970, pp. 12221–12222]

MEMORANDUM FOR THE HONORABLE ROBERT H. KNIGHT, GENERAL COUNSEL OF THE TREASURY

SUBJECT: INSPECTION OF RETURNS BY CONGRESSIONAL COMMITTEES

In the Treasury staff meeting on March 31st it was pointed out that Mr. Carmine Bellino, Special Consultant to the President, had objected to certain regulations and Service policies affecting Congressional Committees authorized to inspect returns by Executive Orders. Specifically, he objected to (A) the regulations requiring the adoption of a resolution by a full Congressional Committee before its representatives may obtain permission to inspect tax returns and (B) the policy against allowing Congressional Committees to obtain photocopies of returns. It was suggested that we would submit our views concerning possible changes in present rules and procedures respecting these matters.

A. Requirement of a resolution by a full congressional committee

The requirement for a resolution adopted by the committee is contained in Treasury Decisions 6132 and 6133. The decision to require a full committee resolution for the inspection of returns was made by officials of the Treasury Department and approved by the President. Prior to the issuance of these Treasury Decisions in May 1955, a Congressional Committee authorized by Executive Order to insect returns was permitted to do so solely upon the written request of the chairman of the committee or of a subcommittee thereof. No resolution of the committee was then required.

Mr. Bellino objected to the "committee resolution" requirement of the regulations because the task of assembling a quorum of a full committee for this purpose is very inconvenient, particularly where the membership is large. He stated that this is a burdensome requirement. For example, in April 1960, the Special Committee on the Federal Aid Highway Program, a Subcommittee of the House Committee on Public Works, requested permission to inspect certain returns. That request was denied because a resolution had not been passed by the full committee, consisting of thirty-two members, as required under the regulation.

Relief from the situation described may be provided by amendment of the regulations to permit, in the alternative, acceptance of a resolution adopted by

a subcommittee, and signed by its chairman. This alternative should eliminate the problem but would retain a system of control needed by the Service.

B. The policy against allowing congressional committees to photocopy or obtain photocopies of returns

Under our present policy representatives of Congressional Committees are not supplied or permitted to make facsimile or photocopies of returns or related documents. However, they are permitted to inspect returns and certain related documents on premises of the National Office or a field office of the Service. Blank returns and other forms are furnished for transcribing data contained in the file opened for inspection. Access is granted not only to returns but also to administrative files, including revenue agent and special agent reports, with the exception of certain confidential documents.

This policy has been approved in the past by President Eisenhower, Secretary Humphrey, and Commissioners Andrews, Harrington, and Latham. The reasons for the policy apparently include the following:

1. It is essential to maintain the confidential nature of tax returns except insofar as the inspection of such returns is required in thhe public interest. Our tax collecting process depends upon the voluntary response of millions of taxpayers and they are entitled to rely on the stautory protection which safeguards the confidential nature of the information they furnish the Service. The use of photocopies exposes such confidential information to a greater extent than present methods of inspection. Improper or indiscreet disclosures could reduce public confidence in the Service and have adverse effects on the collection of revenue. While the use of photocopies might be advantageous to a committee, it would not appear to be essential to the discharge of the committee's functions.

2. The possible disclosure of tax returns or related data at committee sessions held as public hearings, and the accompanying risk of disclosures to unauthorized persons, including the press, have been matters of continuing concern to the Service.

3. When a Congressional Committee expires, its files may not be destroyed and the possibility of unauthorized disclosure may be increased.

However, our practice of not furnishing photocopies of returns to these committees is difficult to defend for the following reasons:

1. Section 6103(a)(3) of the Code provides that whenever a return is open to inspection a certified copy shall be furnished upon request.

2. Section 301.6103(a)-2 (T.D. 6546) of the related Regulations on Procedure and Administration provides that a copy of a return may be furnished any person who is entitled to inspect such return, upon request.

3. Our present policy provides distinctive treatment to such Congressional Committee requests since taxpayers, States, and Agencies of the Executive branch of the Federal Government may be furnished copies of returns upon receipt of a proper application.

Notwithstanding the above, we would like to retain the present policy since it provides a degree of protection against improper and indiscreet disclosures. However, if it is determined that this policy should be liberalized, we shall, of course, be guided accordingly. No amendment of regulations would be required to affect a change.

C. Inspection of returns and files by Mr. Carmine Bellino

On January 26 Mr. Bellino, Special Consultant to the President, called at my office and requested permission to inspect our files on —— and others. Although we had no precedent to guide us, we decided that Mr. Bellino, in his capacity as a representative of the President, could inspect our files without a written request. This reflects the view that Section 6103 of the Code specifically provides that returns shall be open to inspection upon order of the President, and since Mr. Bellino's official capacity constitutes him the representative of the President, the action taken is regarded as conforming to law. Based on this decision, we permitted Mr. Bellino to inspect the files relating to ———. Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Further, in a letter dated January 26, and received January 30, Attorney General Robert F. Kennedy asked that Mr. Bellino be permitted to review all files, records, and documents requested by him in order to coordinate the investigation of certain individuals being conducted by the Internal Revenue Service,

the Justice Department and other Government agencies. Permission was granted for Mr. Bellino to inspect such files in a letter dated February 1, 1961.

Additionally, Senator John L. McClellan, in a letter dated March 24, designated Mr. Bellino as a staff member of the Senate Permanent Subcommittee on Investigations, a subcommittee of the Committee on Government Operations, authorized to inspect returns pursuant to Executive Order 10916. As such, he is authorized to inspect those documents made available to the Subcommittee under requests made pursuant to this Order.

In the interest of providing a more detailed statement there is attached a Technical Memorandum prepared in the office of the Chief Counsel, which sets forth the historical background of (1) the requirement of a committee resolution, and (2) the executive policy against supplying photocopies of returns to Congressional Committees. If you should desire additional information please let me know.

MORTIMER CAPLAN,
Commissioner.

2. Mr. John J. Caulfield, former White House assistant, has testified that Mr. Peter Flanigan, former Assistant to the President for International Affairs, asked him to investigate "certain people that would have been involved in business deals," that Mr. Caulfield conducted an investigation, and that he provided Mr. Flanigan with "IRS information." Mr. Caulfield testified that he received that information from Mr. Vernon Acree (formerly Assistant Commissioner (Inspection)) with the Internal Revenue Service. (Testimony of Mr. John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, Saturday, March 16, 1974.)

Mr. LENZNER. Were you aware that information was conveyed from IRS to the White House with regard to a tax audit of Lawrence O'Brien?

Mr. CAULFIELD. I was not aware that there was a tax audit of Mr. O'Brien and information being conveyed to the White House.

Mr. LENZNER. You were never aware that a tax audit was being conducted of Mr. O'Brien?

Mr. CAULFIELD. No, not until it appeared in the paper. I think it did appear in the paper.

Mr. LENZNER. You mean in the news media?

Mr. CAULFIELD. Yes.

Mr. LENZNER. Were you aware that a tax audit was being conducted on Mr. ———

Mr. CAULFIELD. No, I was not.

Mr. LACKRITZ. Do you recall being asked by Mr. Peter Flanigan to get information from the Internal Revenue Service on any individual?

Mr. CAULFIELD. I recall Mr. Peter Flanigan requesting an investigation on certain people that would have been involved in business deals.

Mr. SEARS. Maybe the word "investigation" is a little too authoritative here. Do you recall Mr. Flanigan, and correct me if I am wrong, calling you and asking you if you could find out anything about some manned individuals; is that correct?

Mr. CAULFIELD. Yes, that's correct.

Mr. LACKRITZ. Right now, do you recall getting information on these individuals from the Internal Revenue Service?

Mr. CAULFIELD. I recall conducting an investigation and providing Mr. Flanigan with the results of that investigation; some of it related to IRS information.

Mr. LACKRITZ. I see. How did you obtain the information from the Internal Revenue Service?

Mr. CAULFIELD. I received it from an individual who was then employed with IRS.

Mr. LACKRITZ. And what was that individual's name?

Mr. CAULFIELD. That was Mr. Acree of the Internal Revenue Service.

Mr. LACKRITZ. And do you recall the nature of the information that was provided on these individuals?

Mr. CAULFIELD. In substance it would best be described as a background investigation.

3. Mr. John J. Caulfield has testified that Mr. John Dean, formerly Counsel to the President, asked him to obtain tax information regarding Mr. Billy Graham. Mr. Caulfield testified that he called Mr. Vernon Acree and asked him to determine whether or not Mr. Billy Graham was being harassed by the Internal Revenue Service. Mr. Caulfield testified that Mr. Acree gave him information

based upon a sensitive case report on Mr. Graham. (Testimony of Mr. John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, Saturday, March 23, 1974.)

Mr. CAULFIELD. On the record again.

At other times, I was asked to make inquiry about certain tax matters, and I believe you have documents in your possession which I will be happy to discuss with you.

Mr. LACKRITZ. Before we get into the documents, do you have any recollection of any of the individuals or taxpayers whose returns, or information from their returns, you obtained?

Mr. CAULFIELD. Rephrase—just repeat the question.

Mr. LACKRITZ. Do you recall any specific requests that you made to either Mr. Acree, Mr. Barth, or any other individuals in the IRS, for information from the tax returns of any individuals or organizations?

Mr. SEARS. Well, the only problem in your question is your inclusion of the words, "from the tax returns," because I do not know.

Mr. LACKRITZ. I can rephrase that, John. Do you ever recall requesting any tax information about specific individuals or organizations from any individual in the IRS?

Mr. CAULFIELD. Off the record.

[Discussion off the record.]

Mr. SEARS. Could we have the question again, please?

Mr. LACKRITZ. Mr. Caulfield, do you recall ever requesting tax information about any specific individuals or organizations from anyone in the IRS?

Mr. CAULFIELD. I recall transmitting a request for tax information from Mr. Dean, period.

Mr. LACKRITZ. Do you recall any of the specific requests that Mr. Dean asked you to obtain?

Mr. CAULFIELD. Yes; I do. I recall the requests for tax information as to the tax status of Mr. John Wayne and Mr. Billy Graham.

Mr. LACKRITZ. Could you turn to tab 15[1] of exhibit 1 from last week? Can you identify that first memorandum from yourself to John Dean, dated September 30, 1971?

Mr. CAULFIELD. Yes; that is mine, yes.

Mr. LACKRITZ. Those are your initials? They are somewhat faded.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. I take it this is your report back to Mr. Dean on his request for information on the status of Billy Graham's and John Wayne's tax returns? You state in the second paragraph that a "discreet check indicates that an anonymous telephone call may have initiated the audit." What do you mean by "discreet check"?

Mr. CAULFIELD. It simply means I called Mr. Acree and asked him to discreetly determine as requested.

Mr. LACKRITZ. Determination of what—how the audits are requested?

Mr. CAULFIELD. I think, if I recall correctly, the request was to make a determination as to whether or not Mr. Billy Graham was being harassed by the IRS.

Mr. LACKRITZ. Did Mr. Dean say where that request had come from?

Mr. CAULFIELD. No; and again, I want to repeat, so I make it more understandable to you. Very often Mr. Dean—in practically all the cases, Mr. Dean did not indicate where his assignments were coming from.

Mr. LACKRITZ. I understand that. I just wanted to know specifically, in this case. He didn't indicate to you that the President was interested in this case?

Mr. CAULFIELD. When you say, "a back-door copy of the sensitive case report out of Atlanta has been reviewed," how did you get a copy of that sensitive case report?

Mr. CAULFIELD. Mr. Acree showed it to me.

Mr. LACKRITZ. Is that normal procedure?

Mr. CAULFIELD. I don't know what you might characterize as normal. The White House making a request in this fashion would probably be considered abnormal, but——

Mr. LACKRITZ. Did you personally, Mr. Caulfield, view any other sensitive case reports?

Mr. CAULFIELD. No; not that I can recall.

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[1] See Book 21, p. 9808.

Mr. LACKRITZ. But Mr. Acree did show you a copy of this particular case report?

Mr. CAULFIELD. Yes. I don't recall specifically, but it is indicated here, and I will say "Yes."

Mr. SEARS. Let's be clear on this. Do you recall or not? Did you see this report, or did he tell you about it?

Mr. LACKRITZ. Doesn't it say, Mr. Caulfield, "has been viewed?"

Mr. CAULFIELD. I know what it says. I just can't——

Mr. SEARS. Recall specifically what it is.

Mr. CAULFIELD. Whether he's editorializing here—I can't say for fact whether or not I actually viewed it. I don't recall.

Mr. LACKRITZ. Wait a minute, Mr. Caulfield. I want you to think back. Do you recall writing this memorandum?

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. Would you write a memorandum saying, "a back-door copy of a sensitive case report out of Atlanta has been viewed," if you had not viewed it?

Mr. CAULFIELD. No. It's very possible that the back-door copy had been viewed by Mr. Acree, and described to me over the phone, and that's the way I'm reporting it here. I don't say that I saw it.

Mr. LACKRITZ. In any case, information from a sensitive case report was brought to your attention by Mr. Acree. That's correct, isn't it.

Mr. CAULFIELD. If Mr. Acree did, in fact——

Mr. LACKRITZ. Mr. Caulfield, the answer to the question is "Yes," isn't it?

Mr. SEARS. Yes.

Mr. CAULFIELD. Well, I don't know for a fact. Off the record for a second, please.

[Discussion off the record.]

Mr. LENZNER. Let's go back on the record.

What does "a back-door copy" mean, Mr. Caulfield?

Mr. CAULFIELD. I would interpret that to mean——

Mr. LENZNER. Well, you wrote it. What did you mean when you wrote it?

Mr. CAULFIELD. Yes, that's what I'm saying.

Mr. LENZNER. Go ahead and tell us what you meant when you wrote it.

Mr. CAULFIELD. My impression was that someone had viewed the sensitive case report, and reported what was contained on it. That's what I really meant by a "back-door copy," without an official, internal IRS request.

Mr. LENZNER. What was Mr. Acree's position at the IRS?

Mr. CAULFIELD. He was Assistant Commissioner for Inspection.

Mr. LENZNER. And in that position, did he not have regular access to sensitive case reports?

Mr. CAULFIELD. I am not familiar with the IRS procedures; whether or not he would have, officially or unofficially. I am not familiar with how that works.

Mr. LENZNER. Were you aware of whether Mr. Barth had access to sensitive case reports?

Mr. CAULFIELD. Yes; I was. But I hasten to add that sensitive case report, in all likelihood, is probably a very general procedure. I do know for a fact that part of Mr. Barth's duties were to keep the Secretary of the Treasury advised of sensitive case reports. Whether or not the same procedure down at the bureaucratic level is the same, I do not know.

Mr. LENZNER. All I am asking, Mr. Caulfield, is, Were you aware that Barth had access to sensitive case reports on a regular basis?

Mr. CAULFIELD. Now, I prefer that you would be more specific about sensitive case reports, because Mr. Barth had access to certain sensitive case reports.

Mr. LENZNER. Which case reports did he have access to?

Mr. CAULFIELD. Apparently, those which required that the Secretary of the Treasury be kept apprised on a monthly basis.

Mr. SEARS. Mr. Caulfield was aware of the fact that Mr. Barth—evidently, according to what Mr. Barth had told him in social conversation, I guess—performed the function of keeping the Secretary of the Treasury, whoever he was, briefed on so-called sensitive case reports. I do not know whether—I do not think that Mr. Caulfield was ever aware of what those case reports were, or who were involved in them. Is that correct?

Mr. CAULFIELD. No.

THE WHITE HOUSE,
Washington, D.C., September 30, 1971.

Memorandum for John W. Dean, III
From: Jack Caulfield
Subject: Billy Graham, John Wayne IRS activity

Graham is currently under IRS audit (Atlanta region). His 1965, 1966, 1969 and 1970 returns are being scrutinized with a view toward determining whether gifts made to Graham are in fact taxable income.

A discreet check indicates that an "anonymous" telephone call may have initiated the audit. A "back door" copy of the sensitive case report out of Atlanta has been viewed and contains a reference to this fact. However, the copy on hand at the Washington office indicates that normal IRS audit procedures caused the inquiry.

Some of the areas to be looked into are:

Construction work performed free of charge
Decorator work performed free of charge
Clothing received as gifts from Charlotte & Ashville, North Carolina stores
Tuition involved in sending Graham's children to foreign schools

The contacting of a number of Graham donors by IRS investigators suggests that the inquiry might possibly surface in the media. Judgments should be made accordingly.

The material requested regarding John Wayne is not yet in. Will advise.

4. Mr. John J. Caulfield has testified that Mr. John Dean asked him to obtain tax information on Mr. John Wayne. Mr. Caulfield further testified that as a consequence of this request, he obtained information for Mr. Dean from Mr. Vernon Acree dealing with audit examinations of individuals in the entertainment industry. Mr. Caulfield testified that the individuals on whom the information was obtained were selected by Mr. Acree. (Testimony of Mr. John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, Saturday, March 23, 1974.)

Mr. LACKRITZ. Do you recall any specific requests that you made to either Mr. Acree, Mr. Barth, or any other individuals in the IRS, for information from the tax returns of any individuals or organizations?

Mr. SEARS. Well, the only problem in your question is your inclusion of the words, "from the tax returns," because I do not know.

Mr. LACKRITZ. I can rephrase that, John. Do you ever recall requesting any tax information about specific individuals or organizations from any individual in the IRS?

Mr. CAULFIELD. Off the record.

[Discussion off the record.]

Mr. SEARS. Could we have the question again, please?

Mr. LACKRITZ. Mr. Caulfield, do you recall ever requesting tax information about any specific individuals or organizations from anyone in the IRS?

Mr. CAULFIELD. I recall transmitting a request for tax information from Mr. Dean, period.

Mr. LACKRITZ. Do you recall any of the specific requests that Mr. Dean asked you to obtain?

Mr. CAULFIELD. Yes; I do. I recall the requests for tax information as to the tax status of Mr. John Wayne and Mr. Billy Graham.

Mr. LACKRITZ. Could you turn to tab 15[1] of exhibit 1 from last week? Can you identify that first memorandum from yourself to John Dean, dated September 30, 1971?

Mr. CAULFIELD. Yes; that is mine, yes.

Mr. LACKRITZ. Those are your initials? They are somewhat faded.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. I take it this is your report back to Mr. Dean on his request for information on the status of Billy Graham's and John Wayne's tax returns?

* * * * * * *

Mr. LACKRITZ. All right, Mr. Caulfield, in tab 15 I would like for you to turn back to the note on White House notepaper to John W. Dean III from John J. Caulfield, dated October 6, 1971, a remark saying, "The Wayne complaint when viewed in the attached context, does not appear to be strong enough to be pursued.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. Can you identify that as coming from your office?

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[1] See Book 21, p. 9808.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. Turning the page, the following four pages appear to be information from audit examinations of individuals in the entertainment industry. Did you obtain that information for Mr. Dean?

Mr. CAULFIELD. Yes; I did.

Mr. LACKRITZ. And where did you obtain that information?

Mr. CAULFIELD. From Mr. Acree.

Mr. LACKRITZ. And how did Mr. Acree provide you with this information?

Mr. CAULFIELD. He turned it over to me at my office.

Mr. LACKRITZ. From what kinds of material? Did he turn over official documents to you or did he turn over this particular memorandum to you? Did you write this memorandum after receiving information?

Mr. CAULFIELD. I don't know whether I copied it or it was written in longhand in the form that appears here.

Mr. LACKRITZ. I see. And was this—did you obtain this kind of information from Mr. Acree on a regular basis?

Mr. CAULFIELD. No. This was the only occasion that I know of that information of this type was ever received.

Mr. LACKRITZ. And you say this information is from audit examinations of taxes of years past. Is that correct?

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. Turning to the third page of that attachment, there is a request for tax information in the middle of Mr. Ronald Reagan. I take it at that time Mr. Reagan was Governor of California still, was he not?

Mr. CAULFIELD. I guess so.

Mr. LACKRITZ. Did you suggest these individuals yourself to make the sampling or were these suggested for you by Mr. Acree?

Mr. CAULFIELD. These were selected by Mr. Acree as I recall.

Mr. LACKRITZ. Pursuant to your request?

Mr. CAULFIELD. Pursuant to my request to see whether or not—supportive of the request of making a determination as to whether or not Mr. John Wayne was being harassed.

Mr. LACKRITZ. Was this information communicated back to Mr. Wayne to your knowledge?

Mr. CAULFIELD. I have no knowledge of that.

THE WHITE HOUSE,
Washington, D.C., October 6, 1971.

To: John W. Dean, III
From: John J. Caulfield
Action:
Approval/Signature
Comments/Recommendations
For Your Information
File

Remarks: The Wayne complaint when viewed in the attached context does not appear to be strong enough to pursue.

Subject: Audit Examinations of Individuals in the Entertainment Industry Who Are Politically Active.

Per your instructions of September 28, 1971, we have selected some individuals in the entertainment industry who were politically active during prior elections and determined their audit history. We attempted to select those individuals whose economic condition is similar to that of JOHN WAYNE. Our review showed the following:

Period	Action	Results of examination deficiency or (over-assessment)
Richard Boone—SSN 564-14-6503:		
7012	Open in audit	
6912	do	
6812	Examined	$363
6712	do	1,014
6612	Surveyed before assignment	None
6512	Examined	(1)

See footnotes at end of table.

Period	Action	Results of examination deficiency or (overassessment)
Sammy Davis, Jr.—SSN 362-24-9919:		
6912	Open in audit	
6812	do	
6612	Examined	$5,531
6312	do	8,683
6212	do	6,674
6112	do	15,795
Jerry Lewis—SSN 144-12-6399:		
7012	Open in audit	
6912	do	
6812	Examined	11,266
6612	do	30,099
6512	do	94,272
6412	do	28,131
6312	do	142,718
6212	do	28,471
6112	do	22,096
6012	do	26,437
5912	do	47,983
5812	do	30,839
Peter Lawford—SSN 554-16-4546 :[3]		
6912	Examined	12,465
6812	do	10,348
6712	do	7,172
6612	do	2,735
Fred MacMurray—SSN 564-09-2582:		
6912	Examined	693
6712	do	(1)
6612	do	11,628
6512	do	607
6412	do	(1,371)
6312	do	6,789
6212	do	(4,340)
Gary Morton and Lucille Ball—SSN 091-18-5014:		
6912	Open in audit	
6812	do	
6612	Surveyed after assignment	
6512	Examined	7,010
Ronald W. Reagan—SSN 480-07-7456:		
7012	Open in audit	
6912	do	
6812	do	
6712	do	
6612	Examined	(1)
6512	do	1,122
6412	do	3,541
6312	do	3,660
6212	do	4,778
Frank Sinatra—SSN 929-29-0367:[3]		
6812	Open in audit	
6512	Surveyed claim	
6412	Examined	5,708
6312	do	5,732
6212	do	7,271
6012	do	12,086

[1] No change.
[2] Prior year returns appear to have been filed in New York.
[3] Intelligence control card records show an open full-scale investigation on Sinatra covering the years 1962 through 1965 It is not known if this investigation involves subsequent years.

Mr. JOHN WAYNE's audit history, per the Form 1247 cards, is shown below:

Period	Action	Results of examination deficiency or (overassessment)
6912	Open in audit	
6812	do	
6712	do	
6612[1]	do	
6612[1]	Examined	237,331
6512	do	7,396
6412	do	6,389

[1] The 6612 year was reopened due to an investment credit carryback.

The Revenue Agent currently assigned the JOHN WAYNE returns advised that the 1962 and 1963 tax years had also been examined, however, the Form 1247 record cards showing those years as being examined were not in the closed file at the date of our review.

5. Mr. John J. Caulfield has testified that Mr. John Dean asked him to obtain background information on Mr. Lawrence Goldberg, and that as a consequence, Mr. Caulfield asked Mr. Vernon Acree to provide information on Mr. Goldberg's financial status. Mr. Caulfield testified that he obtained from Mr. Acree tax information on Mr. Goldberg, and that this information included a photocopy of a page of Mr. Goldberg's tax return. Mr. Caulfield testified that the investigation on Mr. Goldberg was to establish his reliability for working in the reelection campaign for President Richard M. Nixon. (Testimony of Mr. John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, Saturday, March 23, 1974.)

Mr. LACKRITZ. Mr. Caulfield, did you ever obtain information from the tax returns of Mr. Lawrence Goldberg?

Mr. CAULFIELD. Yes; I believe that I did.

Mr. LACKRITZ. Do you recall how the request was initiated?

Mr. CAULFIELD. I know there is a memorandum, and I believe it is in your possession. It would be helpful for me in recalling just how that came about.

Mr. LACKRITZ. If it will refresh your recollection, why do we not turn to tab 12[1]: the first page of that attachment is a note from John J. Caulfield to John W. Dean, dated September 22, 1971. Can you identify that?

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. And the next page is a memorandum about Lawrence Goldberg. Do you recognize that as being your memorandum?

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. Would you like to take a moment to read that to refresh your recollection?

Mr. CAULFIELD. Yes, I have read it.

Mr. LACKRITZ. All right. Could you—do you recall that Mr. Dean requested you to obtain this information on Mr. Goldberg?

Mr. CAULFIELD. Yes. He wanted, as I recall, he wanted background information on Mr. Goldberg.

Mr. LACKRITZ. I see. Now, in the memorandum, in the one, two, three, fourth short paragraph there, you say, "I am waiting for results of an IRS check on Goldberg's financial status."

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. What do you mean by that?

Mr. CAULFIELD. I asked Mr. Acree to provide information on Mr. Goldberg's financial status.

Mr. LACKRITZ. What do you mean by financial status?

Mr. CAULFIELD. There was some, as I recall, in connection with the request there was some question as to whether or not Mr. Goldberg was financially sound.

Mr. LACKRITZ. For the purposes of establishing his reliability for working in the campaign. Is that correct?

Mr. CAULFIELD. That's correct.

Mr. LACKRITZ. The campaign of 1972?

Mr. CAULFIELD. That's correct. As I recall, he was about to go over to the Committee To Re-Elect and there was, if I am not mistaken, there was an allegation that he may not have been financially sound, and that was one of the aims of the inquiry.

Mr. LACKRITZ. When you say financially sound, do you mean solvent?

Mr. CAULFIELD. Solvent, yes.

Mr. LACKRITZ. So, did you then obtain information from Mr. Goldberg's tax returns to insure that he was financially solvent? [Pause.] Mr. Caulfield, I would just like to draw your attention to the last paragraph of your memorandum on that one page there. It says, "inasmuch as Goldberg is scheduled to function in 1701 in the Jewish area, consideration should be given to a potential question of loyalty with respect to the aims and purposes of that operation."

Does that not indicate that the purpose of this memorandum was more to check on Mr. Goldberg's political loyalty than his financial solvency, and in fact, is that not the thrust of that whole——

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[1] See Book 21, p. 9796.

Mr. CAULFIELD. No I wouldn't put it that way, just the way it's written. I think that the focus in the early part of the memorandum, regarding the request for financial information, was the thrust and focus of it, and I refer you to the first sentence of the memo which indicates that I had conferred with John McLaughlin.

Mr. LACKRITZ. Who is John McLaughlin?

Mr. CAULFIELD. He was then on the White House staff and came from that area, if I am not mistaken.

Mr. LACKRITZ, Is that Father McLaughlin?

Mr. CAULFIELD. Yes. And he referred me to Donald Wyatt, the U.S. marshal in Rhode Island, and I believe I had a conversation with him as well as a conversation with McLaughlin. I am fairly certain that John McLaughlin knew Lawrence Goldberg.

Now, the information regarding his active participation in Jewish groups emanated from the inquiry. It was not the purpose of the inquiry, as I recall, and some of the comments, if I am not mistaken, that I received, both from McLaughlin and Wyatt led me to make the comment that I did in the last paragraph.

So my answer to your question is that the aim and purpose of the inquiry was to establish whether or not Mr. Goldberg was financially solvent, and I followed through on that by speaking with Mr. Acree, and he provided the information that is contained on the last three pages.

Mr. LACKRITZ, I see, and that information comes directly from the tax return of Mr. Goldberg, is that correct?

Mr. CAULFIELD. Does it?

Mr. SEARS. Did you ever see Mr. Goldberg's tax return?

Mr. CAULFIELD. No, I never saw it.

Mr. LACKRITZ. But you were given this information?

Mr. CAULFIELD. By Mr. Acree. And in all likelihood, I indicated to Mr. Acree that Mr. Goldberg was going over to the Committee To Re-Elect and working in the Jewish area.

Mr. LACKRITZ. Mr. Caulfield, drawing your attention—actually there are four pages that are tax information, as I understand it.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. And the second page of that tax information, does that item not appear to be a Xerox of a tax return?

Mr. CAULFIELD. Which?

Mr. LACKRITZ. The second page.

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. That is a Xerox of a tax return?

Mr. CAULFIELD. Yes.

Mr. LACKRITZ. And that was provided to you by Mr. Acree, is that correct?

Mr. CAULFIELD. That is correct.

Tab 12

THE WHITE HOUSE,
Washington, D.C., September 22, 1971.

To: John W. Dean, III
From: John J. Caulfield
Action:
Approval/Signature
Comments/Recommendations
For Your Information
File
Remarks:
Subject: Goldberg, Lawrence Yale

I have conferred with John McLaughlin and he has referred me to Donald Wyatt, the United States Marshal in Rhode Island.

Wyatt provided the following input:

(A) Goldberg is wealthy, having been a principal owner in the American Wholesale Toy Company of Rhode Island. Assertedly, his father currently owns the business.

I am waiting for results of an I.R.S. check on Goldberg's financial status.

(B) Goldberg has a long time (12 years) history of involvement in Republican politics in the State of Rhode Island. For example, during the period of 1969–1970, he worked for R.N.C. in Washington, D.C. In '64 he worked for the unsuccessful Bruce Selya campaign for the position of Attorney General in Rhode Island.

Assertedly, for the past two years he has been the finance chairman of the Rhode Island State Central Committee. Selya, I am told, recommends Goldberg highly.

In addition, Goldberg has practiced law with former Republican Governor Del Sesto of Rhode Island.

(C) On the derogatory site, it is asserted that Goldberg went through a messy divorce which was common knowledge amongst his R.I. friends, but apparently did not appear in the media.

(D) It has been determined that Goldberg is actively engaged in Rhode Island B'nai Brith-Anti Defamation League activities. In January of this year, Goldberg and two other members of A.D.L. appeared backstage at a Boston theatre where a travelling Russian entertainment group was performing. Their purpose was to express dissatisfaction with the Soviet repression of Jewish civil rights in the Soviet Union.

(A) Wyatt advises that at a summer '69 meeting of R.I. Republican officials, Goldberg made strong comments vis a vis U.S. policy toward Israel in the Mid-East. He attempted at this meeting to commit the assembled group towards the position of having the State Department modify its Mid-East policy.

Inasmuch as Goldberg is scheduled to function at 1701 in the Jewish area, consideration should be given to a potential question of loyalty with respect to the aims and purposes of that operation.

THE WHITE HOUSE,
Washington, D.C., October 6, 1971.

Memorandum for John W. Dean, III
From: Jack Caulfield
Subject: Lawrence Yale Goldberg

The attached history of financial contributions is for your information. As you can see, it postures an extremely heavy involvement in Jewish organizational activity.

I don't wish to raise this issue again. However, in my judgment, the Attorney General should be discreetly made aware in this regard. I regard this note as a memorandum for my files. I suggest you do the same, John.

6. Mr. Robert V. Barth, formerly Assistant to the Commissioner of Internal Revenue, has testified that he or Secretary of the Treasury George Shultz "transmitted a copy of the sensitive case report of the Hughes project to Mr. John Ehrlichman at the White House * * *." Mr. Barth has testified that shortly thereafter he was asked by Mr. Ehrlichman about the "tax treatment or implication of the payments to Lawrence O'Brien." Mr. Barth has testified that, as a consequence, he asked either Mr. Vernon Acree or Mr. Frank Geibel "for Lawrence O'Brien's tax returns and asked that they get them in a way that the agents working on the case in the field wouldn't know that I had requested them." Mr. Barth testified that he also obtained the tax returns of Joseph Cafall Associated, a partnership in which Mr. O'Brien may have been involved. Mr. Barth further testified that he "advised Mr. Ehrlichman that I had checked it, and that there appeared to be enough gross income to cover this amount, and he said, 'Fine, thank you very much.'"

Mr. Barth also testified that "there was no question about Mr. Ehrlichman, being entitled to tax information."

Mr. Barth also has testified that "there are really no good guidelines" for determining how many individuals within the White House would be entitled to tax information, such as Mr. O'Brien's tax returns, on a regular basis. (Testimony of Mr. Roger Barth before the Senate Select Committee on Presidential Campaign Activities, Thursday, June 6, 1974.)

Mr. LACKRITZ. Do you recall the date that the sensitive case report came to your attention? You say it was early 1972?

Mr. BARTH. Early 1972, and my best guess would be around May of 1972.

Now, when I received this report, I, of course, went through the normal procedure of taking it to Secretary Shultz, and either he or I transmitted a copy of the sensitive case report of the Hughes project to John Ehrlichman at the White House because of the fact that there were allegations or representations in the report of possible wrongdoing by Mr. Rebozo and Mr. Nixon, the President's brother or brothers.

Sometime thereafter, not very long thereafter, I was either called on the phone or went over—I can't remember which—to Mr. Ehrlichman's office, and I think I went over there, as a matter of fact. I am just not positive. And he asked that he be kept advised of the development of this Hughes project as it related to Mr. Rebozo and the Nixon brother or brothers. And in the conversation about that,

he raised the question of whether, you know, what would be the tax treatment or implication of the payments to Lawrence O'Brien. If this were a political contribution by the Hughes Tool Co., it could conceivably be a violation of the Corrupt Practices Act, and if it were deducted by the corporation, it could be a violation of the tax laws. On the other hand, if it were compensation for consulting services to Mr. O'Brien or his firm, then he raised the question of would this be reported by Mr. O'Brien.

I thought that this was a reasonable question that he asked, and I told him I would check it out, but I did not want to make any contact with our field personnel through normal channels because I did not want to give the impression I was on behalf of the Commission or was trying to instigate any audit of Mr. O'Brien. So what I did was go to the Assistant Commissioner of Inspection. I believe, or one of his Division Directors, I have forgotten which.

Mr. LACKRITZ. Who was this assistant?

Mr. BARTH. Vernon Acree at the time, or maybe Frank Geibel had become. I am not sure. Now, I think Acree had left. I think it might have been Geibel. I'm not positive on the date.

Mr. LACKRITZ. Frank Geibel?

Mr. BARTH. Or it would have been Geibel then, or if he wasn't there, one of the Division Directors. In any event, I asked for Lawrence O'Brien's tax returns and asked that they get them in a way that the agents working on the case in the field wouldn't know that I had requested them. And they did this, and what I did, I just looked at the tax returns of Mr. O'Brien and his consulting firm and made sure that there was enough gross income reported for those years, the 2 years involved, to cover the $300,000 and whatever it was. In other words, say it was that they only reported $150,000 gross, then I would have been obliged to refer it to a normal course of investigation.

The amount reported was in excess of that, but there was, of course, no identification as to where this money came from. It might have been from other consulting firms, but I felt that it should not be pursued further, and I so advised Mr. Ehrlichman that I had checked it, that there appeared to be enough gross income to cover this amount, and he said, "Fine, thank you very much."

* * * * * * *

Mr. ARMSTRONG. Now, regarding the O'Brien matter, was there any other information there that would be helpful, anything that is relevant there? Did you have any other sources other than his tax return on one occasion and the sensitive case report?

Mr. BARTH. No. I think those are the only documents that I had. Well, is the partnership—I think it was a partnership return that he was involved in—those to the consulting firm. And I had those returns.

Mr. ARMSTRONG. Those are the Joseph Cafall Associates?

Mr. BARTH. Yes, I think that was the name of it. But it was a partnership that he was involved in.

Mr. ARMSTRONG. Now, you didn't get any other additional information from anyone in the field or anyone else in the IRS?

Mr. BARTH. No, I don't believe I had any other additional information because I was trying to keep it confidential.

* * * * * * *

Mr. LACKRITZ. Well, was this the normal procedure, for you to check on individual tax returns mentioned in sensitive case reports?

Mr. BARTH. No, normally. As far as Mr. Ehrlichman would be concerned, he would be interested in knowing, for example, just on a continuing basis if there was a particular case of concern, for example, with the President's osteopath, Dr. Ryland, he would just want to know on a continuing basis. This was unusual in that I got the returns.

Mr. LACKRITZ. Was this the first time you got the returns?

Mr. BARTH. I think it was probably the first and to my recollection, probably the only time that I got individual returns, and that is why I wanted to make sure that the way that I did it was a way that would not give an impression that I was trying to instigate an audit of Mr. O'Brien, because it is not usual for the Assistant to the Commissioner, or at least for me as Assistant to the Commissioner. There were some things earlier, but it wasn't normal practice for me to go poking around in specific sensitive case reports into the substance of the thing, or getting tax returns and doing any checking on it.

I would inquire as to the status of them periodically, yes, but not go get tax returns and go through this type of check. But it was in unusual circumstances

where there might have been a question, if it was not treated in the right way, that there was a violation of the law, either by the corporation or by Mr. O'Brien. But I felt that it should be handled in a way where the field did not know that I was even thinking of the question.

Mr. LACKRITZ. Well, were you concerned about the disclosure regulations in terms of obtaining tax information that you would then pass on to Mr. Ehrlichman?

Mr. BARTH. Oh, no, there was no question about Mr. Ehrlichman being entitled to tax information. That didn't concern me. It's only that I didn't want to be in the posture of calling down to our compliance people and saying, pull Lawrence O'Brien's tax returns. See if he reported income that I see reflected here in the sensitive case report.

Mr. LACKRITZ. You felt that you should do that on a discreet basis?

Mr. BARTH. Yes. I thought they would get the impression that I was trying to steer them in a particular direction, and I didn't want to do that.

Mr. LACKRITZ. Well, you said that there is no question that Mr. Ehrlichman was entitled to that information. How many other individuals within the White House would be entitled to tax information such as Mr. O'Brien's tax returns on a regular basis?

Mr. BARTH. Whether on a regular basis or on a shot basis, it would be the same under the law, and there are really no good guidelines for that. And in 1969 when Clark Mollenhoff was Special Counsel to the President, he requested some tax returns, and this raised the question to then-Commissioner Thrower and me, what do we do about this, and we checked and found the precedents going back to Commissioner Caplin, the 1962 memo from—1961 memo from Mr. Caplin relating to access of White House staff personnel to tax returns, and he thought it was very clear that they had the authority to get the tax information and he referred to Carmine Bellino, who came over and looked at a number of tax returns and so on. I am sure you are probably familiar with that background.

Well, this is the premise on which we proceeded, that there was the authority there. But Commissioner Thrower and I wanted to establish a procedure so that if years later somebody raised any question we would be able to point to with those tax returns that had gone over to the White House. So we established a procedure with Mr. Mollenhoff, whenever he asked for returns. I think there were maybe 9 or 10, he would do so in writing and with the indication that he was doing it on behalf of the President. And IRS has copies of those requests, and I believe that Mr. Mollenhoff was the only one who got the tax returns.

Mr. LACKRITZ. Did you ask Mr. Ehrlichman for some more written requests?

Mr. BARTH. No, he never saw those tax returns.

Mr. LACKRITZ. I see, but you did explain to him that the tax returns indicated no problem.

Mr. BARTH. Oh, sure, right. But he did not get the tax returns, no. That I did myself.

Mr. LENZNER. Did you retain copies of the returns?

Mr. BARTH. I think I just shredded them because they came from Inspection and they had come from the Service Center, and they had no further need for them. So I am pretty sure I just shredded them. But they at no time went over to the White House.

Mr. LENZNER. Did you furnish anybody else with copies of them?

Mr. BARTH. No, sir.

7. Mr. Robert V. Barth has testified that Mr. John Ehrlichman had been advised that "as part of the Hughes project, the Revenue agents involved wanted to interview Mr. Rebozo and the President's brother, Donald Nixon." Mr. Barth testified that Mr. Ehrlichman told him to "Go ahead with the interview of Mr. Rebozo, but would you do me a favor and call Mr. Rebozo first and tell him that you talked to me and that there will be Revenue agents coming?" Mr. Barth also testified that Mr. Ehrlichman advised him that he had talked to President Nixon about the interview of his brother, and that "the President said to go ahead and treat him like any other taxpayer." Mr. Barth testified that he subsequently called Mr. Rebozo and "told him exactly what Mr. Ehrlichman had asked me to say * * *" (Testimony of Mr. Roger Vincent Barth before the Senate Select Committee on Presidential Campaign Activities, Thursday, June 6, 1974.)

Mr. LACKRITZ. It was in the context of this investigation that Mr. Rebozo's name was mentioned?

Mr. BARTH. That is the best of my recollection, yes.

Mr. LACKRITZ. Have you looked at the sensitive case reports recently?

Mr. BARTH. Not recently.

Mr. LACKRITZ. When was the last time?

Mr. BARTH. Oh, I think maybe last November or December, something like that. Around the time that I was going to meet with either the joint committee or the Special Prosecutor's people, and so on.

Mr. LACKRITZ. Do you recall the specific allegations concerning Mr. F. Donald Nixon in that report?

Mr. BARTH. No. It was just, somehow he was involved in them or it's alleged that he was involved in the scheme or was close to some of these people who were purportedly bilking the Hughes Tool Co., something like that.

Mr. LACKRITZ. At that time were there any requests made of the Internal Revenue Service or made up through channels in the Internal Revenue Service to conduct interviews with either F. Donald Nixon or Mr. Edward Nixon or Mr. Rebozo?

Mr. BARTH. Now that occurred in the spring of last year—1973. That was not anything in 1972. The interview situation came in 1973. And would you like me to describe that?

Mr. LACKRITZ. Yes. Why don't you go ahead and describe that?

Mr. BARTH. OK. To the best of my recollection. I think Commissioner Walters was out of town or out of the country sometime in, oh, maybe March or April of 1973, and Mr. Ehrlichman called me over to his office and showed me a memo, I think addressed to Secretary Shultz from the Commissioner. And in that memo it set forth that, as part of the Hughes project, the Revenue agents involved wanted to interview Mr. Rebozo and the President's brother, Donald Nixon. And he was advising the Secretary of the fact that this request was being made.

So Mr. Ehrlichman said, I think he said something like: "Go ahead with the interview of Mr. Rebozo, but would you do me a favor and call Mr. Rebozo first and tell him that you talked to me and that there will be Revenue agents coming?"

Well, first, I think he asked me the question. He said, "Does it seem to be an appropriate request? Does it look like there's any problem here?" And I said, "I don't know." From what I saw I said I had seen the memo before. I didn't know it had been sent to the Secretary.

He asked whether this looked like anything serious, and I said, "No, I don't think so. It looks like a relatively routine third-party inquiry." He said, "Will you call Mr. Rebozo and tell him that I asked you to call? 'Agents will be coming to visit you, but it looks like they're just looking for some routine help on a larger case.' "

So I went back to IRS and I don't remember if I waited until the Commissioner came back to the office or back to town or wherever he was, or whether I immediately called Mr. Rebozo. I don't remember the chronology of it exactly. But I called Mr. Rebozo——

Mr. LACKRITZ. Down in Florida?

Mr. BARTH. I believe he was in Florida. Mr. Ehrlichman said to call the White House operator and ask them to connect me with him. And I did it that way. I didn't have his phone number.

So I called him and introduced myself and told him exactly what Mr. Ehrlichman had asked me to say, that he would be contacted by some agents; that it appeared to be a routine investigation relating to some other matters; that just as a matter of courtesy, we wanted him to know that these agents would be coming to see him.

I advised both Commissioner Waters of the fact and also Commissioner Alexander—and I'm going to back up just 1 second.

After he said to go ahead, you know, and have them go ahead with the routine interview of a normal course of Mr. Rebozo, he said: "I haven't had a chance to mention to the President the fact that the IRS wants to talk to his brother. Could you hold up on that a couple of days to give me a chance to do that? and I'll give you a call." So I said, "Fine, OK."

So then a few days later he called me and said: "I've talked to the President. The President understands that his brother has to be interviewed, and the President said to go ahead and treat him like any other taxpayer." And so then I transmitted information on both individuals to the Commissioner, and either the Commissioner or I advised Mr. Hanlon, the Assistant Commissioner of Compliance, who was the top of the channel on the request from the agents—the agents

worked under him—to go ahead with the thing. And I think I probably did advise Mr. Hanlon, but I am not positive.

8. Mr. Clark R. Mollenhoff (formerly Special Assistant to the President) stated in an affidavit that he requested a report from the Internal Revenue Service on its investigation of alleged illegal campaign contributions relating to the 1968 Presidential campaign of Governor George Wallace and of unreported income received by his brother, Gerald Wallace. Mr. Mollenhoff stated he asked the Commissioner of Internal Revenue, Randolph Thrower, for this information. Mr. Mollenhoff stated that he received the report from the Assistant Commissioner (Compliance) Donald Bacon. Mr. Mollenhoff additionally stated that he delivered the report to Mr. H. R. Haldeman. (Affidavit of Mr. Clark R. Mollenhoff to the House Committee on the Judiciary, dated June 4, 1974.)

Mr. Randolph W. Thrower, formerly Commissioner of Internal Revenue, stated in an affidavit that Mr. Clark Mollenhoff asked him about filed examinations by the Service of the possible diversion of political contributions for the benefit of private individuals in the 1968 campaign of George Wallace of Alabama. Mr. Thrower said Mr. Mollenhoff advised him that the report was desired by or on behalf of the President and in connection with his official responsibilities. Mr. Thrower stated that he asked the office of the Assistant Commissioner (Compliance) to prepare a memorandum dealing with this inquiry, and he reviewed and sent this memorandum to Mr. Mollenhoff at the White House. (Affidavit of Randolph W. Thrower for the House Committee on the Judiciary dated May 24, 1974.)

1.3 Clark Mollenhoff Affidavit

District of Columbia, ss:

Clark R. Mollenhoff, being first duly sworn, deposes and says:

1. I was appointed Special Counsel to the President in July 1969. I remained in that position until June 1970, at which time I resigned from the White House staff.

2. Because my responsibilities at the White House included investigation of allegations of corruption or mismanagement in government, I had authority from the President to periodically obtain certain tax returns from the IRS.

3. Early in 1970 I was instructed by H. R. Haldeman to obtain a report from the IRS on its investigation of alleged illegal campaign contributions relating to the 1968 presidential campaign of Governor George Wallace and unreported income received by his brother, Gerald Wallace.

4. I initially questioned Mr. Haldeman's instruction, but (upon his assurance that the report was to be obtained at the request of the President) I requested the report of IRS Commissioner Randolph Thrower.

5. On March 20, 1970, I received a report on the IRS investigation from Assistant IRS Commissioner Donald Bacon.

6. On March 21, 1970, I delivered the report to Mr. Haldeman, on his assurance that it was for the President. I did not give a copy of the report to anyone else nor did I discuss the substance of it with anyone until after the appearance of a column by Jack Anderson.

7. On April 13, 1970 a report appeared in Jack Anderson's column about the IRS investigation. Shortly thereafter, I was requested to meet with Messrs. Haldeman, Ehrlichman and Ziegler. At that meeting they accused me of having leaked the IRS report to the press. I denied having done so and told them that the only copy of the report had gone to Mr. Haldeman.

8. Thereafter Commissioner Thrower questioned me about the leak. I informed him that I had delivered the only copy of the report to Mr. Haldeman and had not leaked the information, that Mr. Haldeman had attempted to blame me for the leak, and that I believed that the leak had occurred at the highest White House level.

Clark R. Mollenhoff.

Dated:

Subscribed and sworn to before me this 4th day of June, 1974.

Marjorie Voekel,
Notary Public, D.C.

My Commission expires February 14, 1978.

Page Four. Contributions

NAME Lawrence Y. & Pearle Y. Goldberg

ADDRESS 411 Tamarack Road

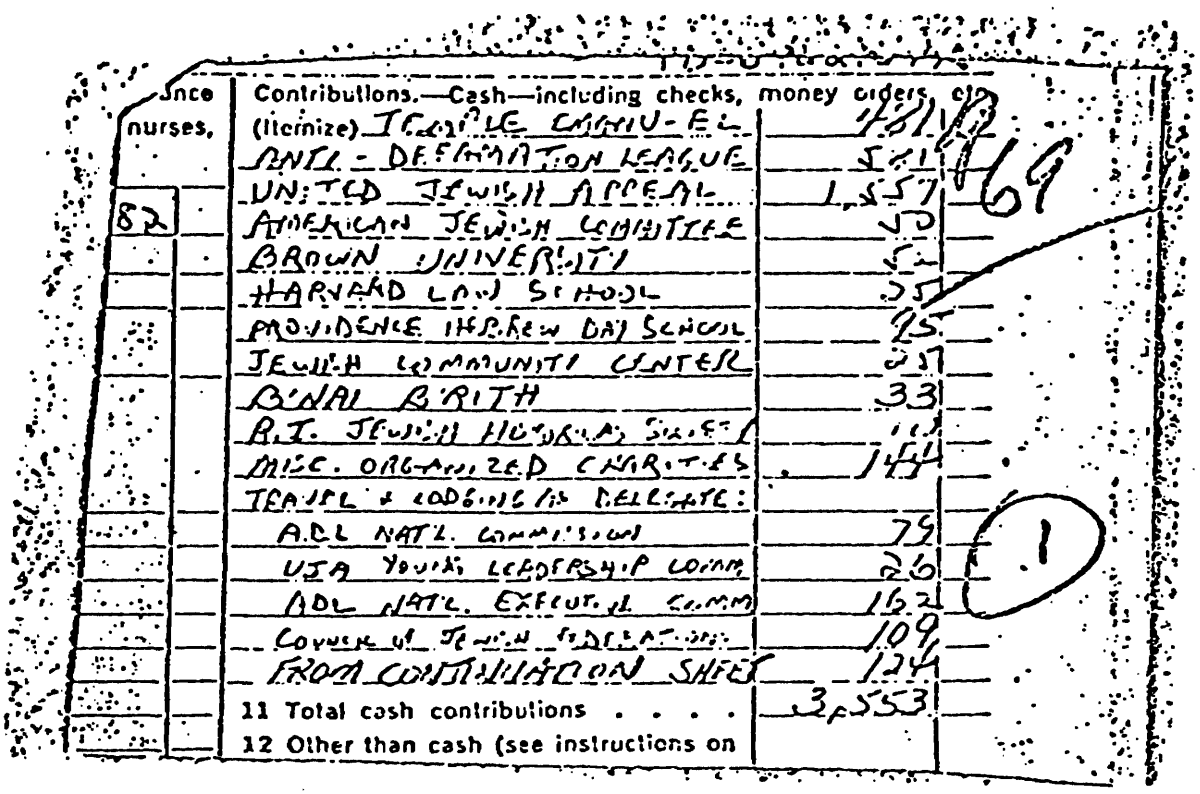
Providence, R.I. 02906

Taxable Year Ended 1967

	Amount	
General Jewish Committee	2500	—
Female Employment	235	—
Brown University	100	—
Miss. Fellowship Clearing	150	—
B'nai B'rith	36	—
Providence Jewish Committee	25	—
Hebrew Orphanage Home	207	50
Jewish Community Center	45	—
Temple & Lodge - Religious Council of Jewish F.C.	220	66
" " " UJA Drive Year	75	—
" " " UJA Annual Meeting	65	—
Total	3659	16

1967

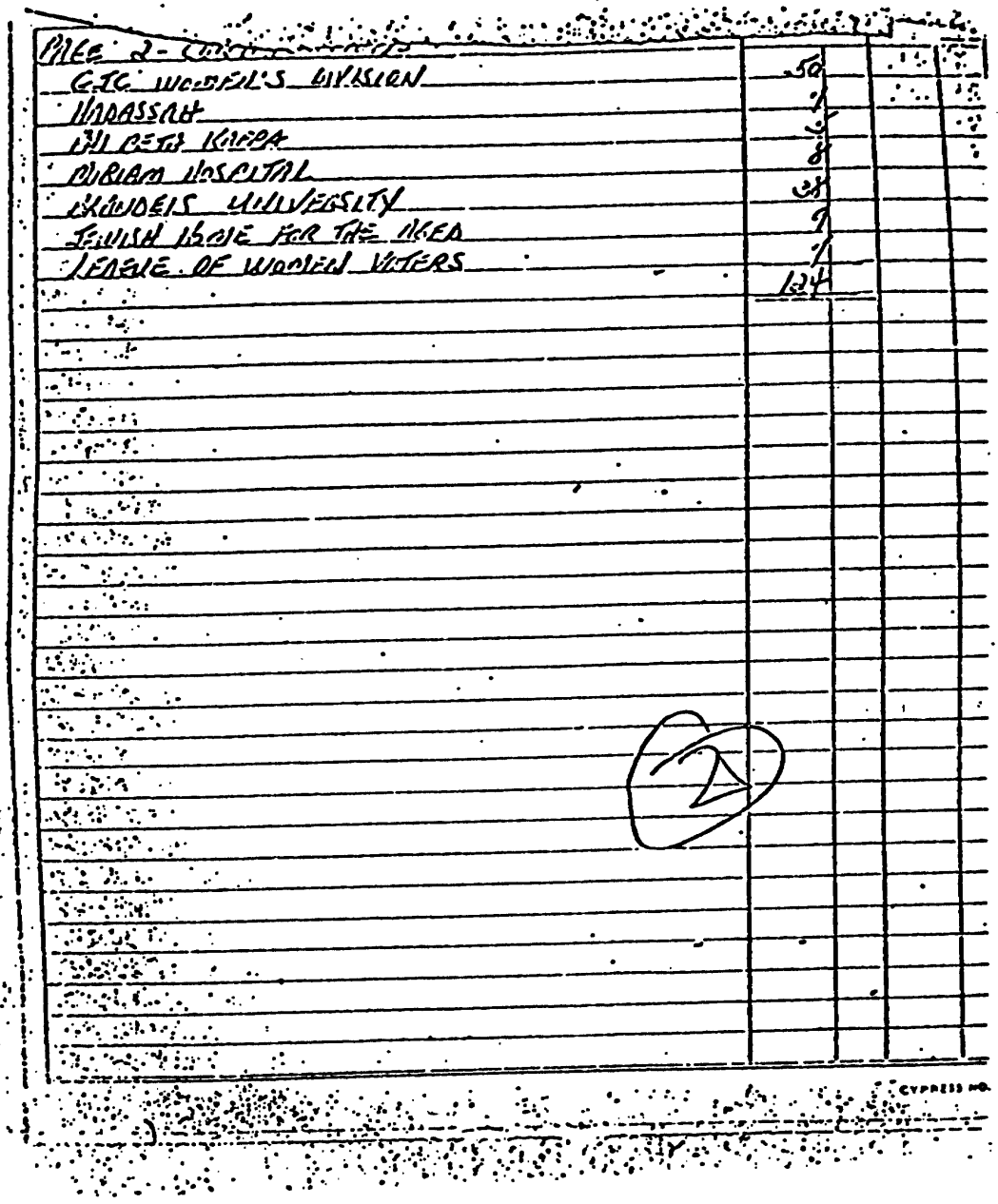
CYPRESS NO. 1001



Since nurses,	Contributions.—Cash—including checks, money orders, etc. (Itemize)	
	JEWISH COMMUNITY	1,511
	ANTI-DEFAMATION LEAGUE	541
82	UNITED JEWISH APPEAL	1,557
	AMERICAN JEWISH COMMITTEE	50
	BROWN UNIVERSITY	52
	HARVARD LAW SCHOOL	55
	PROVIDENCE HEBREW DAY SCHOOL	25
	JEWISH COMMUNITY CENTER	237
	B'NAI B'RITH	33
	R.I. JEWISH HISTORICAL SOCIETY	10
	MISC. ORGANIZED CHARITIES	144
	TRAVEL + LODGING AS DELEGATE:	
	A.D.L. NAT'L. COMMISSION	79
	USA YOUNG LEADERSHIP COMM.	26
	ADL NAT'L. EXECUTIVE COMM.	162
	COUNCIL OF JEWISH FEDERATIONS	109
	FROM CONTINUATION SHEET	124
	11 Total cash contributions	3,553
	12 Other than cash (see instructions on	

1969

1


PAGE 2 - CONTINUED
G.E.C. WAGNER'S DIVISION
HADASSAH
PHI BETA KAPPA
MIRIAM HOSPITAL
BROWN UNIVERSITY
JEWISH HOME FOR THE AGED
LEAGUE OF WOMEN VOTERS
50
1
1
8
34
9
1
134
2
CYPRESS NO.

Name: LAWRENCE Y. & MINNIE Y. GOLDBERG
Address: 60 BROADWAY
PROV., RI 02903
Taxable Year Ended 12-31-7

SCH. A" - CONTRIBUTIONS CASH:	
JEWISH HOME FOR AGED	10
UNIT. JEFFERSON LEAGUE	61
R.I. JEWISH HISTORICAL SOCIETY	10
COUNCIL OF JEWISH FEDERATIONS	36
GENERAL JEWISH COMMITTEE	250
UNITED JEWISH APPEAL	65
BROWN UNIV. - HILLEL FUND	25
B'NAI B'RITH	45
JEWISH FEDERATION OF R.I.	12
TEMPLE EMANU-EL	5281
BROWN UNIVERSITY	100
HIGASSAH	12
B'NAI B'RITH WOMEN	13
PHI BETA CHAPT	10
BROWN U. UNIV.	53
LEAGUE OF WOMEN VOTERS	10
UNIV. OF JUDAISM FUND	10
ELIEZER ORTIST SYNAGOGUE	10
PROJECT HEAD START	10
MISC. ORGANIZED CHARITIES	146
	1228
OTHER THAN CASH:	
TRAVEL AND LODGING AS DELEGATE - COUNCIL OF JEWISH FEDERATIONS	196
1970	

CYPRESS NO.

1

1.4 Randolph Thrower Affidavit

State of Georgia, *County of Fulton*

Personally appeared before me, the undersigned attesting officer, Randolph W. Thrower, who, being duly sworn, deposes and says as follows:

This statement is made upon the basis of my best recollection of the facts and the sequence in which they occurred, without my having had the benefit of reference to files and other materials in the possession of the Internal Revenue Service which would permit a more precise statement.

In the summer of 1970, Clark Mollenhoff, Special Assistant to the President, telephoned me to inquire about an extensive field examination which the IRS was conducting into the possible diversion of political contributions for the benefit of private individuals in the 1968 campaign of George Wallace of Alabama. A brief statement as to the current status of the investigation had been included in our most recent "Sensitive Case Report." For many years reports on the status of sensitive cases within the IRS had been given a very limited and controlled distribution within the Commissioner's staff and a copy had customarily been sent by special courier to the Secretary of the Treasury. I understand that customarily the Secretary of the Treasury would advise the President of any matters in the sensitive case report about which the President, by reason of his official duties and responsibilities, should be advised.

As I recall, Mr. Mollenhoff advised me that the report on the Wallace campaign was desired by or on behalf of the President and in connection with his official responsibilities. In earlier discussions over the disclosure of confidential information in the possession of the IRS, Mr. Mollenhoff and I had reached an understanding that this would constitute a legal justification for the disclosure."

Pursuant to Mr. Mollenhoff's request, I asked the office of the Assistant Commissioner-Compliance to prepare for the White House a summarization of the Wallace investigation in the form of a memorandum from me. A memorandum was prepared which I reviewed and, after a few modifications, sent to Mr. Mollenhoff at the White House.

A few days later a column by Jack Anderson described the IRS investigation of charges of diversion of contributions in the 1968 Wallace campaign. It appeared to me that the Jack Anderson report came directly out of my memorandum. I called in the Assistant Commissioner-Inspection, Vernon D. Acree, and asked him to investigate the possibility of an unlawful disclosure of confidential tax information. I asked him, in partciular, to study carefully my memorandum in relation to other factual summaries in the IRS files, in order to determine whether we could identify any possible source for the Jack Anderson report other than my own memorandum such as other reports in the hands of the IRS or taxpayers' counsel. I also asked him to investigate the possibility of a leak in the movement of my memorandum within the IRS or the Treasury Department. At the time I was leaving the city on official business and asked that he attempt to have a report available on my return.

On my return Mr. Acree advised that my memorandum was clearly the source of the Jack Anderson column. He advised further that he had traced the movement of my memorandum within the Service and the Treasury Department and found nothing to suggest that the leak had occurred in these offices. Thereupon I called Mr. Mollenhoff who, before I could state my complaint, announced that he knew what I was calling about and wanted to assure me that he had not breeched the operating procedures which he and I had developed and that he was in no way responsible for the leak. I told him that while it was a very serious breach of the laws against disclosure, I had felt confident that he was not responsible. I stated, nevertheless, that I was greatly disturbed by it and wanted to know how it possibly could have occurred. Mr. Mollenhoff replied that the responsibility was at a higher level. I asked, "how high?" His response was to the effect that it occurred at the highest level or at the very top. While I do not recall the precise language used, I received the impression that he was referring to Mr. Haldeman or possibly Messrs. Haldeman and Ehrlichman.

Thereafter I telephoned John Ehrlichman to discuss the disclosure and arranged for a meeting at the White House with him and Mr. Haldeman which was attended by the Chief Counsel of the IRS, K. Martin Worthy, and myself. In the conference Mr. Worthy and I discussed the seriousness of the leak and the fact that an unauthorized disclosure constituted a criminal act. I did not make any accusations as Mr. Mollenhoff had asked me to hold in confidence what he had told me as to the apparent source of the leak. Messrs. Haldeman and Ehrlichman

did not indicate to Mr. Worthy and me the source of the leak but did take our complaint seriously and assured us that they would cooperate in undertaking to prevent such incidents in the future and would call the gravity of the situation to the attention of those in the White House who might from time to time have access to such information.

RANDOLPH W. THROWER.

Sworn to and subscribed before me this 24th day of May, 1974.

_____,
Notary Public.

Notary Public, Georgia, State at Large, My Commission Expires June 11, 1974.

THE WHITE HOUSE,
Washington, D.C. March 21, 1970.

1.1 CLARK MOLLENHOFF MEMORANDUM

Memorandum for Bob Haldeman
From: Clark Mollenhoff
Subject: Gerald Wallace and IRS

Attached is a copy of the material on the Gerald Wallace tax matter. As you will see, it's a large case.

The summary makes it apparent the investigation is not conclusive at this state, although it would appear that there is a possibility of a rather large criminal case.

It would seem advisable to let this matter mature a bit, although there might be some advantage in having the Commissioner ask for one or more of the tax returns. This request, which could be complied with through Xerox copies, would not interfere with the investigation and might tend to make the investigators more diligent.

TAX RETURN PRIVACY

I. BACKGROUND

Of all the Watergate abuses of power the most alarming to many citizens was the attempt by White House staff to use the Internal Revenue Service for political purposes—to help friends and to harm enemies. The second article of impeachment adopted by the House Judiciary Committee last July charges this specific misuse of the IRS by former President Nixon:

He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the Constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the Constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

The "Statement of Information" prepared by the House Judiciary Committee contains several examples of the misuse of the IRS during the Nixon Administration: the "leak" of tax information regarding Governor Wallace's brother to the press in 1970; the White House instigation of a tax investigation of Lawrence O'Brien in 1972; John Dean's transmission in 1972 of a list of 575 McGovern supporters and contributors to the IRS and his demand that they be investigated.

Watergate, however, may only have been the occasion which revealed fundamental problems which long before existed regarding income tax privacy. Other incidents of abuse are cited by some who call for legislative action in this area. Thus, Senator Bentsen points out that "according to IRS statistics, during 1973 the following Federal agencies requested and received tax returns from the Internal Revenue Service: Civil Aeronautics Board; Department of Agriculture; Department of Commerce; Department of Health, Education, and Welfare; Department of Justice; United States Attorneys; Federal Deposit Insurance Corporation; Federal Home Loan Bank Board; Federal Trade Commission; Interstate Commerce Commission; Renegotiation Board; Securities and Exchange Commission; Small Business Administration; United States Postal Service; and the Veterans Administration.

"That is 15 different Federal agencies. In addition, practically all State governments and many local governments receive Federal tax returns."

For example, early in 1973, President Nixon issued Executive Order 11679 which authorized the Department of Agriculture to inspect income tax returns filed by persons with farm income. The expressed purpose of the Order was to provide Agriculture Department access to data from farming operations for statistical compilation purposes only. But, the Order allowed *any* and *all* tax return information to be disclosed.

A revised Executive Order (11709) was issued several months later providing that only "names, addresses, taxpayer identification number, type of farm activity and one or more measures of size of farm operations such as gross income from farming or gross sales of farm products" could be supplied by the IRS. Query whether the modified Order was sufficiently protective of farmers privacy interests?

According to one source: IRS investigates between 100 and 200 cases of improper or unlawful disclosure of tax information by state taxing officials to insurance, credit, and private detective agencies each year; in one recent six-month period, the Justice Department requested from IRS some 6,000 returns; and in 1973, IRS investigated 58 internal disclosure violations and 4 cases of revealing confidential information.

II. AREAS OF NEEDED STUDY

(*A*) *Relevant Statutory Provisions*

Section 6103 of the Internal Revenue Code provides, in part, as follows:

"(a) *Public record and inspection.*—(1) Returns * * * shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only *upon order of the President* and *under rules and regulations* * * * *approved by the President.*

* * * * * * *

(b) *Inspection by states.*—(1) State officers.—The proper officers of any state may, upon request of the governor thereof, have access to the returns of any corporation. . . .

(2) State bodies or commissions.—All income returns filed . . . shall be open to inspection by any official, body or commission lawfully charged with the administration of any state tax law, if the inspection is for the purpose of such administration. . . .

(c) *Inspection by shareholders.*—All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) *Inspection by Committees of Congress.*—The statute here provides that the Committees on Ways and Means, Finance, and the Joint Committee on Internal Revenue Taxation, as well as any select committee specifically authorized by resolution to inspect returns, shall have access to any return.

* * * * * * *

(f) *Disclosure of information as to persons filing income tax returns.*—The Secretary or his delegate shall, upon inquiry as to whether any person has filed an income tax return in a designated internal revenue district for a particular taxable year, furnish to the inquirer . . . information showing that such person has, or has not, filed an income tax return in such district for such taxable year."

Section 6103(g) authorizes the Department of Labor and the Pension Benefit Guaranty Corporation, as well as appropriate officers of the Department of Health, Education, and Welfare to examine returns with regard to their responsibilities under the Social Security Act and the Employee Retirement Income Security Act of 1974.

Section 7213 provides the criminal penalties enforcing the prohibitions of Section 6103. Section 7213 states that it is a misdemeanor punishable by a fine of up to $1,000 or, imprisonment of up to one year, or both, for a Federal employee or other person to "make known in any manner not provided by law" any information contained in protected tax materials. Int. Rev. Code § 7123. Where the offender is an officer or employee of the United States government such person is also "dismissed from office or discharged from employment." Int. Rev. Code § 7213(a)(1). Another subsection of Section 7213 extends to employees or agents of any state, and another to shareholders of corporations under Section 6103(c), the penalties of a misdemeanor conviction, and fine of up to $1,000 or imprisonment of up to one year, or both.

(B) Comparative analysis of three legislative proposals on tax return confidentiality: S. 199 (Weicker/Litton) and S. 442 (Bentsen) and S. 1511 (Montoya)

(1) Characterization of Returns

Section 6103(a), as currently in force, makes tax returns "public records," but thereafter limits the inspection of these records.

The Weicker, Bentsen and Montoya proposals change the general character of the tax return from "public" to "confidential," and declare that they shall not be open to inspection nor information therein contained be disclosed except under certain circumstances. A specific exemption from the prohibition is made for statistical information not disclosing the taxpayer's identity, which the Commissioner of Internal Revenue may release.

(2) Definition of "Tax Return"—Protected Materials

A key point of comparison is the definition of "return", because it is this definition which determines the scope of protection afforded by each proposal.

The current definition of a tax return is provided in the Regulations and includes in addition to the individual or corporate return itself, (a) information returns, schedules, lists, and other written statements filed by or on behalf of the taxpayer with the Internal Revenue Service which are designed to be supplemental to or become a part of the returns, and (b) other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included under (a).

The Weicker proposal redefines tax return as: "any form or other document, prepared by or on behalf of a taxpayer and filed under compulsion of law, containing information necessary to determine tax liability under this title."

The impact of this provision is to limit the scope of the confidentiality provided by Section 6103 to the formal return and required supplementary materials. Voluntarily submitted data would appear to be excluded from such protection, as would be data not necessary for tax liability determination.

The Bentsen proposal divides material filed with the IRS into two separate categories: "returns" and "return information". Tax "return" is defined as: "any tax or information return or declaration of estimated tax required by, or provided for or permitted, under the provisions of this title filed by, on behalf of, or with respect to any person with the Commissioner or his delegate, and any amendment or supplement thereto or claim for refund, including supporting schedules, attachments, or lists which are designed to be supplemental to, or become part of, the return so filed."

While this definition includes data which the Weicker's proposal's definition excludes, the Bentsen definition appears to cover most matter currently considered to be "returns". It would specifically guarantee confidentiality of such returns by standards not entirely identical with those it establishes for "return information", which it defines as: "any data including a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any particular of any data, in whatever form (whether as a report, investigative file, memorandum, or other document) or manner received by, recorded by, prepared by, or furnished to the Commissioner or his delegate with respect to a return as described in paragraph (1) or with respect to the existence of the amount of the liability of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition."

As will be seen below, the Bentsen proposal restricts access both to *returns* themselves and to *information compiled from returns. Thus, while the Weicker proposal is more restrictive than the Bentsen proposal as to who may have access, the Bentsen proposal is far more explicit and extensive as to what material is made confidential.*

The Montoya proposal statutorily adopts a definition of "return" as broad as that adopted in the Regulations:

"The term 'return' includes declarations of estimated tax, information returns, schedules and lists accompanying or supplemental to such declarations and returns, and information obtained by the Secretary or his delegates in the administration of this title (other than information which indicates that a taxpayer may be in violation of any provision of title 18)."

Bentsen and Montoya both include "return information" within the scope of confidentiality established by the other provisions of their bills. However, while Bentsen specifically sets out the data comprising "tax information", Montoya conceivably covers even more by referring generally to "information obtained by the Secretary * * * in the administration of this title."

These three definitions, by emphasizing different areas of concern, represent varied approaches to reform in this area. The Bentsen proposal contains a comprehensive delineation of various safeguards regarding tax return and tax information confidentiality, while permitting publication of statistics derived from returns. The Weicker proposal takes a firmer approach with respect to restricting access to "returns", but doesn't concern itself with the use of "return information as such." The underlying approach of the Weicker proposal is that the real evil to be corrected is the disclosure of *tax data which the taxpayer is compelled to file*. The Montoya proposal, while encompassing returns and return information within the definition of items to remain confidential, is aimed at disclosure *without the knowledge and consent of the taxpayer*. It does not bar the use of tax returns or information by individuals and agencies but insists, except in specific circumstances, that it be *consented* use.

(3) Presidential Authority Over Return Disclosure

All three proposals significantly alter the present presidential authority to provide access to tax returns by Order.

Under the Weicker proposal, the President may authorize an inspection but only (1) if he does so in writing, (2) specifically names the taxpayer whose return is to be inspected, and (3) indicates that the inspection is necessary to the performance of his (the President's) official duties.

The Bentsen proposal similarly requires a written presidential request for inspection. Rather than requiring a statement to the effect that the inspection is necessary to the performance of the President's official duties, however, the President would be required to state "the specific need for such return." Moreover, the President would be required to name the White House official authorized to actually make the inspection.

The general approach of the Montoya bill, as previously noted, is to require that, unless specifically exempted, each person desiring to inspect a return must notify the taxpayer in question and have his written consent to make the inspection. The President is not one of those specifically exempted; hence, presidential inspections would require notice and consent. There is a specific provision regarding procedures to be followed when the President is making a "tax check" of prospective employees, however. The President must personally sign a written request containing the name of the individual and the office for which he is being considered. Moreover, the information permitted to be disclosed is limited to whether the individual has filed a return for the three preceding taxable years; has incurred any penalty or has been the subject of a deficiency proceeding within the preceeding 8 taxable years; has been the subject of an investigation for failure to comply with any provision of this title during the last 3 taxable years.

(4) Permitted and Prohibited Inspections

The Weicker proposal establishes six categories of permitted inspections: (1) the taxpayer and his authorized representative, (2) the IRS, the Department of the Treasury, and the Department of Justice where it is relevant to a case referred to them by the Commissioner having to do with enforcement of the tax laws, (3) the Department of Justice for enforcement of the tax laws but only upon a written request of the Attorney General specifically naming the taxpayer under investigation, (4) State bodies charged with tax administration, upon written request of the head of the designated body and naming the representative to inspect or examine the tax returns, and (5) the President of the United States, but only upon written request by the President naming the taxpayer whose return is to be inspected, and only if the return is necessary to the "performance of his (the President's) official duties, (6) the Joint Committee on Internal Revenue Taxation.

The Weicker proposal further orders the Commissioner to submit a quarterly report on inspections under categories (3), (4), and (5) to the Joint Committee on Internal Revenue Taxation. The Joint Committee is authorized to make such reports public as "it deems advisable".

Other agencies are prohibited receipt of other than statistical data under the Weicker proposal. The Social Security Administration and the Railroad Retirement Board are permitted relevant return informaton, but they are the only exception aside from the six categories mentioned heretofore.

The Bentsen proposal establishes seven categories of authorized inspections: the first five apply to returns and return information—(1) the IRS and the Department of the Treasury, and with regard to matters referred to it by the Commissioner, the Department of Justice; (2) any agency charged with enforcement of a statute which has a criminal penalty provision, but only by an order of a United States district court based upon a finding of probable cause to believe the data is both reasonably needed for investigation or prosecution of Federal Criminal laws and that no reasonable alternative to this source exists; (3) State tax bodies, upon the written request of the State's principal tax officer; (4) the President or White House officers, but only upon request signed by the President and designating the officer to make the inspection; (5) the chairmen of the House Committee on Ways and Means, the Senate Finance Committee, and the Joint Committee, sitting in executive session, and the Chief of Staff of the Joint Committee, who may submit the information to another committee on Congress if sitting in executive session, other committee chairmen specifically authorized by resolution to inspect tax returns, and sitting in executive session, and the designated agents of any of these committees; (6) *with regard to the "return" only*, the taxpayer or taxpayers filing the return in question; any person found to have a legitimate interest by the Commissioner where a corporation is in liquidation; a taxpayer's attorney in fact; (7) *return information* may be disclosed to correct misstatements of published fact.

The Bentsen proposal also contains the special provisions for disclosure of certain information to the Pension Benefit Guaranty Corporation and the Department of Labor, as well as to the Social Security Administration and the Railroad Retirement Board. *Another special provision requires the Commissioner to disclose to the Attorney General any information on possible criminial activities under Federal criminal law, revealed on tax returns, and authorizes the Commissioner to do the same with reference to state crimes and state criminal authorities.*

The Montoya proposal, as heretofore noted, establishes a general rule requiring taxpayer consent prior to disclosure of a tax return. There are three classes of exceptions to that rule: (1) tax administration and oversight; (2) criminal investigation; and (3) prospective appointees background check. Areas included within the first exemption are: inspection by a State body solely for the purpose of administering State income tax laws; inspection of a corporate tax return by a shareholder in that corporation; inspection of a return by the House Ways and Means Committee, the Senate Finance Committee, the Joint Committee on Internal Revenue or a select committee of the House or Senate; and inspection of a return by an employee of the Department of Treasury or Justice in connection with the administration or enforcement of this title. The criminal investigation exception provides that a federal official charged with enforcement of any Federal law for the violation of which criminal penalties are provided may apply to the appropriate U.S. district court for an order granting him access to the return specified in the order. The orders shall be granted only if the district court is satisfied that there is probable cause to believe that the return is necessary for the investigation or prosecution of a violation of federal law punishable by a criminal penalty and no other source for such information is reasonably available. The prospective appointees background check exemption is explained in section (3) of this memo.

The Montoya proposal also contains provisions for disclosure of certain information to the Social Security Administration and Railroad Retirement Board. Also, statistical information may be supplied to federal agencies and state tax authorities. However, that information shall be compiled by employees of the IRS.

(5) Criminal Penalties

All three of the proposals would change the criminal penalties for violating the confidentiality guaranteed tax returns by Section 6103.

The Weicker and Montoya proposals change the penalty for unlawful disclosure of tax information from a misdemeanor to a felony, and increases the punishment from one year imprisonment or a $1,000 fine or both to up to five years imprisonment or a $10,000 fine or both. Furthermore, they create a new crime of "unauthorized receipt" of tax data. The new crime would be also a felony, punishable by up to five years imprisonment or a fine of up to $10,000 or both.

The Bentsen proposal would increase the punishment for unauthorized disclosure of tax data to up to five years imprisonment, or up to a $5,000 fine or both. However, it does not make the crime a felony.

(6) Other Changes

The Bentsen proposal contains a number of provisions not found in the other two measures.

The Bentsen proposal creates a new Code subsection which would prohibit political misuse of the internal revenue laws. The new subsection would provide:

Whoever, directly or indirectly, initiates, conducts, attempts to initiate, attempts to conduct, threatens to initiate or threatens to conduct an income tax audit or any other income tax investigation or income tax prosecution in a discriminatory manner—(1) on account of reasons other than enforcement of this title: or (2) on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party;

shall be fined not more than $10,000 or imprisoned not more than five (5) years or both.

The Bentsen proposal also creates a right of civil action by the taxpayer against any official who, in violation of Section 7213, knowingly discloses tax return information. Limiting recovery in this suit to $20,000, the proposal creates a new Section 7217 which states:

(a) Any person who knowingly discloses information in violation of section 7213 of this title shall be liable to any taxpayer injured by such disclosure.

(b) No award, compromise, or settlement of the civil action brought under this section shall exceed the amount of $20,000, including actual and punitive damages, plus court costs.

Finally, the Bentsen proposal creates an IRS oversight function in the General Accounting Office (GAO). Under S. 442, the Comptroller General must make an annual audit of "the administration of the Federal tax laws" and report yearly to the House Committee on Ways and Means, the Senate Finance Committee, and the Joint Committee on Internal Revenue Taxation on this subject. Among the subjects upon which the Comptroller General would be required to report would be IRS disclosures of tax data to State or Federal agencies, unlawful disclosures of tax data, number of requests to examine Federal tax data and reasons given by States and Federal agencies, requests for statistical tax data, IRS investigation and prosecution of civil and criminal tax fraud, implementation of the Freedom of Information Act by the IRS, and any other matters the above mentioned Congressional committees may require to be included.

III. CONCLUSION

In approaching an analysis of these three proposals, it would appear most important that the bills be recognized as approaches to differently defined problems rather than merely three approaches to the same problem. The Weicker proposal reflects the view that the "evil" to be overcome is not the inspection of all tax data as such, but the inspection of tax materials submitted by the taxpayer under compulsion of law.

The Bentsen proposal reflects a different view: its concern is not only with disclosure of data on individuals compiled due to compulsory submission, but with political misuse of the internal revenue laws. The response here is to provide penalties for unpermitted inspections, establish a right of civil action by a taxpayer against an official who illegally discloses tax return information, and create an IRS oversight function in the General Accounting Office.

The Montoya proposal attacks the "secretive" element of tax return disclosure. Its basic approach is to bar unconsented use of tax returns. In the areas where it does permit disclosure without the taxpayer's consent, the Montoya proposal provides stringent guidelines.

Senator HASKELL. And before we hear from our first witness, the very distinguished senior senator from New Mexico, Senator Montoya, I will ask Senator Dole if he has any comments.

Senator DOLE. No, I have no comments. I am anxious to hear what the Senator has to say.

Senator HASKELL. We look forward to hearing from you, Senator, very much indeed, but before we do, Senator Bentsen who could not be present today asked to have his statement put in the record.

[Statement of Senator Bentsen follows:]

STATEMENT OF SENATOR LLOYD BENTSEN

Mr. Chairman, I commend you for conducting these hearings on the privacy of Federal tax returns which is an issue of great concern to all Americans. Greater legislative oversight of the activities of the Internal Revenue Service, through Congressional hearings such as these, will help insure that our tax laws are enforced and administered in a more equitable manner.

Mr. Chairman, revelations of abuses involving our tax system clearly demonstrate the importance of prompt enactment of legislation to insulate the Internal Revenue Service from political abuse, to protect the privacy of taxpayers and to insure that our tax laws are administered in a fair and equitable manner. Last year I introduced my proposed "Internal Revenue Service Reform and Taxpayer Privacy Act" to help achieve these objectives. In January I reintroduced this bill, S. 442.

Abuses involving the administration of our tax laws have been vividly demonstrated by the House Judiciary Committee's impeachment inquiry, the final report of the Senate Watergate Committee, as well as the revelations of the political activities of the IRS special services staff which operated between July 1969 and August 1973. Just recently we learned about an operation called "Project Leprechaun" which reportedly involved widespread spying by IRS agents into the private lives of public figures in Miami, Florida. These agents were apparently attached to the Justice Department's Organized Crime Strike Force.

The enactment of legislation to prevent these abuses and to protect the privacy of tax returns will greatly bolster public confidence in our system of Government.

Such legislation will demonstrate to the American people that their leaders in Washington can respond to the tragic lessons of Watergate with strong and constructive political reform legislation.

S. 442 which I introduced earlier this year includes six major items:

First, criminal penalties would be imposed against the use or attempted use of the IRS for the purpose of political harassment. In addition, the General Accounting Office, which is an arm of the Congress, would be directed to audit the operations of the IRS and report its findings annually to the Senate Finance Committee, the House Ways and Means Committee and the Joint Committee on Internal Revenue Taxation.

Second, strict procedural safeguards would be established to prevent the President and the White House staff from misusing confidential tax information.

Third, increased criminal penalties would be imposed against anyone who knowingly and without authorization discloses confidential tax information.

Fourth, a taxpayer would be allowed to file suit for damages against any person who knowingly and without authorization discloses the taxpayer's confidential tax information.

Fifth, clear limitations would be established on the access of Federal and State agencies to confidential tax information.

And, sixth, the General Accounting Office would be authorized to audit the use of confidential tax information by any Federal or State agency.

The new law I propose will carefully restrict the existing practice whereby confidential tax returns and tax information are often distributed to a large number of Federal, State and local Governmental agencies which play no role whatsoever in the enforcement of our Federal tax laws. Unrestricted dissemination of confidential tax information throughout all levels of Government poses a grave threat to our right to privacy. Since the American Revolution we have cherished this very fundamental human value. The right of privacy was included twice in the Bill of Rights—in the Fourth Amendment which protects all Americans against unreasonable searches and seizures and in the Fifth Amendment which guarantees the privilege against self-incrimination. Congress must continually make every effort to prevent any abuse of this precious right.

My proposed legislation will also help prevent political misuse of the Internal Revenue Service which can seriously undermine public confidence in the enforcement of our Federal tax laws. This bill will help insure that our tax laws are administered fairly and impartially.

Several examples of misuse of the Internal Revenue Service were described in the final impeachment report of the House Committee on the Judiciary.

In 1970 the White House obtained tax information on Governor George Wallace of Alabama and leaked this to the press.

In 1972 the White House demanded an IRS investigation of Democratic National Committee Chairman Lawrence O'Brien.

On September 11, 1972, White House Counsel John Dean personally gave the Commissioner of Internal Revenue a list of 575 names of staff members and contributors to Senator McGovern's Presidential campaign. John Dean asked that the IRS investigate or develop information about the people on the list.

All these were indefensible attempts to misuse the IRS. Under my proposal all would be specifically outlawed and subject to stiff criminal penalties.

The Second Article of Impeachment adopted by the House Judiciary Committee last July charges this specific misuse of the IRS by former President Nixon:

"He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the Constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the Constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner."

The Report of the House Judiciary Committee continues:

"The Committee finds clear and convincing evidence that a course of conduct was carried out by Richard M. Nixon's close subordinates, with his knowledge, approval, and encouragement, to violate the Constitutional rights of citizens—their right to privacy with respect to the use of confidential information acquired by the Internal Revenue Service; their right to have the tax laws of the United States applied with an even hand; and their right to engage in political activity in opposition to the President. This conduct involved an attempt to interfere with the lawful administration of the Internal Revenue Service and the proper conduct of tax inquiries by misusing confidential IRS information and the powers of investigation of the IRS for the political benefit of the President. In approving and encouraging this activity, he failed to take care that the laws be faithfully executed and violated his Constitutional oath faithfully to execute the Office of President and to preserve, protect and defend the Constitution."

These grave abuses of our tax system clearly demonstrate the need for prompt passage of remedial legislation.

The Washington Post has stated: "Of all the abuses of power which took place during the Nixon years, the most alarming to many citizens were the attempts by White House aides to use the Internal Revenue Service to help political friends, to punish people regarded as enemies—or simply to collect intelligence on the opposition."

The New York Times pointed out: "Of all of the Watergate lessons, the one that seemed to strike the members of the House Judiciary Committee hardest was the potential for political abuse and victimization of individuals through the Internal Revenue Service."

However, it must be emphasized that even if the tragic events of Watergate had never occurred, other incidents in which our Federal tax system has been flagrantly abused by Federal, State and local officials would still dictate the need to enact my legislative proposals.

Within the last few weeks, we learned about "Operation Leprechaun" which reportedly involved widespread spying by IRS agents into the private lives of prominent figures in Miami, Florida.

Most Americans are unaware of just how many agencies of the Federal Government have access to individual tax returns. For example, according to IRS statistics, during 1973 the following Federal agencies requested and received tax returns from the Internal Revenue Service:

Civil Aeronautics Board.
Department of Agriculture.
Department of Commerce.
Department of Health, Education, and Welfare.
Department of Justice.
United States Attorneys.
Federal Deposit Insurance Corporation.
Federal Home Loan Bank Board.
Federal Trade Commission.
Interstate Commerce Commission.

Renegotiation Board.
Securities and Exchange Commission.
Small Business Administration.
United States Postal Service.
Veterans Administration.
That's fifteen different Federal agencies.

In addition, practically all State Governments and many local Governments receive Federal tax returns.

Such widespread distribution of confidential tax information is clearly open to serious abuse and, in fact, abuses have occurred.

Employees of Federal agencies have acquired confidential tax returns for their personal use.

Officials of State and local Governments have given confidential tax information to private credit agencies.

In addition, there have been well publicized efforts to authorize the Department of Agriculture to inspect the Federal tax returns of our Nation's farmers.

The legislation that I have introduced will help prevent abuses of this kind in the future.

Mr. Chairman, I would now like to explain the provisions of my bill in some detail:

1. PROHIBITION AGAINST ATTEMPTS TO USE THE INTERNAL REVENUE SERVICE FOR POLITICAL PURPOSES

First, my proposal would specifically prohibit anyone from initiating or attempting to initiate any tax audit or any other tax investigtaion in a discriminatory manner for such purposes as the harassment of political enemies. In addition, this proposal would prohibit anyone from using the Internal Revenue Service for personal reasons.

Violations of this provision would constitute a felony and would be punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

The use of our tax system to punish or harass political opponents is indefensible. All Americans have a right to have their tax laws applied with an even hand.

Our system of tax collection, based upon voluntary self-compliance, has been very successful in raising Federal revenues. Indeed, our success is the envy of all other Nations around the world. In many Nations the failure to pay taxes seems to be the rule rather than the exception. However, we cannot maintain this public confidence in our tax system unless Americans are convinced that Government officials cannot utilize tax returns for political purposes. The attempt by John Dean to initiate an IRS investigation of McGovern supporters was indefensible. Under my legislation this kind of abuse would constitute a felony.

In addition, the General Accounting Office, which is an arm of the Congress, would be directed to audit the operations of the Internal Revenue Service and report its findings annually to the Senate Finance Committee, the House Ways and Means Committee and the Joint Committee on Internal Revenue Taxation. This will provide increased Congressional oversight of IRS activities and prevent misuse of our Federal tax collection system.

2. STRICT STATUTORY LIMITS ON WHITE HOUSE ACCESS TO CONFIDENTIAL TAX RETURNS

Second, my bill would establish strict safeguards on White House access to confidential tax returns and, in addition, would provide Congressional oversight of such access.

The evidence revealed during the House impeachment inquiry clearly demonstrates that unlimited White House access to tax returns is open to serious abuse.

Under my proposal, the President of the United States could receive a tax return only upon his personal written request to the Commissioner of Internal Revenue explaining the specific need for such return. Any request would have to specify in writing any member of the White House staff who is also authorized to see the returns. Furthermore, the Commissioner of Internal Revenue would be required to submit a semiannual report to the Joint Committee on Internal Revenue Taxation listing all returns furnished to the President. This Congressional oversight would serve as a strong deterrent to any future attempts by the White House to misuse its access to tax returns.

3. INCREASED PENALTIES FOR THE UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

Third, this legislation would increase the existing penalties for unauthorized disclosures of confidential tax information.

A growing number of states and counties have agreements with the Internal Revenue Service to receive Federal tax returns such as the Form 1040. There have been instances in which State and local officials have given confidential tax information to private credit agencies, for example.

Under my proposal, the individual who knowingly discloses confidential tax information without authorization would be subject to a stiff penalty. This would help prevent such outrageous and indefensible abuses of our tax system as the dissemination of confidential tax information to private detectives and credit services.

4. PRIVATE REMEDY FOR UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL TAX INFORMATION

Fourth, a taxpayer would be allowed to file suit for up to $20,000 in damages against any person who knowingly and without authorization discloses confidential tax information about that individual.

This private legal remedy will help deter anyone from misusing confidential tax information.

5. CONFIDENTIALITY OF FEDERAL TAX RETURNS

Fifth, my proposal would limit the access of Federal and State agencies to confidential tax information.

As I noted earlier, a surprisingly large number of agencies of the Federal Government have wide access to confidential tax returns. The practice is open to abuse and invasions of personal privacy. My legislation explicitly makes tax returns confidential. There would be no Governmental access to these returns except under carefully limited circumstances.

One of the best illustrations of the inadequacies of existing law in protecting the confidentiality of tax returns involves the tax returns of our Nation's farmers.

On January 17, 1973, President Nixon issued Executive Order 11677 authorizing the Department of Agriculture to inspect income tax returns filed by persons having farming operations. The stated purpose for the Order was to allow the Department of Agriculture to obtain data from farm operations for statistical purposes only. The Order did not indicate specific data to be gathered. On January 23, new Internal Revenue Service regulations went into effect to implement the Executive Order.

Neither the Executive Order nor the IRS regulations limited the type or amount of information that could be released to the Department of Agriculture. The January 23 IRS regulation states:

"The Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Department of Agriculture (for the purpose of obtaining data as to the farm operations of such persons) with the names, addresses, taxpayer identification numbers, or any other data on such returns or may make the returns available for inspection and the taking of such data as the Secretary of Agriculture may designate."

The President issued a revised Executive Order 11709, on March 27, 1973. This permitted the Department of Agriculture to inspect farmers' tax returns in accordance with amended IRS regulations, which limited the scope of the data which could be obtained. The new regulations provided that only "names, addresses, taxpayer identification numbers, type of farm activity, and one or more measures of size of farm operations such as gross income from farming or gross sales of farm products," would be furnished the Agriculture Department.

In the original Executive Order 11679, any employee of the U.S.D.A. might gain the authority to examine any tax returns of citizens showing farm income or expenses as long as they could claim it was for statistical purposes. But, even when the President substituted a new, modified Executive Order, farmers' tax returns were still potentially an open book. U.S.D.A. employees could still examine any farmers' tax returns and obtain any piece of information that might be construed to be a measure of the size of the farming operation of the taxpayer. Close examination of a farmer's tax returns will clearly show that almost any piece of information on the return could be so construed.

It is very significant to note that these Executive Orders were formulated as a model or prototype for future Executive Orders opening tax returns for similar statistical use by other Federal agencies. In response to a Congressional inquiry, the Justice Department said:

"The original Order was prepared by the Department of the Treasury in language designed to serve as a prototype for future tax return inspection orders."

Although President Nixon revoked these Executive Orders last March, there are several reasons why Congress must now provide great statutory protection to the confidentiality of tax returns.

First, since the American revolution, we have cherished our right of privacy and Congress must continually make every effort to protect this very fundamental human value.

Second, the events of Watergate illustrate that easy access to confidential tax returns by Federal employees creates a potential for abuse. We must not give Federal officials easy access to tax returns so that unprincipled employees of an Executive Department can engage in a "fishing expedition" to investigate taxpayers. For example, if we were to allow Agriculture Department officials to inspect at random the tax returns of all farmers, soon the Commerce Department would be scrutinizing the returns of businessmen, HEW would be auditing doctors' returns and HUD would be reviewing the tax returns of large numbers of homeowners. This potential for abuse must be prevented by clear statutory restrictions.

Third, every effort must be made to safeguard the integrity of the Internal Revenue Service and to prevent its "politicization." We can help protect IRS from political pressure by protecting the confidentiality of tax returns.

My proposal explicitly states that all tax returns are confidential except in carefully limited circumstances. Under my proposal, tax returns would be available only to the following individuals:

First, the taxpayer or his attorney.

Second, officers and employees of the Internal Revenue Service, the Treasury Department, and the Justice Department for the *exclusive* purpose of tax administration and tax enforcement.

Third, employees of the Department of Justice, United States Attorneys and employees of other Federal agencies who are engaged in Federal criminal investigations and prosecutions but *only* if a Federal district judge issues a court order which authorizes the IRS to release a particular return. A Federal judge could issue such a court order only if there is probable cause to believe that information contained in a particular taxpayer's return is reasonably necessary to enforce a Federal statute with criminal penalties and no alternative source for this information is reasonably available.

This procedure would enable the Justice Department, for example to obtain tax returns that may be needed to prosecute a narcotics case but this procedure would establish a judicial mechanism to prevent misuses of confidential tax information. Many of the most serious crimes—for example, narcotics violations, gambling, loansharking, embezzlement and political corruption—involve violations of our tax laws (failure to report income) as well as violations of criminal laws. Due to the inter-relationship of non-tax offenses with tax offenses, it takes the coordinated and cooperative efforts of the IRS and other Federal law enforcement agencies to achieve effective law enforcement.

For example, according to the Justice Department, the successful prosecutions against former Circuit Judge Kerner, Alderman Keane, Congressman Podell, many political contribution cases, recent cases involving frauds upon the Small Business Administration and the Department of Housing and Urban Development, and the corruption and fraud cases in Illinois, Maryland and New Jersey could not have been made without tax returns and tax information.

Fourth, the President of the United States, upon his personal written request to the Commissioner of Internal Revenue explaining the specific need for such return and designating the member of the White House staff who is authorized to see the return.

Fifth, State tax officials, but *exclusively* for the purposes of State tax administration and State tax enforcement and only upon the written request of the chief tax official of that State.

Sixth, the Senate Committee on Finance, the House Ways and Means Committee and the Joint Committee on Internal Revenue Taxation. Access to tax returns by other Congressional Committees would require a resolution of the appropriate House of Congress. In addition, tax information would only be furnished in closed

Executive Session. Access to tax returns by the Senate Finance Committee, the House Ways and Means Committee and the Joint Committee on Internal Revenue Taxation is essential to enable the tax writing Committees of Congress to effectively evaluate the impact of existing Federal tax provisions and to effectively evaluate various proposals to amend the Internal Revenue Code.

Seventh, income, estate, gift, unemployment, and certain excise tax returns would be open to the filing taxpayer, the beneficiary of a trust, a trustee in bankruptcy and a member of a partnership. Income tax returns of a deceased taxpayer would be open to the representative of his estate and, along with estate and gift tax returns, to certain other persons upon a satisfactory showing of a material interest.

In addition, under my proposal *statistical information* can be complied from tax returns by the IRS for the use of any Federal or State agency so long as the information furnished does not disclose the identity of any taxpayer or any return.

Furthermore, under my proposal, the Commissioner of Internal Revenue would be required to submit to the Joint Committee on Internal Revenue Taxation, a semi-annual report listing (with the reasons why) all returns furnished to the President, State tax officials, United States Attorneys, Department of Justice and other Federal agencies. This Congressional oversight would serve as a strong deterrent to prevent misuse of confidentail tax information.

6. GENERAL ACCOUNTING OFFICE OVERSIGHT OF THE IRS

Under the sixth section of my bill, the General Accounting Office, which is an arm of the United States Congress, would be authorized to audit the use of confidential tax information by Federal or State agencies.

This GAO oversight will help deter misuse of confidential tax information.

CONCLUSION

Mr. Chairman, in conclusion, I believe that the tragic events of Watergate and the revelations of other abuses of our tax system demonstrate that we must take prompt steps to help insulate the Internal Revenue Service from political pressures, to help preserve the confidentiality of tax returns, and to provide greater Congressional oversight of the IRS. The "Internal Revenue Service Reform and Taxpayer Privacy Act" will help achieve these goals.

Senator HASKELL. You may proceed, Senator.

STATEMENT OF HON. JOSEPH M. MONTOYA, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator MONTOYA. Thank you very much, Mr. Chairman and Senator Dole. I appreciate the opportunity to testify here today.

The subject you are examining has been of great concern to me for several years as a result of testimony taken before my Subcommittee of the Appropriations Committee. Those hearings were held to examine taxpayer service as performed by IRS. In the course of the hearings, it became very clear that one of the most serious complaints which taxpayers and tax specialists were making was that of indiscriminate access to taxpayer returns and taxpayer information.

The chairman mentioned the Watergate Committee, and I recall that I asked the question and supplied the list, the enemies list, which disclosed to the American public that information was being sought by the White House with respect to taxpayers, which bore no relation to the inquiry which is authorized by law.

The public is deeply troubled about this matter. Quite properly, your committee has zeroed in on the key question: Who should have the right to see the information which taxpayers are required either to report on their tax returns or to submit in support of their returns?

The Internal Revenue Service, as its name indicates, was conceived as a service to the people. Over the years, as our Tax Code has become more complex and as other agencies of Government have grown more comprehensive, the service rendered by the IRS has more and more tended to be a service to Government rather than a service to the taxpayer. I want to say at this point that in examining the processes of Internal Revenue, we have substantially an array of good public servants, dedicated to fairness and justice.

The injustices that occur within the Service are perpetrated by a few individuals who use their authority in such a way that it is abusive to the interests and to fairness with respect to the American taxpayer. It is these instances which constitute a reflection on the entire Service, and my committee has been trying to expose these instances so that we can infuse into the Service a great feeling of responsibility to the taxpayer. In turn, that will reflect upon the good name of the IRS.

Now, in an effort to assist Government in the accumulation of information, it has become easier and easier for agencies of government at both the State and Federal level to use the very tempting pool of information available to the IRS.

The second question before your committee, quite naturally, therefore, is: What protections are provided the taxpayer against malicious or careless use of personal information which he has been required to submit to the IRS?

The balance between the right of the citizen to privacy and the responsibilities of Government officials who have been trusted to receive and handle private information in order to perform their legitimate Government functions is now a very precarious one. Many citizens have concluded that the system works to their disadvantage and is a threat to their freedom.

Unfortunately, we are all now aware that it is possible for Government officials to misuse the access privilege for political reasons or simply because of a callous lack of consideration for the rights of individuals. We are relearning rather painfully that men in government must sometimes be reminded of their first duty as servants of the people. That is why, when the people give power to men in government, it is essential that protections against the misuse of that power be put firmly in place.

I have always said that power belongs to those people who can properly use it, but will not abuse it. Now, my Subcommittee on Treasury, Post Office, and General Government has held hearings for 2 years into the relationship between IRS and taxpayers, the services rendered, the needs which taxpayers feel are not being met, and the corrections which taxpayers feel need to be made in the IRS practices and procedures.

We have heard testimony which pinpointed the growing alienation of the taxpayer. We have heard complaints that illustrate the taxpayer's increasing belief that the IRS is in a position to betray the confidence of the citizen and that it sometimes does betray that trust.

I am informed that your committee has heard testimony from IRS and other Federal and State agencies during these hearings to substantiate the need of various parts of government for at least a limited exchange of taxpayer information taken from tax returns. I believe that need is substantial, and I agree with Deputy Attorney General-

Tyler, who testified before you last week, that the average citizen would understand and sympathize with that need in most cases.

However, Mr. Chairman, at least 15 agencies of Government have access to IRS tax return information: these are the Civil Aeronautics Board, the Department of Agriculture, the Department of Commerce, the Department of Health, Education, and Welfare, U.S. attorneys, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Trade Commission, the Interstate Commerce Commission, the Renegotiation Board, the Securities and Exchange Commission, the Small Business Administration, the U.S. Postal Service, the Veterans' Administration, the Advisory Commission on Intergovernmental Relations, the Federal Reserve System, the Federal Reserve banks, and the Department of Justice.

In addition, almost all State governments have access to Federal returns and supporting data if they want it, and most States do request that information. I believe that it would be very helpful to the Congress if this committee, Mr. Chairman, requested a formal study by each of the agencies which use IRS taxpayer information, how it is used by their agency, and what the cost would be to that agency if they were asked to perform without that information.

Along these lines, I think it would be helpful if law enforcement and related agencies, such as the Department of Justice, Drug Enforcement Administration, Securities Exchange Commission, and others, supplied your subcommittee with figures showing how frequently they require returns for non-tax-related prosecutions or investigations. Some of the testimony you have received has answered those questions in a limited way. I believe, Mr. Chairman, that we really need the full story from all those who currently have access to this information.

Most of those who use taxpayer information have a legitimate need. But the traumatic experience for the public in recent disclosures of the political misuse of taxpayer information has underlined the necessity for limits to be drawn and for penalties to be established so that privacy and constitutional rights of American citizens will be protected at the same time that efficiency in Government is assisted.

For your record, I would like to submit copies of some testimony and findings of the House Judiciary Committee in 1974 which are revealing of the loopholes which allow for massive misuse of taxpayer information.

[The material referred to follows:]

1. On or about March 21, 1970 Special Counsel to the President Clark Mollenhoff sent a memorandum to H. R. Haldeman transmitting material on the taxes of Governor George Wallace's brother, Gerald Wallace, Mollenhoff had stated that he had been instructed by Haldeman to obtain a report from IRS on investigations relating to George Wallace and Gerald Wallace; that he had been assured by Haldeman that the report was to be obtained at the request of the President; that he obtained the report from the IRS; and that Mollenhoff did not give a copy of the report to anyone other than Haldeman or discuss the substance of it with anyone else until after the appearance of an article on April 13, 1970 regarding confidential field reports, and IRS investigation of charges of corruption in the Wallace Administration and the activities of Gerald Wallace. Former Commissioner of Internal Revenue Randolph Thrower has stated that an IRS investigation concluded that the material had not been leaked by the IRS or the Treasury Department. Thrower has stated that thereafter he and the IRS Chief Counsel

met with Haldeman and Ehrlichman at the White House and discussed with them the seriousness of the leak and the fact that unauthorized disclosure of IRS information constituted a criminal act.

2. On September 21, 1970 White House aide Tom Charles Huston sent a memorandum to Haldeman transmitting a report on an investigation by the IRS Special Service Group of political activities of tax-exempt organizations. Huston discussed administrative action against the organizations and stated that valuable intelligence-type information could be turned up by IRS as a result of their field audits.

6. On July 20, 1971 John Dean wrote a memorandum to Ehrlichman's aide Egil Krogh attaching information compiled by John Caulfield regarding the Brookings Institution's tax returns and noting that Brookings received a number of large government contracts. Caulfield has testified that it was his impression that this was public information. On July 27, 1971 Dean sent a memorandum to Krogh to which was attached a carbon copy of Dean's July 20, 1971 memorandum on which the words "receives a number of large government contracts" were underscored and a marginal note by Haldeman stated that these should be turned off. Dean's July 27, 1971 memorandum stated that he assumed that Krogh was turning off the spigot.

10. On September 22, 1971 John Caulfield wrote a memorandum regarding plans for scheduling Lawrence Goldberg to function in the Jewish area at the Committee for the Re-election of the President. Caulfield stated that Goldberg was actively engaged in Anti-Defamation League activities and that consideration should be given to a potential question of loyalty. On October 6, 1971 Caulfield sent a memorandum to Dean attaching *lists of charitable contributions from Goldberg's tax returns and stating that* it postured an extremely heavy involvement in Jewish organizational activity. Caulfield also stated that Attorney General Mitchell should be discreetly made aware in this regard. Caulfield has testified that he obtained information on *Goldberg's financial status* from *IRS Assistant Commissioner (Inspection) Vernon Acree* and that the purpose of obtaining the information was to determine whether Goldberg was financially solvent and therefore able to assume a campaign position at CRP.

11. On or about September 30, 1971 Caulfield sent a memorandum to Dean reporting on IRS tax audit information about Rev. Billy Graham. Caulfield testified that he obtained the information from Assistant Commissioner Acree. On October 1, 1971 Higby sent a copy of Caulfield's memorandum to Haldeman with a transmittal slip bearing the hand-written notation, "Can we do anything to help," below which is Haldeman's handwritten notation, "No, it's already covered." Dean has testified that the President had asked that the IRS be turned off on friends of his.

12. On or about October 6, 1971 Caulfield sent a memorandum to Dean transmitting information about tax audits of John Wayne and eight other entertainers and former entertainers which Caulfield had instructed the IRS to furnish. Caulfield has testified that he obtained the information from Acree.

THE WHITE HOUSE,
Washington, D.C., July 27, 1971.

Memorandum for: Bud Krogh
From: John Dean
Subject: Brookings Institution

6.2 JOHN DEAN MEMORANDUM, WITH ATTACHMENT

A few days ago I forwarded to you copies of the Brookings Institution's tax returns. Please note the attached memorandum on what should be done about the large numbers of government contracts now held by the Brookings Institution. If you want me to "turn the spigot off" please let me know; otherwise, I will assume that you are proceeding on this matter.

Thank you, Bud.

Senator MONTOYA. I think a careful restudy of this testimony as presented in volume VII of "Hearings Before the Committee on the Judiciary, House of Representatives, 93d Congress, 2d Session, Pursuant to House Resolution 803," makes it clear that we must take steps to control access to taxpayer information. We ought to create severe penalties for those who abuse their government power and for those who take advantage of such abuse.

In the last session of Congress, I introduced S. 3935 to provide some protection for the taxpayer and to limit the access to taxpayer information. Several similar bills were also introduced at that time. In the current session, some of these bills have been reintroduced. I have just this last week introduced a new bill, S. 1511, which I think is better considered than the legislation which I prepared originally and which will provide limitations on the access to tax information by law enforcement agencies, the Justice Department, and others in government whose work is clearly made more efficient and more productive if they are allowed to properly use this tax information tool.

My bill will do the following things: it will declare that tax returns are confidential records, and not public records as they are in the present law. The current law is not definite about the status of these records, declaring them to be "public records" in section 6103 and then establishing a rule which declares that they are open to inspection only on the "order of the President" or by regulations established by the Secretary of the Treasury. My legislation attempts to remedy that confusion.

I shall submit for the record a copy of a recent comparative analysis of the pertinent legislation done by the Library of Congress.

I believe this analysis examines the matter of confidentiality in depth and will be helpful to the committee in considering the need to amend the Internal Revenue Code.

My bill will allow the Department of the Treasury, the Joint Committee on Internal Revenue Taxation, and select committees, the Department of Justice, and other selected agencies of State and Federal Government to have necessary access to tax return information with certain clear requirements and limitations.

It will provide for the release of "clean" tax data to the agencies; that is, which does not invade the privacy of any individual return, but simply makes statistical analysis of tax problems possible.

It will provide protection for the taxpayer by requiring either that he consent to the use of his tax return by government for a purpose other than tax collection, or that a court order has been obtained allowing such use.

It will stiffen penalties for unauthorized disclosure or other misuse of taxpayer information, and will create a criminal penalty for the receipt of tax return information in addition to the current penalty for disclosure. In the same way that our laws now penalize criminals for the receipt of stolen goods, the Tax Code will thus penalize both those who illegally release taxpayer information and those who request and receive it.

My bill will empower the GAO to audit the use of tax returns by State and Federal agencies, to insure the protections of the law are being respected. Complaints that credit agencies are being given access to Federal returns by State employees could be immediately investigated by GAO if this provision of my bill is adopted.

Finally, Mr. Chairman, for the purpose of so-called tax checks by the White House on prospective appointees, S. 1511 would allow IRS to respond to a written request from the President with the following information: (1) Whether the individual under consideration has filed tax returns for the last 3 years; (2) whether he has been subject to any deficiency assessments in the past 8 years; or (3) whether he has been under investigation for tax matters in the last 3 years.

This provision may be seen as a loophole, but I think it a necessary one.

There are, Mr. Chairman, some major differences between my bill and the other two bills dealing with return disclosure which will be considered by this committee. I think it has become clear in the testimony you have received that we must balance the need of the citizen for privacy protection against his need for vigorous and efficient law enforcement and investigation of white-collar crime. The exchange of information between IRS investigators and the investigtors of the Justice Department, members of the Organized Crime Strike Forces, or of other agencies concerned with the investigation and prosecution of crime, is clearly a valuable tool which protects the citizen and the Nation.

I believe that the legislation I have proposed is correct in allowing the continued use of this tool while at the same time providing sensible privacy protections for the taxpayer. The restrictions in my bill will mean greater effort by government in the use of taxpayer information as a tool, but will not block the use of that information for legitimate criminal investigation.

Similar restrictions would apply, under my legislation, to the practical needs of other agencies of government, including State tax agencies in the use of tax information. I am horrified that 61 million returns were sent out to the States last year, and I am convinced that this kind

of wholesale information dissemination is not necessary and is so massive that there is very little way in which controls can be managed.

However, under the bill I propose, the increase in the penalties for misuse of that information are sufficient, I believe, to assure greater responsibility and greater awareness of citizen rights. What is now only a misdemeanor with a fine of up to $1,000 and up to 1 year in jail, would become a felony, with a penalty of $10,000 fine and up to 5 years in jail, and the penalty would apply for both parties to misuse of taxpayer information.

This kind of realistic penalty will, I believe, act as a deterrent to the temptation to use taxpayer information politically or maliciously. It will go a long way toward reassuring taxpayers that we in the Congress are serious about our attempt to protect their rights and limit invasions of their privacy to essential and pertinent and correct release of information.

I believe the legislation I have proposed is balanced, and will help to rebuild the confidence of the public while still recognizing the understandable desire of government officials to work in the most efficient and effective way in performing their jobs.

Justice Brandeis, in a famous dissent in 1927, said something which is perhaps pertinent to this matter, Mr. Chairman and members of the committee. He said:

> The makers of our Constitution conferred, as against the government, the right to be let alone, the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

I would like to think, Mr. Chairman, that the bill I have introduced this past week will protect the right of the American taxpayer to be let alone and that it will provide a means through which the Government can justify necessary intrusions on the privacy of individuals.

Senator HASKELL. Thank you, Senator, very much indeed for a very thoughtful statement. Both Senator Dole and I are aware of the extensive thought you have given this area.

First, I would like to say, if it is all right with Senator Dole, we will adopt a 10-minute rule and go back and forth, if that is all right with you.

Senator, your bill, I gather, makes a distinction between giving statistical or aggregated information, and giving the particularly identified returns to various and sundry agencies. This is an important distinction in your bill, as I read it.

Senator MONTOYA. That is right, and I have provided a comparative analysis of my bill vis-a-vis the other pending bills before this committee, which I will supply to the committee.

Senator HASKELL. Fine; we would like to have that as part of the hearing record, Senator.

[The material referred to follows:]

EXHIBIT 2

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., April 25, 1975.

To: Honorable Joseph Montoya.
Attention: Bruce Jaques.
From: American Law Division.
Subject: Comparative Analysis of Three Bills on Tax Return Confidentiality.

Pursuant to your inquiry of April 24, 1975, and our telephone conversation of that same date, wherein you requested a comparative analysis of three bills on tax return confidentiality, S. 199, S. 442, and your S. 1511, all in the Ninety-fourth Congress, please find enclosed an analysis with attendant documentation entitled "Comparative Analysis of Major Provisions of Three Legislative Proposals on Tax Return Confidentiality: S. 199, S. 442, and S. 1511," prepared by me and dated April 24, 1975.

HOWARD M. ZARITSKY,
Legislative Attorney.

COMPARATIVE ANALYSIS OF MAJOR PROVISIONS OF THREE LEGISLATIVE PROPOSALS ON TAX RETURN CONFIDENTIALITY: S. 199, S. 442 AND S. 1511

During the past months questions have been raised regarding the sanctity and security against examination by the various organs of government of the Federal income tax return and tax return information. This concern has apparently led to the introduction of three major bills for legislative reform in the field of tax return confidentiality; S. 199, introduced by Senator Lowell P. Weicker, Jr., of Connecticut, S. 442, introduced by Senator Lloyd Bentsen of Texas, and S. 1511, introduced by Senator Joseph Montoya of New Mexico, all in the Ninety-fourth Congress. The following report is a comparative analysis of the major points of legal reform of these three proposals.

I. CURRENT LAW: SECTIONS 6103 AND 7213 OF THE INTERNAL REVENUE CODE

The current law with regard to the confidentiality of Federal income tax returns is contained largely at Sections 6103 and 7213 of the Internal Revenue Code of 1954, as amended to date [hereinafter, "the Code" or "Section"]. Section 6103 establishes the basic pattern of confidentiality and details which individuals and organizations are allowed access to tax returns, while Section 7213 establishes criminal penalties for violations of Section 6103. To understand the state of the law with regard to the confidentiality of income tax returns, both of these sections would appear to warrant examination.

Section 6103 first characterizes tax returns as "public records," then establishes the rule that these records are open to inspection only pursuant to "order of the President" or regulations of the Secretary of the Treasury [hereinafter, "the Secretary"]. Int. Rev. Code § 6103(a). The inherent intent of the section has been stated as protecting tax returns from disclosure to or by government employees and agencies who have no legitimate interest in such materials. *United States ex rel. Carthan* v. *Sheriff, City of New York*, 330 F. 2d 100 (C.A. 2, 1964), cert. den. 379 U.S. 929; and *Kingsley* v. *Delaware, L. & W. R. Co.*, 20 F.R.D. 156 (S.D. N.Y., 1957). It is not intended to preclude the taxpayer's disclosure of his own return information. *United States ex rel. Carthan* v. *Sheriff, City of New York, supra.* Furthermore, the nondisclosure protection afforded the taxpayer has been held to extend to other agencies, as well as the Internal Revenue Service [hereinafter, "IRS"] where returns are filed with those agencies. *Association of American Railroads* v. *United States*, 371 F. Supp. 114 (D.C. D.C., 1974). There has been judicial recognition of the "confidential" status of tax

returns filed with the government. *Federal Savings & Loan Ins. Corp.* v. *Krueger*, 55 F.R.D. 513 (N.D. Ill., 1972). However, the confidentiality of the return may arguably be waived by the taxpayer by filing his return or through other conduct. *Association of American Railroads* v. *United States, supra.; Federal Savings & Loan Ins. Corp.* v. *Krueger, supra.;* but see also *United States* v. *Garner*, 72-2 U.S.T.C. § 9540 (Cir. 9, 1972).

The first subsection of Section 6103 refers to the confidentiality and inspections of "returns." Therefore, the scope of the term "returns" for the purposes of Section 6103 may be thought a threshold issue for resolution. The term is defined in the regulations promulgated by the Secretary under this section, specifically Treasury Regulation § 301.6103(a)-1(a)(3)(i). That regulation defines "return" to include:

"(a) Information returns, schedules, lists, and other written statements filed by or on behalf of the taxpayer with the Internal Revenue Service which are designed to be supplemental to or become a part of the return, and

"(b) Other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included under (a) of this subdivision—Treas. Reg. § 301. 6103(a)-1(a)(3)(i).

The regulation, however, goes further to distinguish between the two classes of "return," those items considered under subdivision (a) quoted above and those considered under subdivision (b) quoted above. As to those under subdivision (b), the regulation states that they "may be open to inspection in any case where inspection of the return is authorized by section 6103(a) and these regulations only in the discretion of the Secretary or the Commissioner or the delegate of either."—Treas. Reg. § 301. 6103(a)-1(a)(3)(i).

While the regulations specifically characterize both subdivision (a) and subdivision (b) materials as "returns," it may be thought that, from the distinction made in the regulation's subsequent sentence, the subdivision (b) items may be better referred to as "return information." This term is also used in one of the bills under analysis herein, although it is never really used in Section 6103 as it now is written.

The provisions of Section 6103 permit the Secretary to issue regulations, approved by the President, which allow inspection of income tax returns by individuals or organizations. The regulations also delineate the circumstances and purposes attendant to the inspection by these parties. However, certain inspection rights are statutory. This would appear to give a greater assurance that these delineated inspection rights statutorily guaranteed would not be changed by regulations of the Secretary. While the executive branch may adopt or rescind regulations, only the Congress may repeal the statutorily enacted inspection rights. These statutory rights of inspection are delineated at Section 6103 (b), (c), (d), and (g).

Section 6103(b) authorizes inspection of tax returns of corporations by the proper officers of any state where there is a request by the Governor of that state. The subsection further authorizes the commission and organs of state government charged with administration of the tax laws of the state to inspect all income tax returns upon written request of the Governor of the state designating the proper representative of the state body to do the inspection. The use of such information is specifically limited to administration of the state's tax laws. The procedures for the states to request such information are spelled out in Revenue Procedure 66-4 (1966). Furthermore, specific agreements for the exchange of tax information have been entered into with the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Generally, these agreements tend to protect the confidentiality of tax returns involved in IRS-state exchange.

Section 6103(c) provides that shareholders of at least one percent of the outstanding shares of a corporation may examine the annual returns of their corporation. Treasury Regulation § 301.6103(c)-1 describes the special requirements of affidavit and other restrictions on this particular inspection.

Section 6103(d) relates to the inspection of tax returns by the Congress and certain organs of the Congress. Under subsection (d) the House Committee on

Ways and Means and the Senate Finance Committee may be furnished with information on any return, as, also, any select committee of either House if authorized by appropriate resolution to investigate tax matters may acquire such tax information. The applicable committees, the House Committee on Ways and Means, the Senate Finance Committee or select committee, must examine the information in executive session. The committee may, furthermore, act through agents in inspecting the tax information and furnish relevant information to either or both Houses of Congress. Similar authority is extended to the Joint Committee on Internal Revenue Taxation [hereinafter the "Joint Committee"] but that committee is also authorized to furnish information to either the House Committee on Ways and Means or the Senate Committee on Finance as well as the full House or Senate. Among the committees of Congress which have been given authority to inspect tax returns in the past have been the Senate Committees on Rules and Administration, on Government Operations, on Foreign Relations, on Armed Services, on the Judiciary, on Agriculture and Forestry, on Education and Labor, on Banking and Currency, on the District of Columbia, on Interior and Insular Affairs, on Interstate Commerce, on Expenditures in the Executive Departments, and numerous special and select Senate Committees. In the House, the Committees on Un-American Activities, on Naval Affairs Investigation, and on Internal Security have had the inspection authority granted them under Section 6103(d).

Section 6103(g) authorizes the Department of Labor and the Pension Benefit Guaranty Corporation, as well as appropriate officers of the Department of Health, Education, and Welfare to examine returns with regard to their responsibilities under the Social Security Act and the employee Retirement Income Security Act of 1974.

Other authorizations are contained in the regulations issued by the Department of the Treasury, generally pursuant to an Executive Order and approved by the President, under the authority of Section 6103(a). See Appendix. The authorizations of such regulations extend to:

"The individual taxpayer (or taxpayers in the case of a joint return), the guardian, trustee or committee of such individual if the taxpayer is incompetent, the executor or administrator of the estate of the taxpayer if the taxpayer is deceased, the heirs or beneficiaries of the taxpayer at the discretion of the Secretary or his delegate, the receiver of a bankrupt taxpayer, taxpayer's attorney in fact, any partner of the taxpayer if taxpayer is either the partnership or another partner in the same partnership, or the attorney in fact of any of the above; for estate tax returns, the administrator, executor, or trustee of the estate, or, at the discretion of the Secretary or his delegate, the heirs or next of kin of the taxpayer, or the attorney in fact of any of the above may inspect the return; for trust returns the beneficiaries, trustees, beneficiary's guardian or committee or attorney in fact may inspect; corporate returns are open to inspection by designatees of the board of directors, officers or employees of the corporation upon written request by the corporation's chief officer and secretary, or the attorney in fact, trustee or receiver in bankruptcy or others in interest at the determination of the Secretary or his delegate where the corporation is in dissolution."—Treas. Reg. § 310.6103(a)-1.

"Department of the Treasury or other agencies determined appropriate by the Secretary."—Treas. Reg. § 301.6103(a)-1 (e), (f).

"United States attorneys and attorneys of the Department of Justice as required for performance of 'official duties.' "—Treas. Reg. § 301.6103(a)-1(g).

"Department of Health, Education, and Welfare for administration of Title II of the Social Security Act, 42 U.S.C. ch. 7."—Treas. Reg. § 301.6103(a)-100.

"The Securities and Exchange Commission as may be needed for gathering statistical data and carrying out its other functions."—Treas. Reg. § 301.6103 (a)-102.

"The Advisory Commission on Intergovernmental Relations in 'connection with the performance of its function of recommending methods of coordinating and simplifying tax laws.' "—Treas. Reg. § 301.6103(a)—103.

"The Department of Commerce."—Treas. Reg. § 301.6103(a)-104.

"The Renegotiation Board."—Treas. Reg. § 301.6103(a)-105.

"The Federal Trade Commission, for corporate tax returns."—Treas. Reg. § 301.6103(a)-106.

It would appear that it is within the framework of these delegations of inspection authority that the main portions of the three tax reform proposals under consideration address themselves. They all tend to restrict, to one extent or another.

the ability of the above mentioned organizations or individuals from receiving the tax returns and return information they now are permitted to receive.

Section 7213 provides the criminal penalties enforcing the prohibitions of Section 6103. Section 7213 states that it is a misdemeanor, punishable by a fine of up to $1,000 or imprisonment of up to one year, or both, for a Federal employee or other person to "make known in any manner not provided by law" any information contained in protected tax materials. Int. Rev. Code § 7213. Where the offender is an officer or employee of the United States government such person is also "dismissed from office or discharged from employment." Int. Rev. Code § 7213(a)(1). Another subsection of Section 7213 extends to employees or agents of any state, and another to shareholders of corporations under Section 6103(c), the penalties of a misdemeanor conviction, and fine of up to $1,000 or imprisonment of up to one year, or both. The purpose of these penalties have been asserted to be "to prevent wholesale (sic) revelation of confidential information to persons not determined to have a legitimate interest therein."—*United States* v. *Tucker*, 316 F. Supp. 822, 825 (D. Conn., 1970).

Therefore, the basic structure of Sections 6103 and 7213 would appear to create a framework of confidentiality for tax returns and related information which, though subject to substantial administrative variation by Executive Order and Treasury Regulation, contains a basic statutory skeleton of protection for the confidentiality of Federal income tax returns.

II. THE THREE REFORM PROPOSALS

The three reform proposals referred to earlier, S. 199, S. 442, and S. 151 may be analyzed both in terms of their similarities and in terms of their differences. All three amend the current statutory provisions with regard to the confidentiality of tax returns and tax data, but each takes a different approach to the questions of what constitutes the actual problem, if any, in confidentiality and how should such problem, if any exists, be rectified. The first point of comparison, it would appear, may be the definition of "return," because it is this definition which describes and determines the scope of the bill's proposals.

Current law defines "return" by regulations, as quoted heretofore. *Supra.* p. 3, Treas. Reg. § 301.6103(a)-1(a)(3)(i). The definition includes within the term "return,"

"(a) Information returns, schedules, lists, and other written statements filed by or on behalf of the taxpayer with the Internal Revenue Service which are designed to be supplemental to, or become a part of the return, and

"(b) Other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included under (a) of this subsection."—Treas. Reg. 301.6103(a)-1(a)(3)(i).

Each of the three proposals would alter this definition, and each would make the definition statutory, rather than regulatory.

S. 199 redefines tax return as "any form or other document, prepared by or on behalf of a taxpayer and filed under compulsion of law, containing information necessary to determine tax liability under this title."—S. 199, § 1(1975).

The apparent impact on this definitional provision, aside from removing the definition from the power of the Secretary and making it statutory, is to limit the scope of new Section 6103 to the formal return and required supplementary materials. Voluntarily submitted data would appear to be excluded, as would be data not necessary for tax liability determination, perhaps submitted by the taxpayer voluntarily to explain a supposed ambiguity, but not actually required to determine tax liability. Also apparently excluded from the safeguards of S. 199's new Section 6103 would be data gathered by the IRS in the course of its own investigations, since such is not "filed under compulsion of law."

S. 442 divides material filed with the IRS into two distinct categories: "return" and "return information." Tax "returns" it defines as: "any tax or information return or declaration of estimated tax required by, or provided for or permitted, under the provisions of this title filed by, on behalf of, or with respect to any person with the Commissioner or his delegate, and any amendment or supplement thereto or claim for refund, including supporting schedules, attachments, or lists which are designed to be supplemental to, or become part of, the return so filed."—S. 442 § 5(a)(1) (1975).

While this definition appears to include much data S. 199's definition may exclude, and possibly exclude some S. 199 could encompass, S. 442's definition

appears to cover most tax returns and supplemental affidavits currently considered returns, and it would specifically guarantee confidentiality of such returns by a set of standards not entirely identical with those it establishes for "return information." "Return information" is defined to encompass most, if not all information on the taxpayer not included in the "return," S. 422 stating:

"(2) The term 'return information' means any data including a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions. exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any particular of any data, in whatever form (whether as a report, investigative file, memorandum, or other document) or manner received by, recorded by, prepared by, or furnished to the Commissioner or his delegate with respect to a return as described in paragraph (1) or with respect to the existence of the amount of the liability of any person under this title for any tax, penalty, interest, fine, forfeiture, or other impositions."—S. 442 § 5(a)(2) (1975).

The impact of utilizing these two definitions to cover all tax data, rather than one definition, when considered in conjunction with the breadth of the definitions appear to demonstrate an intent to permit somewhat greater flexibility in regulating the availability of the information submitted by the taxpayers and compiled by the IRS about the taxpayers. This would, additionally, appear to follow the basic conceptual underpinnings of S. 442.

S. 1511 defines "return" to include "declarations of estimated tax, information return, schedules and lists accompanying or supplemental to such declarations and returns, and information obtained by the Secretary or his delegates in the administration of this title (other than information which indicates that the taxpayer may be in violation of title 18.)"—S. 1511 § (c).

This definition would appear to encompass all, or nearly all, of the tax data which a taxpayer may submit to the IRS or which might be gathered by the IRS about the taxpayer. Therefore, the breadth of the coverage of S. 1511 would seem at least as great as that of S. 442 and perhaps greater than S. 199.

A point may well be made here. The three definitions are not to be necessarily considered of different "value" or "accuracy." Rather, they represent different approaches to reform in this area. S. 442 contains a seemingly comprehensive delineation of various safeguards on tax return confidentiality, while permitting certain information to be used by the government for certain limited purposes (the "return information," as opposed to the "returns"). S. 199 appears to take a more firm approach, restricting greatly access to "returns," but not concerning itself with the use of "return information." The underlying thought here may be that the real evil is that the taxpayer is compelled to file certain information and then it may be used in various ways without his consent or knowledge. S. 1511, however, takes what would seem to be the stand that the present system is not entirely wrong, but, more specificity, delineation, and more safeguards are necessary. Therefore, differences in the definitional provisions of the bills, as well as in other aspects of the reforms suggested, may better be considered as representing different views of the problems, rather than as three different calibers of the same approach.

A second major feature of the three proposals is a two-fold revision of the current Section 6103(a), which both characterizes tax returns as "public records" and makes them open to inspection under Presidentially-approved regulations of the Secretary, and by "order of the President." Both of these facets of Section 6103(a) are deleted in all three proposals.

With reference to the character of returns as "public records" S. 442, S. 199. and S. 1511 characterize tax returns as "confidential." This change may not have an actual impact on the availability of tax returns because the current law restricts distribution, although giving the returns the characterization "public." However, after any of the three bills' enactment, returns are declared to be confidential and this may have an impact on judicial interpretations of this new section of the Code. The characterization may be considered a statement of overriding Congressional intent, and held as guidance in interpreting the new law. In this sense, the change from "public records" to "confidential" may have an impact on the actual status of tax returns.

The three proposals each also delete the authority of the President and the Secretary to determine inspection rights as to tax returns. The President, as stated, has an apparently absolute right to inspect any return "on order," and the Secretary may open returns to inspection by regulation approved by the

President. The three proposals would remove these authorities. The Secretary would still have authority to make general interpretative regulations under Section 7805, but could not likely create new classes of authorized inspections beyond those in the statute.

Both S. 199 and S. 1511 permit the Commissioner to release statistical tax data, as long as taxpayer anonymity is preserved. This, it would seem, is at least partially intended to satisfy certain agencies' demands for tax data which is to be used for purely statistical purposes. Among such agencies are the Department of Commerce and the Bureau of the Census.

Each of the three proposals takes a different approach to the basic problem of safeguarding tax return confidentiality. S. 199 and S. 442 both deal with redelineation of the list of authorized inspections, and S. 1511 takes another approach. On the basic structure on this issue, each may bear examination.

S. 199 establishes new categories of permitted and prohibited inspections. Because it removes the ability of the President and the Secretary to add to the statutorily delineated listing, the five categories established in S. 199 would appear to be intended as exclusive. The five categories or classifications delineated are (1) the taxpayer and his authorized representative, (2) the IRS, the Department of the Treasury, and the Department of Justice where it is relevant to a case referred to them by the Commissioner having to do with enforcement of the tax laws, (3) the Department of Justice for enforcement of the tax laws but not in cases referred to in subsection (2), but only upon a written request of the Attorney General specifically naming the taxpayer under investigation. (4) State bodies charged with tax administration for their state, upon written request of the head of the designated body and naming the representative to inspect or examine the tax returns, and (5) the President of the United States, but only upon written request by the President naming the taxpayer whose return is to be inspected, and only if the return is necessary for the "performance of his official duties."

S. 199 further orders the Commissioner to submit a quarterly report on inspections under paragraphs (3), (4), and (5) authorized by or requested of the IRS, to the Joint Committee on Internal Revenue Taxation. The Joint Committee is authorized to make such reports public as "it deems advisable."

Furthermore, under S. 199, the Joint Committee is the only Congressional body authorized to receive tax returns. They, in addition, are prohibited from disclosing information to the other bodies of the Congress except in the form of statistical data, without revealing the taxpayer's identity. Decisions to request or inspect data must be made by a majority of the Joint Committee's members.

Other agencies are prohibited from receipt of other than statistical data under S. 199. The Social Security Administration and the Railroad Retirement Board are permitted relevant return information, but they are the only exception aside from the five categories mentioned heretofore.

The apparent intent and impact of S. 199 is to forclose the use of taxpayer-supplied data for non-tax purposes, with only a few specificed exceptions. The proposed law would restrict all agencies not enumerated, and the Congress, itself, in their ability to get tax data. The Congress would be forced to go through the Joint Committee to gather tax data, and then the taxpayer's identity could not be supplied. It is possible to characterize this as the "hardline" approach to the issue of tax return confidentiality, but it should be remembered that the restrictions apply only to that data filed by the taxpayer under compulsion of law and necessary to compute tax liability.

S. 442 also establishes categories of authorized inspections and inspectors. Unlike S. 199, however, S. 442 establishes seven categories. These seven classifications of inspectors of both tax returns and tax return information include (1) the IRS and the Department of the Treasury, and with regard to matters referred to it by the Commissioner, the Department of Justice, (2) any agency charged with enforcement of a statute which has a criminal penalty provision, but only by an order of a United States district court based upon a finding of probable cause to believe the data is both reasonably needed for investigation or prosecution of Federal criminal laws and that no reasonable alternative exists, (3) State tax bodies, upon the written request of the State's prinicipal tax official, (4) the President or White House officers, but upon request signed by the President designating the officer to make the inspection, (5) the chairpersons of the House Committee on Ways and Means, the Senate Finance Committee, and the Joint Committee, sitting in executive session, and the Chief of Staff of the Joint Committee, who may submit the information to another committee of

Congress if sitting in executive session, other committee chairpersons of committees specifically authorized by resolution to so inspect tax returns, and sitting in executive session, and the designated agents of any of these committees, (6) with regard to the "return" only, the taxpayer or taxpayers filing the return in question; the partners in the case of a partnership return; the board of directors or an officer acting under authority of the chief officer and secretary of a corporation for that corporation's return; any stockholder of a Subchapter-S corporation; any person found to have a legitimate interest by the Commissioner where a corporation is in liquidation; the administrator, executor, trustee or other person found by the Commissioner to have material interest if the return is an estate tax return; the trustee, guardian, or committee of any authorized, but incapacitated individual; the trustee or receiver in bankruptcy of any bankrupt taxpayer; a taxpayer's attorney in fact. The "return information" about a taxpayer is open to inspection by any of the above, but at the discretion of the Commission, (7) return information may be disclosed to correct misstatements of published fact, in the discretion of the Commissioner.

S. 442 also contains the special provisions for disclosure of certain applicable information to the Pension Benefit Guaranty Corporation and the Department of Labor with reference to the Employee Retirement Income Security Act of 1974, as well as to the Social Security Administration and the Railroad Retirement Board for use in their limited work. Another special provision requires the Commissioner to disclose to the Attorney General any information on possible criminal activities under Federal criminal law, revealed on tax returns, and permits the Commissioner to do the same with reference to state crimes and state criminal authorities, in his discretion.

The apparent impact and intent of S. 442 would seem distinct from that of S. 199. The latter, S. 199, was apparently interested in preventing the disclosure of material the taxpayer was compelled to disclose. The former, S. 442, appears to take a more broad-based approach, regulating the use of all tax data on a taxpayer, wherever obtained, and therefore making broader permitted disclosures, as necessitated by the broader scope of the bill.

S. 1511 leaves intact the current law regarding permitted disclosures and inspections, but it acts to preclude "any person . . . [or] agency of the Government of the United States, or of any State" from inspecting a return without notifying the taxpayer whose return is sought and getting from the taxpayer a written statement of consent to the inspection. The Proposal exempts from the requirements of notice and consent the IRS, the Department of the Treasury, and the Department of Justice where the latter is dealing with tax matters, as well as state tax agencies where dealing with tax matters and certain Congressional bodies. Other agencies will be able to get tax returns for enforcement of Federal criminal statutes, but only after a showing in Federal district court that there is probable cause to believe that the return is necessary and that the data is not otherwise reasonably available. Another exception permits the President to make a personal request in writing to the Secretary or his delegate for information as whether an individual under consideration for possible Presidential appointment has filed tax returns for the last 3 years, has been subject to any deficiency assessment in the past 8 years, or has been under investigation in tax matters in the last 3 years.

Again, it would appear that the three different approaches to limiting access to tax returns tend to reflect the underlying views of the three Proposals. With regard only to compulsorily filed data, S. 199 would appear to most greatly limit access to tax returns, precluding even much Congressional and Presidential access. S. 442, however, bifurcated by "returns" and "return information" takes a slightly different approach, permitting more examination of some documents, such as "returns" by Congress and the President, but more severely restricting access to "return information." S. 1511 more simply permits extensive inspection of tax returns, retaining the current law's standards, but requires written notification of the taxpayer and consent. The view apparently reflected therein is that it is the use of the tax information without the knowledge of the taxpayer which constitutes the real evil in tax return disclosures.

All three of the reform proposals would change the criminal penalties for violating the confidentiality guaranteed tax returns by Section 6103. As stated earlier, these criminal penalties are currently found at Section 7213.

S. 199 suggests changing the penalty for unlawful disclosure of tax information from a misdemeanor to a felony, and increasing the punishment authorized from one year imprisonment or a $1,000 fine or both to up to five years im-

prisonment or a $10,000 fine or both. Furthermore, it would create a new crime of "unauthorized receipt" of tax data. The new crime would also be a felony, punishable by up to five years imprisonment or a fine of up to $10,000, or both.

S. 442 is similar to S. 199 on this point. It would increase the punishment for unauthorized disclosure of tax data to up to five years imprisonment, or up to a $5,000 fine or both. However, S. 442 does not make the crime a felony. While this status of a high penalty misdemeanor would raise no tax law consequences it could have bail and civil disability implications.

S. 1511 contains the same suggested changes in Section 7213 as S. 199, including an increase in the penalties for unauthorized disclosure of tax data and criminal sanctions against unauthorized receipt of tax data. *Supra*, p. 20.

In addition to comparing the similarities of the three measures it may be noteworthy that S. 442 and S. 1511 also contain unique propositions for additions to the tax laws of provisions not currently found therein.

S. 442, aside from the aforementioned terms, creates a new section in the Code. Section 7212(c) would prohibit political misuse of the internal revenue laws, and is found at S. 442, § 1. The new subsection would provide:

"(c) POLITICAL MISUSE OF THE INTERNAL REVENUE LAWS.—Whoever, directly or indirectly, initiates, conducts, attempts to initiate, attempts to conduct, threatens to initiate or threatens to conduct an income tax audit or any other income tax investigation or income tax prosecution in a discriminatory manner—

"(1) on account of reasons other than enforcement of this title; or

"(2) on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party;

shall be fined not more than $10,000 or imprisoned not more than 5 years or both".—S. 442 § 1.

Again, this would appear to support an analysis that the Bentsen Proposal is aimed at more points of IRS action than either of the other two bills, this neither being a strength nor a weakness of any of the three proposals, but merely a distinction in approach.

S. 442 also creates a right of civil action for the taxpayer against the official who, in violation of the prohibitions set forth in Section 7213, knowingly discloses tax return information. The right of action, created in a new Section 7217, limits the recovery to $20,000. S. 442's new Section 7217 states:

"SEC. 7217. CIVIL PENALTIES FOR UNAUTHORIZED DISCLOSURE OF INFORMATION.

"(a) Any person who knowingly discloses information in violation of section 7213 of this title shall be liable to any taxpayer injured by such disclosure.

"(b) No award, compromise, or settlement of the civil action brought under this section shall exceed the amount of $20,000, including actual and punitive damages, plus court costs."—S. 442 § 4.

Finally, S. 442 creates an IRS oversight function in the General Accounting Office (GAO). Under S. 442 § 4, the Comptroller General must make an annual audit of "the administration of the Federal tax laws" and report yearly to the House Committee on Ways and Means, the Senate Finance Committee, and the Joint Committee on Internal Revenue Taxation on this subject. Among the subjects upon which the Comptroller General would be required to report would be IRS disclosures of tax data to State and Federal agencies, unlawful disclosures of tax data, number of requests to examine Federal tax data, and reasons given by States and Federal agencies, requests for statistical tax data, IRS investigation and prosecution of civil and criminal tax fraud, implementation of the Freedom of Information Act by the IRS, and any other points the above named Congressional committees designate.

The proposal authorizes the Comptroller General to examine any IRS or other State or Federal records with regard to this audit, and authorizes and directs furnishing such records by the Treasury, or other state or Federal agencies. Similarly, S. 1511 authorizes the Comptroller General's office to audit and oversee the IRS in the subject of tax return confidentiality.

III. CONCLUSION

In approaching an analysis of these three proposals it would appear most important that the bills be recognized as approaches to differently defined problems rather than merely three approaches to the same problem. Senator Weicker's S. 199 appears to represent the view that the "evil" to be overcome is not the inspection of all tax data by agencies and persons but the inspection by such author-

ities of tax materials submitted by the taxpayer under compulsion of law. This might be analogized to an argument under the Fifth Amendment to the United States Constitution in criminal cases, but only on the analogical level. See *United States* v. *Sullivan*, 274 U.S. 279 (1926), but also *United States* v. *Garner*, 501 F. 2d 228 (Cir. 9, 1972), reh. en banc 501 F. 2d 236, cert. den. 416 U.S. 935, reh. den. 417 U.S. 959.

Senator Bentsen's S. 442 appears to adopt a different view of what problems exist in tax return confidentiality. It seems to believe that the central disturbances are those to data compiled about individuals including compulsory submissions, but extending beyond to data gathered from independent investigations. The bill proposes both inspection limitations and oversight as a response to this broader problem.

Senator Montoya's S. 1511 would seem to isolate the "secretive" factor in tax return confidentiality. It does not bar tax return use by individuals and agencies but merely insists that it be consented use.

Therefore, by comparison all three bills adopt distinct, but frequently overlapping, objectives in the area of tax return confidentiality and thereupon may be judged as to the efficiency and facility with which they accomplish their objectives.

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Appendix

INTERNAL REVENUE CODE OF 1954, AS AMENDED TO DATE, SECTION 6103

[¶ 35.422] Code Sec. 6103. Publicity of Returns and Disclosure of Information as to Persons Filing Income Tax Returns.

(*a*) *Public Record and Inspection*

(1) Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President.

(2) All returns made with respect to the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, and subchapter B of chapter 37, and chapter 41, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(3) Whenever a return is open to the inspection of any person, a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Secretary or his delegate. The Secretary or his delegate may prescribe a reasonable fee for furnishing such copy.

(*b*) *Inspection by States*

(*1*) *State officers.*—The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of any corporation, at such times and in such manner as the Secretary or his delegate may prescribe.

(*2*) *State bodies or commissions.*—All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any offlical, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Secretary or his delegate. Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of

such political subdivision, but may be furnished only for the purpose of and may be used only for, the administration of such tax laws.

(c) Inspection by Shareholders

All bona fide shareholders of record owning 1 percent or more of the outstanding stock of any corporation shall, upon making request of the Secretary or his delegate, be allowed to examine the annual income returns of such corporation and of its subsidiaries.

(d) Inspection by Committees of Congress

(1) Committees on ways and means of finance.—(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns of such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) Joint committee on internal revenue taxation.—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

(e) Declarations of Estimated Tax

For the purposes of this section, a declaration of estimated tax shall be held and considered a return under this chapter.

(f) Disclosure of Information as to Persons Filing Income Tax Returns

The Secretary or his delegate shall, upon inquiry as to whether any person has filed an income tax return, in a designated internal revenue district for a particular taxable year, furnish to the inquirer, in such manner as the Secretary or his delegate may determine, information showing that such person has, or has not, filed an income tax return in such district for such taxable year.

(g) Disclosure of Information With Respect to Deferred Compensation Plans

The Secretary or his delegate is authorized to furnish—(1) returns with respect to any tax imposed by this title or information with respect to such returns to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of administration of Titles I and IV of the Employees Retirement Income Security Act of 1974, and

(2) registration statements (as described in section 6057) and information with respect to such statements to the proper officers and employees of the Department of Health, Education, and Welfare for purposes of administration of section 1131 of the Social Security Act.

NOTE.—Section 6103(g) was added by the Employee Retirement Income Security Act of 1974, § 1022(h), effective September 2, 1974.

TREASURY REGULATIONS § 301.6103, REG. § 301.6103(a)–1

Reg. § 301.6103(a)–1 (TD 6543, filed 1–18–61; amended by TD 6646; filed 4–5–63; TD 6809, filed 3–22–65; TD 7162, filed 2–18–72; TD 7266, filed 3–9–73.) Inspection of returns by certain classes of persons and State and Federal Government establishments pursuant to Executive order.

(a) In General.—*(1) Authority.*—The President is authorized by subsection (a) of section 6103 to open to public examination and inspection returns in respect of the taxes described in paragraphs (1) and (2) of such subsection. In addition, section 6106 provides that returns in respect of the tax described therein

(unemployment tax imposed by chapter 23 of the Code) shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns of the taxes described in section 6103, except that subsections (a)(2) and (b)(2) of section 6103, and subsection (a)(2) of section 7213 (relating to unauthorized disclosure of information) shall not apply.

(2) *Scope.*—This section and the Executive orders pursuant to which this section is prescribed govern the inspection of returns by the classes of persons and State and Federal government establishments designated in the succeeding paragraphs of this section insofar as such inspection is permissible only upon order of the President and under regulations approved by the President. Specifically, this section relates to inspection of returns made in respect of the taxes imposed by the following subdivisions of the Code: Chapters 1, 2, 3, and 6 (income taxes); chapter 5 (tax on transfers to avoid income tax); chapter 11 (estate tax); chapter 12 (gift tax); chapter 23 (unemployment tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 33 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); subchapter B of chapter 37 (tax on coconut and palm oil); and chapter 41 (interest equalization tax).

(3) *Terms used.*—(*i*) *Return.*—For purposes of section 6103(a), the term "return" includes—

(a) Information returns, schedules, lists, and other written statements filed by or on behalf of the taxpayer with the Internal Revenue Service which are designed to be supplemental to or become a part of the return, and

(b) Other records, reports, information received orally or in writting, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included under (a) of this subdivision.

The items listed in (b) of this subdivision may be open to inspection in any case where inspection of the return is authorized by section 6103(a) and these regulations only in the discretion of the Secretary or the Commissioner or the delegate of either. The above rules and procedures also apply to any reproductions or recordings by whatever means made of any such documents or portion thereof. A notice of acquisition filed under section 4917 is a return for purposes of section 6103. An application for exemption from income tax under section 501(a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103. For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(*ii*) *Other terms.*—Any word or term used in this section, other than the word "return", which is defined in any chapter of the Code shall be given the definition contained in the chapter which is applicable to the particular return made.

(4) *Cross references.*—For special provisions relating to inspection of returns pursuant to Executive order by committees of Congress other than those enumerated in section 6103(d) or by certain designated Federal Government establishments see the regulations under section 6103(n) in §§ 301.6103(a)–100, et seq.

(*b*) *Procedure for inspection.*—(1) *Authority to permit inspection.*—The Secretary or the Commissioner or the delegate of either may grant permission for the inspection of returns in accordance with this section.

(2) *Place of inspection.*—Generally, returns may be inspected in the Internal Revenue Service office in which they were filed or in the national office. In appropriate cases, inspection may also be made in other offices of the Internal Revenue Service as designated by the Commissioner. Such inspection shall be made only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Penalties.*—For penalties for unauthorized disclosure of information, see section 7213.

(*c*) *Inspection by certain classes of persons.*—(1) *Returns in respect of income tax, unemployment tax, and certain excise taxes.*—(i) In general.—Returns in respect to the taxes imposed by chapters 1, 2, 3, and 6 (income taxes), chapter 5 (tax on transfers to avoid income tax), chapter 23 (unemployment tax), chapter 32 (manufacturers excise taxes), subchapters B, C, and D of chapter 33 (communications tax, transportation taxes and tax on safe deposit boxes, respectively), subchapter B of chapter 37 (tax on coconut and palm oil) and chapter 41 (interest equalization tax) of the Code shall be open to inspection as hereinafter provided in this subparagraph by certain persons having a material interest which will be affected by information contained in such returns. The word "return," as used in

the succeeding subdivisions of this subparagraph, refers to a return made in respect of any of the taxes described in the preceding sentence except as such word is expressly limited in any subdivision to the return of a particular tax.

(ii) Return of individual.—A return of an individual shall be open to inspection—

(a) By the individual for whom the return was made;

(b) If the individual for whom the return was made is legally incompetent, by the committee, trustee, or guardian of his estate;

(c) If the individual for whom the return was made has died, (1) by the administrator, executor, or trustee of his estate (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(d) If the property of the individual for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iii) Joint return of income tax.—A joint income tax return of husband and wife shall be open to inspection—

(a) By either of the individuals for whom the return was made;

(b) If either of the individuals for whom the return was made is legally incompetent, by the committee, trustee, or guardian of the estate of such individual;

(c) If either of the individuals for whom the return was made has died, (1) by the administrator, executor, or trustee of the estate of such decedent, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(d) If the property of either of the individuals for whom the return was made is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(iv) Return of partnership.—A return of a partnership shall be open to inspection—

(a) By any person who was a member of the partnership during any part of the period covered by the return upon submission of satisfactory evidence of such membership;

(b) If an individual who was a member of the partnership during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(c) If an individual who was a member of the partnership during any part of the period covered by the return has died, (1) by the administrator, executor, or trustee of his estate, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return;

(d) If the property of the partnership is in the hands of a receiver or trustee in bankruptcy, by such receiver or trustee; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(v) Return of estate.—A return of an estate shall be open to inspection—

(a) By the administrator, executor, or trustee of the estate;

(b) In the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of the decedent for whose estate the return was made, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return, or if any such heir at law, next of kin, or beneficiary has died or is legally incompetent, by the administrator, executor, committee, trustee, or guardian of his estate, upon a like submission of evidence; and

(c) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vi) Return of trust.—A return of a trust shall be open to inspection—

(a) By any person who was a beneficiary of the trust during any part of the period covered by the return, upon submission of satisfactory evidence that the person was such a beneficiary;

(c) If any individual who was a beneficiary of the trust during any part of the period covered by the return is legally incompetent, by the committee, trustee, or guardian of his estate;

(d) If any individual who was a beneficiary of the trust during any part of the period covered by the return has died, (1) by the administrator, executor, or trustee of his estate, and (2) in the discretion of the Secretary or the Commissioner or the delegate of either, by any heir at law, next of kin, or beneficiary under the will, of such decedent, upon submission of satisfactory evidence that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and

(e) By the duly constituted attorney in fact of any of the foregoing persons, subject to the conditions of inspection prescribed for such person.

(vii) Return of corporation.—A return of a corporation shall be open to inspection—

(a) By any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action;

(b) By any officer or employee of the corporation upon written request signed by any principal officer and attested by the secretary, or other officer, under the corporate seal, if any;

(c) By the duly constituted attorney in fact of the corporation;

(d) If the property of the corporation is in the hands of a receiver or trustee in bankruptcy by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee; and

(e) In the discretion of the Secretary or the Commissioner or the delegate of either if the corporation has been dissolved by any person who under the regulations in this subdivision (vii) might have inspected the return at the date of dissolution.

For provisions relating to inspecton of corporation income or unemployment tax returns by shareholders, see section 6103(c) and § 301.6103(c)-1.

(2) *Returns in respect of estate tax.*—A return or notice in respect of estate tax imposed by chapter 11 of the Code shall be open to inspection—

(i) By the executor, or his successor in office, or the duly constituted attorney in fact of such executor or successor; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or notice or in obtaining information as to the payment of the tax.

(3) *Returns in respect to gift tax.*—A return in respect of gift tax imposed by chapter 12 of the Code shall be open to inspection—

(i) By the donor or his duly constituted attorney in fact; and

(ii) In the discretion of the Secretary or the Commissioner or the delegate of either, by any other person upon submission of satisfactory evidence that such person has a material interest either in ascertaining any fact disclosed by the return or in obtaining information as to the payment of the tax.

(4) *Applications for inspection.*—Applications for permission to inspect returns under this paragraph shall be made in writing to the internal revenue officer (district director or Director of International Operations) with whom the return was filed and shall set forth (i) the name and address of the person for whom the return was made, (ii) the kind of tax reported on the return, (iii) the taxable period covered by the return, (iv) the reason why inspection is desired, and (v) a statement showing that the applicant is a person entitled under this paragraph to make the inspection requested.

(d) *Inspection by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions, of returns in respect of certain taxes.*—(1) *Inspection of estate and gift tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.*—Returns and notices in respect of estate tax imposed by chapter 11 of the Code and returns in respect of gift tax imposed by chapter 12 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration, provided a like cooperation is given by the State, District

of Columbia, the Commonwealth of Puerto Rico, or the possession to the Commissioner and his representatives with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession for use in the administration of the Federal tax laws.

(2) *Inspection of unemployment tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.*—Returns in respect of the unemployment tax imposed by chapter 23 of the Code may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, provided (i) such government has a law certified to the Secretary as having been approved in accordance with section 3304, and (ii) the inspection is solely for the purpose of administering such law.

(3) *Inspection of excise tax returns by States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions.*—Returns in respect of the excise taxes imposed by chapter 5 (tax on transfers to avoid income tax); chapter 32 (manufacturers excise taxes); subchapters B, C, and D of chapter 53 (communications tax, transportation taxes, and tax on safe deposit boxes, respectively); subchapter B of chapter 37 (tax on coconut and palm oil); and chapter 41 (interest equalization tax) may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official, body, or commission, lawfully charged with the administration of any tax law of a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(4) *Inspection of income tax returns by the District of Columbia, the Commonwealth of Puerto Rico, or possessions.*—Returns in respect of income tax imposed by chapters 1, 2, 3, or 6 of the Code, may, in the discretion of the Secretary or the Commissioner or the delegate of either, be made available for inspection by any properly authorized official body, or commission lawfully charged with the administration of any tax law of the District of Columbia, the Commonwealth of Puerto Rico, or a possession of the United States, for the purpose of such administration.

(5) *Applications for inspection.*—(i) In general.—Application for the inspection provided for in subparagraph (1), (2), (3), or (4) of this paragraph shall be made in writing and signed by the governor of the State or the executive head of the District of Columbia, or Commonwealth of Puerto Rico, or possession, and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall state—

(a) The title of the official, body, or commission by whom or [for] which inspection is to be made;

(b) By specific reference, the law of the State, District of Columbia, Commonwealth of Puerto Rico, or possession which such official, body, or commission is charged with administering and the law under which he or it is so charged;

(c) The purpose for which the inspection is to be made; and

(d) If inspection of estate or gift tax returns is requested, that the State, District of Columbia, Commonwealth of Puerto Rico, or possession, as the case may be, gives to the Commissioner and his representatives like cooperation with respect to the inspection of returns of estate, inheritance, legacy, succession, gift, or other tax of the State, District of Columbia, Commonwealth of Puerto Rico, or possession for use in the administration of the Federal tax laws.

(ii) Returns filed in internal revenue district within or including States or other entity requesting inspection.—(a) General inspection.—Upon application by a State, the District of Columbia, the Commonwealth of Puerto Rico, or possession of the United States, permission may be granted for general inspection of returns of the taxes specified in subparagraph (1), (2), (3), or (4) of this paragraph which are filed in an internal revenue district within or including such State or District or, in the case of the Commonwealth of Puerto Rico, or a possession, with the Director of International Operations. If such general inspection is desired, the application made to the Commissioner in accordance with subdivision (i) of this subparagraph shall include a statement that general inspection is desired of a specified class or classes of returns (for example, estate tax returns, gift tax returns, etc.). Permission granted to a State, the District of Columbia, the Commonwealth of Puerto Rico, or a possession for the general inspection provided for in this subdivision shall, except as hereinafter provided in the case of unemployment tax returns, continue in effect until such time as the Secretary or the Commissioner or the delegate of either,

by written notice to the governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, provides that such inspection will be permitted only on the basis of periodic applications therefor. Permission for general inspection of unemployment tax returns will terminate without notice at such time as the State, District of Columbia, Commonwealth of Puerto Rico, or possession ceases to have a law certified to the Secretary as having been approved in accordance with section 3304. The governor of the State or the executive head of the District of Columbia, the Commonwealth of Puerto Rico, or possession, as the case may be, shall supply in writing to the internal revenue officer (district director or Director of International Operations) with whom the returns to be inspected were filed a list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate deletions or additions as may be necessary.

(b) Inspection of specific returns.—Permission granted pursuant to (a) of this subdivision for general inspection of returns of particular tax includes permission to inspect specifically identified returns of such tax when desired. However, if a State, the District of Columbia, the Commonwealth of Puerto Rico, or possession is interested only in examining certain returns of particular taxpayers, the application for inspection of such returns shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision, shall state the name and address of each taxpayer whose return or returns it is desired to inspect, the kind of tax reported on each such return, the taxable period covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(iii) Returns filed in other internal revenue districts.—In the case of returns filed in an internal revenue district other than one within or including the State or District of Columbia requesting inspection or, if the inspection is requested by the Commonwealth of Puerto Rico or a possession, filed elsewhere than with the Director of International Operations, permission for the inspection provided for in subparagraph (1), (2), (3), and (4) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subdivision (i) of this subparagraph and, in addition to the information outlined in such subdivision and in subdivision (ii)(b) of this subparagraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(6) *Time and place of inspection.*—A convenient time and place for the inspection of returns permitted under this paragraph will be arranged by the internal revenue officer (district director or Director of International Operations) with whom the returns were filed.

(7) *Cross reference.*—For other provisions relating to inspection of returns on behalf of States or political subdivisions thereof, see section 6103(b) and § 301.6103(b)-1.

(e) *Inspection of returns by Department of the Treasury.*—Officers and employees of the Department of the Treasury whose official duties require inspection of returns made in respect of any tax described in paragraph (a)(2) of this section may inspect any such returns without making written application therefor. If the head of a bureau or office in the Department of the Treasury, not a part of the Internal Revenue Service, desires to inspect, or to have an employee of his bureau or office inspect, any such return in connection with some matter officially before him for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary or the Commissioner or the delegate of either, be permitted upon written application by the head of the bureau or office desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington 25, D.C., and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(f) *Inspection of returns by executive departments other than the Department of the Treasury and by other establishments of the Federal Government.*—Except as provided in paragraphs (d) and (g) of this section, if the head of an executive department (other than the Department of the Treasury), or of

any other establishment of the Federal Government, desires to inspect, or to have some other officer or employee of his department or establishment inspect, a return in respect of any tax described in paragraph (a) (2) of this section in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue or the delegate of either, be permitted upon written application signed by the head of the executive department or other Government establishment desiring the inspection. The application shall be made to the Commissioner of Internal Revenue, Washington 25, D.C., and shall set forth (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, (4) the reason why inspection is desired, and (5) the name and the official designation of the person by whom the inspection is to be made. The information obtained from inspection pursuant to this paragraph may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(*g*) *Inspection of returns by United States attorneys and attorneys of Department of Justice.*—A return in respect of any tax described in paragraph (a) (2) of this section shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The application for inspection shall be in writing and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why inspection is desired. The application shall, where the inspection is to be made by a United States attorney, be signed by such attorney, and, where the inspection is to be made by an attorney of the Department of Justice, be signed by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. The application *shall* be addressed to the Commissioner of Internal Revenue, Washington, *D.C. 20224, with a copy addressed to the internal revenue officer (the district director or the director of the service center)* with whom the return was filed.

(*h*) *Use of returns in grand jury proceedings and in litigation.*—Returns made in respect of any tax described in paragraph (a) (2) of this section, or copies thereof, may be furnished by the Secretary or the Commissioner or the delegate of either to a United States attorney or an attorney of the Department of Justice for official use in proceedings before a United States grand jury, or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Returns or copies thereof will be furnished without written application therefor to United States attorneys and attorneys of the Department of Justice for official use in the prosecution of claims and demands by, and offenses against, the United States, or the defense of claims and demands against the United States or officers or employees thereof, in cases arising under the internal revenue laws or related statutes which were referred by the Department of the Treasury to the Department of Justice for such prosecution or defense. In all other cases, written application for a return or copies thereof shall be made to the Commissioner of Internal Revenue, Washington, *D.C. 20224, with a copy addressed to the internal revenue officer (the district director or the director of the service center) with whom the return was filed. The application shall be in writing and shall show (1) the name and address of the person for whom the return was made, (2) the kind of tax reported on the return, (3) the taxable period covered by the return, and (4) the reason why the return or a copy thereof is desired. Such* application shall be signed by the United States attorney if the return or copy is for his use, or by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General if the return or copy is for the use of an attorney of the Department of Justice. For provisions relating to the certification of copies of returns, see § 301.6103(a)-2. If a return, or copy thereof, is furnished pursuant to this paragraph, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto. See paragraphs (e) and (f) of this section for use, in proceedings to which the United States is a party, of information obtained by executive departments and other Federal Government establishments from inspection of

returns. *If a U.S. attorney or an attorney of the Department of Justice has obtained a copy of a return under paragraph (g) of this section, an application for the use of such return in a siutation specified in this paragraph shall not be necessary. Returns shall not be made available to the Department of Justice for purposes of examining prospective jurors except that this shall not prohibit the answering of an inquiry, from the Department of Justice, as to whether a prospective juror has, or has not, been investigated by the Internal Revenue Service.*

(*i*) *Disclosures by internal revenue officers for investigative purposes.*—An internal revenue officer engaged in an official investigation of the liability in connection with any return or notice in respect of estate tax imposed by chapter 11, or any return in respect of gift tax imposed by chapter 12, of the Code may disclose the returned value of any item, the amount of any specific deduction, or other limited information, if the disclosure is necessary in order to verify such value, deduction, or other information, or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purpose of the investigation, and in no case extends to such information as the amount of the estate or gift, the amount of the tax, or other general data.

(*j*) *Inspection of accepted offers in compromise.*—Subject to such rules and under such circumstances as the Secretary or the Commissioner shall determine to be in the public interest, returns in respect of income tax imposed by chapter 1, 2, 3, or 6, estate tax imposed by chapter 11, or gift tax imposed by chapter 12, of the Code, shall be open to inspection to the extent necessary to permit examination of any accepted offer in compromise under section 7122 relative to the liability for any such tax.

REG. § 301.6103(a)–2

[¶ 35,425] Reg. § 301.6103(a)–2 (TD 6546, filed 1–18–61; amended by TD 6700, filed 1–6–64.) Copies of returns.

Any person who may be permitted to inspect a return under section 6103 and § 301.6103(a)–1, § 301.6103(b)–1, or § 301.6103(c)–1 may be furnished with a copy of such return upon request. If the request for a copy of a return is made other than at the time of inspection of such return by the applicant, the request shall be in writing, shall adequately identify the return a copy of which is desired, and shall be accompanied by satisfactory evidence that the applicant qualifies as one of the persons or governmental agencies to whom or which inspection of the return may be permitted. Except as otherwise provided in this section, applications for copies of returns should be submitted to the Commissioner of Internal Revenue, Washington, D.C. 20224, who is authorized to furnish such copies and to certify them upon request under the official seal of his office or under the official seal of the Department of the Treasury. Where the applicant is (a) a person who may be permitted under paragraph (c) of § 301.6103(a)–1 to inspect a return, (b) an official of a State, the District of Columbia,[2] The Commonwealth of Puerto Rico, or a possession of the United States entitled to inspect returns under paragraph (d) of § 301.6103(a)–1 or under § 301.6103(b)–1, or (c) a shareholder entitled under § 301.6103(c)–1 or inspect returns of the corporation of which he is a shareholder, the application for a copy of the return should be submitted to, and such copy may be furnished by, the internal revenue officer (district director or the Director of International Operations) with whom the return was filed. Any copy so furnished by the district director or the Director of International Operations may, upon request, be certified by him under his official seal. The district director or the Director of International Operations is authorized, when so directed by the Commissioner, to furnish to any bureau or office of the Treasury Department or to any other department or agency of the Government copies of any returns which such bureau, office, department, or agency is permitted to inspect under paragraph (e) or (f) of § 301.6103(a)–1, and to certify such copies under the official seal of his office. Applications for copies of returns available to United States attorneys or attorneys of the Department of Justice pursuant to paragraph (g) or (h) of § 301.6103(a)–1 may be submitted to, and such copies may be furnished and certified under seal by, the Commissioner or, where desired, the district director or the Director of International Operations, as the case may be, with whom the returns were filed. Where such application is required to be in writing it shall be signed by the United States attorney if the copy is for his use, or by the Attorney General, the Deputy Attorney General, or an Assistant Attorney General if the copy is for the use of an attorney of the Department of Justice. The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

REG. § 301.6103(a)–100

[¶35,426] Reg § 301.6103(a)–100 (TD 6135, filed 6–29–55; republished in TD 6498, filed 10–24–60.) Inspection by Department of Health, Education, and Welfare of individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, any individual income tax return made in respect of a tax imposed under chapter 1 or chapter 2 of the Code shall be open to inspection by the Department of Health, Education, and Welfare as may be needed in its administration of the provisions of title II of the Social Security Act, as amended (42 U.S.C. ch. 7). Upon request, the inspection of an individual income tax return may be made by any officer or employee of the Department of Health, Education, and Welfare duly authorized by the Secretary of such Department to make such inspection. The request to inspect an income tax return or returns of a particular individual shall be made, in writing, by the Secretary or any duly authorized officer or employee of the Department of Health, Education, and Welfare to the Commissioner or Internal Revenue or to any officer or employee of the Internal Revenue Service designated by the Commissioner. The written request shall be in such form and manner as may be prescribed by the Commissioner of Internal Revenue. Upon receipt of such a request, any officer or employee of the Internal Revenue Service duly authorized by the Commissioner of Internal Revenue may make the individual income tax return or returns available for inspection by any duly authorized officer or employee of the Department of Health, Education, and Welfare or may furnish such Department with a copy of the return or with any data on such return. Any information thus obtained shall be held confidential, except to the extent necessary to effectuate the purposes for which returns are open to inspection.

REG. § 301.6103(a)–101

[¶35,427] Reg. § 301.6103(a)–101 (TD 6132, filed 5–3–55; republished in TD 6498, filed 10–24–60.) Inspection of returns by committees of Congress other than those enumerated in section 6103(d).

(a) Pursuant to the provisions of section 6103(a) any return with respect to income, estate, or gift tax imposed by the Internal Revenue Code of 1954 shall be open to inspection by any committee of the Congress, or any subcommittee or a committee of the Congress, specially authorized to inspect such returns by an Executive order issued under the aforementioned statutory provisions. Such inspection shall be subject to the conditions and restrictions imposed by the executive order and the rules and regulations hereinafter prescribed.

(b) Only such of the aforementioned returns as are specified in a resolution adopted by the committee in accordance with the rules of the appropriate house of the Congress then applicable to the reporting of a measure or recommendation from such committee shall be open to inspection. Such resolution shall set forth the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns. The inspection of returns authorized in this section may be made by the committee of the Congress, or the subcommittee of a committee of the Congress, authorized as provided in paragraph (a) of this section, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as such committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of such committee or of such subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is desired to inspect and the taxable periods covered by the returns and stating that the resolution hereinbefore mentioned with respect to the inspection of such returns has been duly adopted by such committee or by the committee under which such subcommittee functions, the Secretary or any officer or employee of the Department of the Treasury, with the approval of the Secretary, shall furnish such committee or subcommittee with any data relating to or contained in any such return or shall make such return available for inspection by such committee or subcommittee or by the examiners or agents designated or appointed by such committee or subcommittee. Such data shall be furnished, or such return shall be made available for Inspection, in an office of the Internal Revenue Service. Any information thus obtained by such committee or subcommittee shall be held confidential: Provided, however, That any portion thereof

relevant or pertinent to the purpose of the investigation may be submitted by the investigating committee to the appropriate house of the Congress.

(c) This section shall not be applicable to any committee authorized by section 6103(d) to inspect returns.

REG. § 301.6103(a)–102

[¶35,428] Reg. § 301.6103(a)–102 (TD 6374, filed 4–29–59; republished in TD 6498, filed 10–24–60.) Inspection by Securities and Exchange Commission of transcript cards and corporate and individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, corporate and individual income tax returns made for taxable years ending after December 31, 1956, and statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made for taxable years beginning after December 31, 1953, and ending after August 16, 1954, shall be open to inspection by the Securities and Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78j), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b), relating to the development of programs for preparing statistical information by Executive agencies. Upon request, such inspection may be made by any officer or employee of the Securities and Exchange Commission duly authorized by the Chairman of such Commission to make it. Upon written notice by the chairman of the Securities and Exchange Commission to the Secretary of the Treasury, stating the type of statistical transcript cards or income tax returns of which inspection is desired, the Secretary, or any Officer or employee of the Treasury Department with the approval of the Secretary, may furnish the Securities and Exchange Commission with any data on such cards or returns or may make them available for inspection and the taking of such data as the Chairman of the Securities and Exchange Commission may designate. Such data shall be furnished, or such returns or cards shall be made available for inspection, in the Office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

REG. § 301.6103(a)–103

[¶ 35,429] Reg. § 301.6103(a)–103 (TD 6570, filed 8–24–61.) Inspection of returns by the Advisory Commission on Intergovernmental Relations.

(a) Pursuant to the provisions of sections 6103(a) and 6106 of the Internal Revenue Code of 1954 (68A Stat. 753, 756; 26 U.S.C. 6103(a), 6106) and of the Executive order issued thereunder, any return with respect to income tax, tax on transfer to avoid income tax, estate tax, gift tax, unemployment tax, manufacturers excise taxes, communications tax, transportation taxes, tax on safe deposit boxes, or tax on coconut and palm oil imposed by such Code shall be open to inspection by the Advisory Commission on Intergovernmental Relations for the purpose of making studies and investigations in connection with the performance of its function of recommending methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers. The inspection of returns herein authorized may be made by any member or employee of the Commission duly authorized by the Chairman of the Commission to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury stating the kinds of returns which it is desired to inspect, the Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Commission with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the Federal Register.

REG. § 301.6103(a)–104

[¶ 35,430] Reg. § 301.6103(a)–104 (TD 6547, filed 1–18–61.) Inspection by Department of Commerce of income tax returns made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Department of Commerce. The inspection of returns herein authorized may be made by any officer or employee of the Department of Commerce duly authorized by the Secretary of Commerce to make such inspection. Upon written notice by the Secretary of Commerce to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary of the Treasury or any officer or employee of the Department of the Treasury with the approval of the Secretary may furnish the Department of Commerce with any data on such returns or may make the returns available for inspection and the taking of such data as the Secretary of Commerce may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the Federal Register.

REG. §301.6103(a)–105

[¶35,431 Reg. § 301.6103(a)–105 (TD 6544, filed 1–18–61). Inspection by Renegotiation Board of income tax returns made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(a) of the Internal Revenue Code of 1954 (68A Stat. 753; 26 U.S.C. 6103(a)) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns made under such Code shall be open to inspection by the Renegotiation Board. The inspection of returns herein authorized may be made by any officer or employee of the Renegotiation Board duly authorized by the Chairman of the Board to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Renegotiation Board with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Board may designate. Such data shall be furnished, or such returns shall be made availble for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose directly or indirectly, the name or address of any taxpayer.

(b) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

REG. § 301.6103(a)–106

[¶35.432] Reg. § 301.6103(a)–106 (TD 6545, filed 1–18–61). Inspection by Federal Trade Commission of income tax returns of corporations made under the Internal Revenue Code of 1954.

(a) Pursuant to the provisions of section 6103(e) of the Internal Revenue Code of 1954 (68A Stat. 753, 26 U.S.C. 6103(a) and of the Executive order issued thereunder, and in the interest of the internal management of the Government, income tax returns of corporations made under such Code shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914 (38 Stat. 717). The inspection of returns herein authorized may be made by any officer or employee of the Federal Trade Commission duly authorized by the Chairman of the Commission to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury, the Secretary, or any officer or employee of the Department of the Treasury with the approval of the

Secretary, may furnish the Federal Trade Commission with any data on such returns or may make the returns available for inspection and the taking of such data as the Chairman of the Commission may designate. Such data shall be furnished, or such returns shall be made available for inspection, in the office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This Treasury Decision shall be effective upon its filing for publication in the Federal Register.

REG. § 301.6103(a)–109

[¶ 35,432.10] Reg. § 301.6103(a)–109. (TD 7205, filed 8–30–72.) Inspection of returns by Department of the Treasury for economic stabilization purposes.

(a) *In general:* Officers and employees of the Department of the Treasury, including the Internal Revenue Service and the Office of Chief Counsel for the Internal Revenue Service, whose official duties include the administration or enforcement of provisions of the Economic Stabilization Act of 1970 (Public Law 91–379, 84 Stat. 799), as amended by the Economic Stabilization Act Amendments of 1971 (Public Law 92–210, 85 Stat. 743), may inspect any returns made in respect of any tax described in paragraph (a)(2) of § 301.6103(a)–1 without making written application therefor. The provisions of paragraph (e) of § 301.6103(a)–1 shall not apply with respect to the head of a bureau or office in the Department of the Treasury, including the Internal Revenue Service and the Office of Chief Counsel for the Internal Revenue Service, who desires to inspect, or to have an employee of his bureau or office inspect, any such return in connection with some matter officially before him for the purpose of administering or enforcing the provisions of the Economic Stabilization Act of 1970, as amended. The information obtained from inspection pursuant to this paragraph may be—

(i) Used as evidence by the Department of the Treasury, including the Internal Revenue Service and the Office of Chief Counsel for the Internal Revenue Service, in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party, or

(ii) Used to the extent necessary to effectuate the purposes for which such returns are open to inspection.

(b) *Terms used—(1) "Return".* For the definition of the term "return" for purposes of section 6103(a) and this section, see paragraph (a)(3)(i) of § 301.6103(a)–1.

(2) *Other terms.* Any word or term used in this section, other than the word "return", which is defined in any chapter of the Code shall be given the definition contained in the chapter which is applicable to the particular return made.

REG. § 301.6103(b)–1

[¶ 35,433] Reg. § 301.6103(b)–1 (TD 6546, filed 1–18–61). Inspection by States.

(a) *Corporation returns of income tax or unemployment tax.* Under the provisions of sections 6103(b)(1) and 6106, the proper tax officers of a State shall have access, upon application made in accordance with the provisions of this paragraph, to the returns filed by any corporation with respect to the taxes imposed by chapters 1, 3, and 6 of the Code and with respect to the unemployment tax imposed by chapter 23 of the Code, or to abstracts of such returns. Application for access to the returns of any corporation, or abstracts thereof, shall be in writing signed by the governor of the State and addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall set forth the reason why access is desired; the names and official positions of the officers designated to have such access; and, with respect to each return to which access is desired, the name and address of the corporation filing the return, the kind of tax (income tax or unemployment tax) reported on the return, and the taxable year covered by the return.

(b) *Income tax returns—(1) In general.*—Income tax returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 of the Code shall, upon application made in accordance with the provisions of this paragraph, be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, or any properly designated representative of such official, body, or commission, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to

local taxing authorities as provided in section 6103(b)(2). The application shall be made in writing and signed by the governor of the State and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The application shall state—

(i) The title of the official, body, or commission by whom or which the inspection is to be made;

(ii) By specific reference, the State tax law which such official body, or commission is charged with administering and the law under which he or it is so charged;

(iii) The purpose for which the inspection is to be made; and

(iv) If the inspection is for the purpose of obtaining information to be furnished to local taxing authorities, (a) the title of the official, body, or commission of each political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, to whom or to which the information secured by the inspection is to be furnishd, and (b) the purpose for which the information is to be used by such official, body, or commission.

(2) *Returns filed in internal revenue district within or including State.*—(i) General inspection.—Permission may be granted by the Commissioner to any State for general inspection or returns of the taxes imposed by chapters 1, 2, 3, and 6 of the Code which are filed in an internal revenue district within or including such State. If such general inspection is desired, the application made to the Commissioner in accordance with subparagraph (1) of this paragraph shall include a statement that general inspection is desired of returns filed in the internal revenue district or districts within or including the State with respect to the taxes imposed by chapers 1, 2, 3, and 6 of the Code. Permission granted for the general inspection provided for in this subdivision shall continue in effect until such time as the Commissioner by written notice to the governor of the State provdes that such inspection will be permitted only on the basis of periodic applications therefor. The governor shall supply to the district director with whom the returns to be inspected were filed a written list of the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application to the Commissioner, and shall keep such list current by appropriate elections or additions as may be necessary.

(ii) Inspection of specific returns. Permission for the general inspection provided in subdivision (i) of this subparagraph includes permission to inspect a specifically identified return when desired. However, a State interested only in examining the returns of particular taxpayers may inspect such returns on written application therefor to the Commissioner. The application in such case shall state, in addition to the information outlined in subparagraph (1) of this paragraph, the name and address of each taxpayer whose return or returns it is desired to inspect, the taxable year covered by each such return, and the names of the individuals designated to make the inspection on behalf of the official, body, or commission named in the application.

(3) *Returns filed in other internal revenue districts.*—In the case of returns filed with the Director of International Operations or in an internal revenue district other than one within or including the State requesting the inspection, permission for the inspection provided for in subparagraph (1) of this paragraph will be granted only with respect to specifically identified returns. The application for such inspection shall be made to the Commissioner as provided in subparagraph (1) of this paragraph and, in addition to the information outlined in such subparagraph and in subparagraph (2)(ii) of this paragraph, shall specify the internal revenue district or office in which the returns to be inspected are believed to have been filed.

(c) *Time and place of inspection.*—The internal revenue officer (district director or Director of International Operations) with whom the returns were filed is authorized to make such returns available in accordance with permission granted by the Commissioner pursuant to this section. Such officer shall set a convenient time and place for the inspection. The inspection will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.*—For purposes of section 6103(b) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501(a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section

6103(b). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104–1.

(e) *Cross reference.*—For additional provisions relating to inspection of returns on behalf of States, see paragraph (d) of § 301.6103(a)–1. For penalties for unauthorized disclosure of information, see section 7213.

REG. § 301.6103(c)–1

[¶ 35,434] Reg. § 301.6103(c)–1 (TD 6546, filed 1–18–61). Inspection of corporation returns by shareholders.

(a) *In general.*—Under the provisions of sections 6103(c) and 6106, a bona fide shareholder of record owning one percent or more of the outstanding stock of a corporation shall be allowed, upon request, to examine the annual income tax returns and unemployment tax returns of such corporation and its subsidiaries. A person is not a bona fide shareholder of record within the meaning of section 6103(c) if he acquired his shares for the purpose of obtaining the right to inspect the returns of the corporation. The privilege of inspecting returns in accordance with section 6103(c) and this section is personal to the shareholder and cannot be delegated. In the case of a corporation which has been dissolved, the returns may be examined by any shareholder who would have been entitled to examine them at the date of dissolution.

(b) *Applications.*—Request for permission to inspect returns under this section shall be made in writing and verified by affidavit. The request shall be submitted to the district director or the Director of International Operations, as the case may be, with whom the return was filed. The request shall set forth (1) the name and address of the applicant, (2) the name and address of the corporation whose return or returns it is desired to inspect, (3) the kind of tax and the taxable period covered by each return it is desired to inspect, (4) the amount of the corporation's outstanding capital stock, (5) the number of shares owned by the applicant and the date or dates on which he acquired them, (6) whether the applicant has the beneficial as well as the record title to such shares, and (7) that the applicant did not acquire the shares for the purpose of obtaining the right to inspect the returns of the corporation. The request shall be accompanied by evidence establishing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. Such evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal.

(c) *Time and place of inspection.*—The district director or the Director of International Operations, upon being satisfied from the evidence presented that the applicant meets the statutory requirements, shall grant permission to examine the returns and shall set a convenient time and place for the examination. Examination of returns by shareholders will be permitted only in the presence of an internal revenue officer or employee and only in an office of the Internal Revenue Service during the regular hours of business of such office.

(d) *Definition of return.*—For purposes of section 6103(c) and this section, the term "return" includes information returns, schedules, lists, and other written statements filed with the Internal Revenue Service which are designed to be supplemental to or to become a part of the return, and, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. An application for exemption from income tax under section 501(a) filed by an organization described in section 501 (c) or (d) in order to establish its exemption is not a return for purposes of section 6103(c). For provisions opening to public inspection exemption applications with respect to which a determination has been made that the organization is entitled to exemption from income tax under section 501(a), see section 6104(a) and § 301.6104-1.

(e) *Penalties.*—For penalties for unauthorized disclosure of information, see section 7213.

REG. § 301.6103(d)–1

[¶ 35,435] Reg. § 301.6103(d)–1 (TD 6546, filed 1–18–61). Inspection by committees of Congress.

(a) *Committees on Ways and Means and Finance and joint and select committees specially authorized to investigate returns.*—The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on

Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return. Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine. Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(*b*) *Joint Committee on Internal Revenue Taxation.*—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and the right to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be. See also section 8023 for authority of the Joint Committee to obtain additional data.

(*c*) *Applications for tax exemption.*—The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501(a) for any taxable year, and other other papers which are in the possession of the Internal Revenue Service and which relate to such application, shall, in accordance with section 6104(a)(2), be made available to any committee of Congress designated in paragraph (a) or (b) of this section as if such papers constituted returns.

REG. § 301.6103(f)-1

Reg. § 301.6103(f)-1 (TA 6546, filed 1-18-61). Public lists of persons making returns of income tax and of unemployment tax.

In accordance with the provisions of sections 6103(f) and 6106, the district director for each internal revenue district (including the Director of International Operations) shall prepare as soon as practicable in each year and make available to public inspection in his office during regular hours of business—

(a) Lists containing the name and post-office address of each person filing an income tax return in such district; and

(b) Lists containing the name and post-office address of each person filing a return in such district in respect of unemployment tax imposed by chapter 23 of the Code.

TEMPORARY REGULATIONS HAVE BEEN ISSUED BY THE INTERNAL REVENUE SERVICE FOR APPLICATION TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, P.L. 93-406—TEMP. REG. § 420.6103(g)-1.

Reg. § 420.6103(g)-1 (TD 7325, filed 9-20-74.) Disclosure of certain identification and statistical information to the Pension Benefit Guaranty Corporation.

(*a*) *In general.* Pursuant to section 6103(g), the Commissioner of Internal Revenue or his delegate may furnish to the Pension Benefit Guaranty Corporation upon written request signed by its Executive Director, setting forth the specific purpose for which the information is needed in the administration of title IV of the Employee Retirement Income Security Act of 1974 (hereafter referred to in this section as the "Act"), the following information in respect of a plan deferring receipt of compensation (within the meaning of section 404) maintained by an employer:

(1) With respect to each employer maintaining such a plan, the—

(i) Name,

(ii) Address,

(iii) Employer identification number (EIN),

(iv) Type of business entity,

(v) Total number of employees, and

(vi) Taxable year of the employer.

(2) With respect to each such plan which is administered by a board of trustees or other administrator which has been assigned an employer identification number (EIN), the

(i) Name,

(ii) Address,
(iii) Employer identification number (EIN), and
(iv) Taxable year of such board or other administrator.
(3) With respect to each such plan, the—
(i) Plan serial number,
(ii) Type of plan,
(iii) Type of benefit,
(iv) Total number of plan participants,
(v) Number of participants with fully vested rights under the plan,
(vi) Fund type of entity,
(vii) Medium of funding,
(viii) Amount of contributions, and
(ix) Amount of assets.

(*b*) *Disclosure of information.* Any information obtained under this section by the Pension Benefit Guaranty Corporation shall be held confidential, and shall not be disclosed to any person, department, or agency except proper officers and employees of the Pension Benefit Guaranty Corporation whose duties require such information for the purposes specified in the request, and they may use it only for such purposes. The Pension Benefit Guaranty Corporation may use information obtained under this section to mail forms, instructions, and announcements to employers, plan sponsors and administrators provided that the mailing is performed solely by the Pension Benefit Guaranty Corporation or in such manner as the Commissioner of Internal Revenue or his delegate agrees to in writing. Information obtained under this section may be published or disclosed in statistical form provided that such publication or disclosure does not reveal, directly or indirectly, the identity of any persons or associate any information obtained under this section with any person.

(*c*) *Effective date.* This section shall be effective on September 20, 1974.

TEMP. REG. § 420.6103(g)-2

Reg. § 420.6103(g)-2 (TD 7331, filed 10-29-74.) Disclosure of certain identification and statistical information to the Department of Labor.

(*a*) *In general.* Pursuant to section 6103(g), the Commissioner of Internal Revenue or his delegate may furnish to the Department of Labor, upon written request signed by the Assistant Secretary for Labor-Management Relations of the Department of Labor specifying the purpose for which the information is needed in the administration of title I of the Employee Retirement Income Security Act of 1974 (hereafter referred to in this section as the "Act"), the following information in respect of a plan deferring receipt of compensation (within the meaning of section 404) maintained by an employer:

(1) With respect to each employer maintaining such a plan, the—
(i) Name of the employer,
(ii) Address of the employer,
(iii) Employer identification number (EIN),
(iv) Total number of plans of the employer and total number of fund accounts thereunder,
(v) Number of plans treated by the employer as partially terminated,
(vi) Type of business entity of the employer, and
(vii) Total number of employees employed by the employer, total of such employees not covered by any such plan and total of such employees covered by at least one such plan.

(2) With respect to each such plan maintained by an employer pursuant to subparagraph (1) of this paragraph—
(i) The plan serioal number,
(ii) The type of plan,
(iii) Whether the plan was terminated or a resolution to terminate the plan was adopted,
(iv) The total number of participants with fully vested rights under the plan,
(v) The total number of plan participants,
(vi) The employer identification number of the plan fiduciary,
(vii) Whether, according to the annual status report filed by the employer with respect to the plan, the plan qualifies under the Internal Revenue Code.
(vii) The type of vesting provision under the plan,
(ix) The type of benefit under the plan,
(x) The fund identification number of each fund under the plan,
(xi) The type of entity of each such fund,

(xii) The funding medium of each such fund, and

(xiii) The total assets of each such fund.

(*b*) *Disclosure of information.* Any information obtained under this section by the Department of Labor shall be held confidential, and shall not be disclosed to any person, department, or agency except officials and employees of the Department of Labor whose duties require such information for the purposes specified in the request, and they may use it only for such purposes. The Department of Labor may use information obtained under this section to mail forms, instructions, and announcements to employers, plan sponsors and administrators, provided that the mailing is performed solely by the Department of Labor or in such manner as the Commissioner of Internal Revenue or his delegate agrees to in writing. Information obtained under this section may be published or disclosed in statistical form provided that such publication or disclosure does not reveal, directly or indirectly, the identity of any person or associate any information obtained under this section with any person.

(*c*) *Effective date.* This section shall be effective on October 31, 1974.

INTERNAL REVENUE CODE OF 1954, AS AMENDED TO DATE! SECTION 7213

[¶ 38,566] Code Sec. 7213. Unauthorized Disclosure of Information.

(*a*) *Income Returns.*—(*1*) *Federal employees and other persons.*—It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(*2*) *State employees.*—Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103(b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any information acquired by him through an inspection permitted him or another under section 6103(b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103(b) to be seen or examined by any person except as provide by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(*3*) *Shareholders.*—Any shareholder who pursuant to the provisions of section 6103(e) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(*b*) *Disclosure of Operations of Manufacturer or Producer.*—Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs or prosecution; and the offender shall be dismissed from office or discharged from employment.

(*c*) *Offenses Relating to Reproduction of Documents.*—Any person who uses any film or photoimpression, or reproduction therefrom, or who discloses any information contained in any such film, photoimpression, or reproduction, in

violation of any provision of the regulations prescribed pursuant to section 7513(b), shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(*d*) *Disclosures by Certain Delegates of Secretary.*—All provisions of law relating to the disclosure of information, and all provisions of law relating to penalties for unauthorized disclosure of information, which are applicable in respect of any function under this title when performed by an officer or employee of the Treasury Department are likewise applicable in respect of such function when performed by any person who is a "delegate" within the meaning of section 7701(a)(12)(B).

(*e*) *Cross References.*—(1) Returns of federal unemployment tax.—For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(*2*) *Penalties for disclosure of confidential information.*—For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

The following Executive Orders have been issued pursuant to the authority granted by Section 6103(a). This is only a five-year survey.

1975

None.

1974

E.O. 11805: Inspection by President and Certain Designated Employees of the White House of Tax Returns Made Under the Internal Revenue Code of 1954.

E.O. 11786: Inspection of Tax Returns by the Committee on the Judiciary, House of Representatives.

E.O. 11773. Revoking the Authority of the Department of Agriculture to Inspect Income Tax Returns.

1973

E.O. 11722: Inspection of Income, Estate, and Gift Tax Returns by the Committees on Internal Security, House of Representatives.

E.O. 11720: Inspection of Income, Excess-Profits, Estate, Gift, and Excise Tax Returns, By the Senate Committee on Commerce.

E.O. 11719: Inspection of Income, Estate, and Gift Tax Returns by the Committee on Public Works, House of Representatives.

E.O. 11711: Inspection of Income, Excess-Profits, Estate, and Gift Tax Returns by the Senate Committee on Government Operations.

E.O. 11709: Inspection by Department of Agriculture of Income Tax Returns Made under the Internal Revenue Code of 1954 of Persons having Farm Operations.

E.O. 11706: Inspection of Returns of U.S. Attorneys and Attorneys of Department of Justice and Use of Returns in Grand Jury Proceedings and in Litigation.

E.O. 11697: Inspection by Department of Agriculture of Income Tax Returns Made under the Internal Revenue Code of 1954 of Persons having Farm Operations.

1972

E.O. 11682: Inspection by the Department of the Treasury of Tax Returns Made Under the Internal Revenue Code of 1954 for Economic Stabilization Purposes.

E.O. 11656: Inspection of Estate, Gift, and Income Tax Returns by the Select Committee on Crime, House of Representatives.

E.O. 11655: Inspection of Income, Excess-Profits, Estate and Gift Tax Returns by the Committee on Government Operations, House of Representatives.

E.O. 11650: Inspection by Certain Classes of Persons and State and Federal Government Establishments of Returns made in Respect of Certain Taxes Imposed by the Internal Revenue Code of 1954.

1971

E.O. 11631: Inspection of Income, Estate, and Gift Tax Returns by the Committee on Public Works, House of Representatives.

E.O. 11624: Inspection of Income, Exess-Profits, Estate, Gift, and Excise Tax Returns by the Senate Committee on Commerce.

E.O. 11611: Inspection of Income, Excess-Profits, Estate and Gift Tax Returns by the Committee on Internal Security, House of Representatives.

E.O. 11584: Inspection of Income, Excess-Profits, Estate, and Gift Tax Returns by the Senate Committee on Government Operations.

1970

E.O. 11535: Inspection of Tax Returns by the Committee on the Judiciary, House of Representatives.

E.O. 11505: Inspection of Income, Excess-Profits, Estate and Gift Tax, Returns by the Senate Committee on the Judiciary.

Senator HASKELL. Now, if certain Federal agencies are to be restricted as to receipt of returns, the IRS's staff will be required to give new information and perhaps secure additional information. We had the Bureau of the Census in, for example, and they said the breakdown of business categories on the Internal Revenue form was not quite as detailed as they would like to have it, so the IRS would have to collect additional information.

I would assume there would have to be additional staffing within the Service. Is this a thought that you have examined?

Senator MONTOYA. Yes; I have examined this, and I do not think it will require any unusual staffing by the Service because right now they already have the manpower to do these things on a more extensive basis, so if my bill is passed, there would be limitations, and in fact it would reduce the manpower needs for this purpose.

Senator HASKELL. All right, sir. Just really two more questions: we do definitely have a problem regarding the tax information to be provided to the States. I think Commissioner Alexander testified last Monday that some 61½ million tax returns or information from them was disclosed to States, and I wonder whether or not a notification by the IRS to a State that a deficiency had been asserted or an additional tax payment had been made might or might not be sufficient for the purpose of the States.

Have you considered that possibility?

Senator MONTOYA. Yes; I have, and my feeling is that in that case the States would less readily redisseminate any information to channels that would invade the privacy of individuals. To leave open a wide door and say to the States, you can have every taxpayer's return, I think is compounding the possibility for illegal disclosure. There should be some definitive standard set in the law which would empower the Internal Revenue to respond to the State's request, but only in a limited way, only in a way that is attuned to the needs of the States for better tax administration with respect to the return of that individual and to be informed as to whether that individual has, pursuant to investigation, been assessed an additional amount. I think when you accomplish those two objectives, you have already done for the States what they should expect to be done by the Federal Government.

Senator HASKELL. Thank you, Senator, very much. I just have one last question—the Internal Revenue Service has immense powers, immense investigatory powers. As a matter of fact, I think they probably exceed almost any other agency of Government, and these powers have been upheld by the Supreme Court of the United States.

Now, certainly, the times of misuse of the powers are extremely few, but should they be misused, they bring the immense resources of the Federal Government to bear against a private citizen who obviously cannot meet those resources. And there is the possibility of harassment, involving not only financial, but also emotional strain. I wonder if you

have considered the possibility of a civil remedy, for one subjected to an improperly motivated investigation for which there is no basis in fact.

Do you think that there should be any civil remedy that an individual citizen has under these particular and very unusual set of circumstances?

Senator MONTOYA. I certainly do. Moreover, when the Internal Revenue disseminates information without having justification for such release, that is a real invasion of that individual's privacy, and I think the Government ought to redress that individual in some way civilly. I sincerely believe this.

Now, I interrogated Commissioner Alexander about the excesses that might creep in in the name of a request by some department for a taxpayer's return, because that individual was under investigation. I said to Commissioner Alexander, supposing that a person in the lower echelon of that department made a request of a Cabinet officer, of a Secretary, to make that request upon you. Now, the Cabinet officer is going to merely endorse the request because some underling has certified to him certain factual situations, and I said, what do you do to review the conclusions that have been made by the departments before they asked you for this information?

I said to Commissioner Alexander, should you not be able to investigate thoroughly whether the reasons assigned are properly based in fact and justified?

Now, this is an area which should be considered because this could constitute a loophole, a request made in the name of a criminal investigation, which criminal investigation is nebulous in many cases, and I think you are the proper forum here to really check and provide some definitive standards so that this loophole can be closed.

Senator HASKELL. Thank you, Senator. You obviously have given this matter a great deal of thought. I very much appreciate your appearing here. I will ask Senator Dole to ask such questions as he may have.

Senator DOLE. I share the Chairmans' observation. Of course, Senator Montoya has done a great deal of work in this area. I think much of the concern is based on disclosures during the Watergate committee, of which Senator Montoya and one of the later witnesses, Senator Weicker were members. But I think sooner or later, we are going to put Watergate behind us, and we have to look ahead to protection of privacy. I think that is what the committee has in mind, and what we hope we can resolve. I am particularly concerned about not only the 61 million returns that go back to States either all or in part, but I think also, as I understand the law, that could go to some county that also had an income tax. So we are getting further and further away from protecting the individual through more and more dissemination of returns. As I understand your bill, Senator Montoya, it would apply penalties to those who receive——

Senator MONTOYA. As well as to those who give.

Senator DOLE. Right. But if someone in Kansas, for example, had my return or any return, and we had some county in Kansas which imposed an income tax, your penalty section would apply to any of those people who deal with that return?

Senator MONTOYA. That is right.

Senator DOLE. I think that is what the average citizen would at least like to believe—that the information is confidential. What about Members of Congress? Do you think we have a right to inquire of the IRS when some taxpayer writes in, complaining about he is being harassed by an IRS agent, or wants us to look into his tax problem?

Senator MONTOYA. I certainly do. I think the taxpayer has no other resort but to a Member of Congress to point to the Internal Revenue Service what an Internal Revenue agent is doing by way of harassment or abuse of power. I think it should be done. I do not think a Member of Congress should call the Internal Revenue Office and say, I want you to reduce this man's liability, and I do not think any Member of Congress does that. But certainly, what good is the right of petition of any taxpayer if he cannot go to a Member of Congress, and the Member of Congress in turn contacted the Commissioner of Internal Revenue with that complaint?

Senator DOLE. I share that view. But it is getting anymore that we are almost afraid to do anything as Members of Congress, because it might be viewed somehow as an act of impropriety or illegality. And if we are going to be able to serve our constituents, I think we ought to have the right to ask any agency to review a matter. Maybe the word review implies reduce, but I do not think so, necessarily. Neither do I believe that, in all cases, the taxpayer is being harassed by an agent. There are times when a constituent feels that we should take a look at it.

Senator MONTOYA. Since I started the oversight hearings, I have received close to 20,000 letters from all over the country, and many of these letters are not really legitimate complaints. They are merely reactions of animosity against Internal Revenue, because it did the proper thing by way of protecting the Government. But some of these letters relate injustices, and I have called these letters to the attention of the Service through my committee, and the Service has investigated quite a few of these complaints. They have an inspection inhouse, and they do these things properly. But I want to say here, more frankly, that I know of instances where the Internal Revenue Service has investigated complaints of this type through their inspection system, and the inspection system has come back, in my opinion, and rendered a verdict of approval of the Revenue agent's behavior. And I have never had one instance where the Internal Revenue Service has come back and said to me, he was wrong. Now, that kind of inspection is no good.

I think there should be an inspection division within the Internal Revenue Service to receive taxpayers' complaints, and it should be independent of the collection system.

Senator DOLE. I think we raised a couple of questions last Monday about actions in Maryland and Florida, and I understand they are being looked into.

Now, your bill would also permit a tax check, I understand, for anyone who was under consideration for a Federal appointment. Is that right?

Senator MONTOYA. Yes. I am trying to limit the tax information which might be available to the White House, so that there will be no indiscriminate requests for tax returns, and the tax returns delivered in toto to the White House; because I do not think the total tax re-

turn is relevant to the purposes that the White House has in mind when they request a tax check.

Senator DOLE. What about the Senate Finance Committee, the House Ways and Means Committee, and the Joint Economic Committee's access to tax returns? Should we have access to the entire return? Or should any committee by resolution of the House or the Senate, be able to gain access to certain information?

Senator MONTOYA. I think the Joint Committee on Internal Revenue, under the law, should have a right to taxpayers' returns, and for certain purposes outlined in the law, and of course I have no quarrel with that.

Senator DOLE. We get back to the same question of confidentiality, and I do not know of any better way to publicize it than to give it to some Senate committee or House committee.

Senator MONTOYA. Well, I do not think the Joint Committee on Internal Revenue is going to release that return. I think they have in-house rules to protect the confidentiality of that particular return.

Senator DOLE. Well, there is a need in the Senate Finance Committee, if there are 200 major corporations or people of great wealth who pay no income tax; and we are trying to look at it objectively to determine what changes might be made in the tax laws. I do not know of any abuse made in the Senate or House Committee. But we have to face up to the same question, as far as our own rights to access if we are talking about the rights of the Justice Department and other Federal agencies and States and local governments.

Senator MONTOYA. Well, I think what applies to any State, what applies to the Internal Revenue Service, should also apply to any committee of the Congress.

Senator DOLE. Thank you.

Senator HASKELL. Thank you very much, Senator Montoya. We appreciate it. We are sorry you cannot stay and join us. Thank you very much.

Senator MONTOYA. Thank you very much, Mr. Chairman. I ask that an editorial from today's Washington Post, entitled "The Future of the IRS" be inserted in the record at this point.

[The material referred to follows:]

[From the Washington Post, Apr. 28, 1975]

THE FUTURE OF THE IRS

The Internal Revenue Service has become a popular subject for congressional scrutiny. At least half a dozen panels are now looking into various aspects of IRS operations, from the treatment of ordinary taxpayers to recent political intelligence-gathering. But it is not yet clear to what extent Congress will follow through by considering the broad, basic issue of the role of IRS.

A good example of fastening firmly on a corner of the problem is the widespread interest in restricting access to income-tax returns. The need for tough new rules was amply shown during the Nixon years. Indeed, there are few more sensitive records systems in the government, since IRS is the only agency that collects detailed annual reports on the finances of most citizens. Yet that is just one aspect of IRS's extraordinary power over people's fortunes and lives. The agency also has exceptional authority to investigate citizens' activities, to collect private information by administrative summons—often, as with bank records, without the taxpayer's knowledge or consent—and to seize property in the most preemptory ways. Thus the basic question is how the whole panoply of IRS powers ought to be used.

Some answers are obvious. IRS should be scrupulously apolitical; its awesome powers should not be misused to help political friends, to harass those regarded as "enemies," or to collect information unrelated to the enforcement of the laws. But the answers are not so simple when one proceeds to the problem of how IRS's records and investigative strengths should be used in legitimate federal law-enforcement efforts.

At present, IRS does share its resources with other agencies. Last year, for instance, 8,210 returns—out of a total of 81.5 million—were made available to other federal offices; 7,676 of those, or 93 per cent, went to the Justice Department and U.S. Attorneys. Even more significant, IRS agents, with their specialized investigative skills, have been invaluable in recent probes of organized crime, fraud, and corruption in many states.

Many people, including IRS Commissioner Donald C. Alexander, believe that such general law-enforcement activities should be cut back, that the sharing of tax returns should be tightly curbed, and that IRS should function almost exclusively as a revenue-collecting agency. This, of course, has great surface appeal and some real advantages. It would greatly reduce the possibility that tax returns might be misused by other agencies, or that IRS might become entangled in improper surveillance projects again. It could enhance public confidence and might even produce more revenue. For instance, if taxpayers could be sure that their returns would not go to U.S. Attorneys or the FBI, corrupt officials, drug dealers and the like might even report and pay tax on all their illegal gains.

But the isolation of IRS along those lines has all the defects of its merits. As Deputy Attorney General Harold R. Taylor Jr. testified before a Senate panel last week, such strict curbs on the sharing of resources would greatly hamper the Justice Department's ability to prosecute white-collar crime, corruption and other offenses. The enforcement of tax laws might also be hurt. Moreover, if denied access to IRS files and specialists, other federal agencies might be driven to create or enlarge their own financial intelligence units thus opening up new problems.

All this is not to say that the present system is perfect. The sharing of tax returns for non-tax law-enforcement purposes does raise privacy problems and no doubt limits some citizens' compliance with tax laws. The demands on IRS's limited manpower can be too great. Finally, if IRS is to continue to serve as an arm of general law enforcement, the agency's special powers to search and seize ought to be re-examined. Congress authorized such shortcuts of due process for tax-collection purposes, not so the agency could function as a proxy for other offices whose authority is more circumscribed.

The point is that, when one moves beyond the areas of obvious abuses, the choices involving IRS are more complex and consequential than they may seem. Tighter standards and more consistent oversight could reduce many problems, especially in regard to tax returns. But overall, defining the role of IRS is not a simple matter of balancing claims of privacy against those of law enforcement, for there are interests of citizens' right and governmental effectiveness on every side. This is the kind of problem Congress often ducks. But if the current flurry of studies are to be very meaningful, such questions will have to be seriously addressed.

Senator HASKELL. Our next witness is the Senator from Connecticut, the Honorable Lowell P. Weicker. Senator, it is a great pleasure to welcome you here. We know of your great interest in this matter, your work on Senator Ervin's Watergate Committee, and the legislation which you have submitted and introduced, and we look forward to hearing from you.

STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator WEICKER. Thank you very much, Senator.

Senator DOLE. Now, do I understand you are going to proceed together?

Senator WEICKER. I will proceed, and then Congressman Litton will proceed alongside with me.

Senator HASKELL. Congressman, we are very pleased to have you here. I would like to ask you if your schedule would permit. I would very much like to have you join the committee in discussing this area with the former Commissioners of Internal Revenue. I have already asked Senator Weicker, and I think he will be able to join us. So if your schedule permits, I would like to have you stay.

Mr. LITTON. I would be happy to.

Senator WEICKER. Thank you very much, Senator Dole and Senator Byrd, and thank you very much specifically for setting up these hearings.

This is an essential day: essential not just as to the subject matter before this committee, but essential to the credibility and stature of the Congress of the United States. Let me explain why.

Several days ago, my press secretary told me of press interest in these hearings and, more specifically, their interest in any bombshells I might unload. It is true that I continue to pursue evidence relating to abuses of power within Government. But the evidence I am going to proffer your committee today has its significance not in the newness of other people's wrongdoing, but in the staleness of Congress' response.

Mr. Chairman, colleagues, the stacks of paper before me here are the substance of a 2-year public --and I emphasize public—record of wrongdoing connected with the IRS. The air between us is the substance of the legislative response to that record. If the executive branch of Government has taken licks for its failings, then believe me, Congress' shame is as great: not because we broke into anything, but because we broke down. The danger in the country today is no longer suppression of the truth, but the willingness to live with that portion of the truth which runs counter to American concepts of justice and constitutionality. Insofar as the mess can be cleaned up legislatively, let us get with it. Please—and I emphasize this, please—before any more horror stories, let us have one concrete, positive act by the Congress which can be interpreted as work rather than politics.

Now, why S. 199—which Congressman Litton and I have worked on for close to a year—why this particular legislation or something akin to it? I will tell you: No. 1, article II, paragraph (1) of the impeachment of Richard Nixon, President of the United States—GPO stock No. 5270-02486, August 1974—in paragraph 1, "He has, acting personally through subordinates and agents endeavored to obtain from the Internal Revenue Service in violation of the constitutional rights of citizens, confidential information contained in income tax returns." There is a public record, there is a record of one of the most dramatic experiences in the course of American politics. This is a past abuse, but it still goes unanswered.

Why S. 199? Investigation into certain charges of the use of the Internal Revenue Service for political purposes. Prepared for the Joint Committee on Internal Revenue Taxation, December 1973. Right here. Information from farmers' income tax returns and invasion of privacy. Committee on Government Operations, October 1973, that my good friend and colleague, Jerry Litton, was so involved with. Here it is, a public document.

Joint hearings before the Committee on the Judiciary and Committee on Foreign Relations on warrantless wiretapping and electronic surveillance, April 1974. Well do I remember these hearings—one of

the last acts of Senator Ervin in holding them, along with Senator Muskie. I came before that committee and if you will take a look at the public record, in some several pages of testimony, setting forth the abuses of the IRS, more particularly the Special Service section, which was concerned with "militant, subversive, ideological" and other groups. It is all there. That is why; and yet, it is unanswered.

Well, I guess it must be about some 25 volumes here. Hearings before the Select Committee on Presidential Campaign Activities before the U.S. Senate. And yet, do you realize, since these hearings have been held, there has not been one single legislative response to the abuses that were unearthed, to the factfinding conducted by that Senate committee, and the final report of the Select Committee on Presidential Campaign Activities in 1974, which dealt with the Internal Revenue Service. Within this report is my particular report, which again dwells largely on the abuses of various agencies of the Government, not on Richard Nixon or what occurred to one individual, but the abuses within our Government.

Do you want to see what the press has done on that subject? You cannot blame them. Here it is. I will not go through them all; 2 years of articles and editorials, pointing out the various abuses connected with the Internal Revenue Service. So certainly, it is not something they have closed their eyes to.

President Ford, September 16, 1974, a press conference that he had.

Question. "Mr. President, sir, there is a bill that the Treasury Department has put forth. I think it is about 38 pages under this bill, which deal with getting ahold of returns, Internal Revenue returns, of citizens of the country. You could take action to get those returns whenever you want to. I wonder if you are aware of this, and if you feel you need to get those returns of citizens." The President: "It is my understanding that a President has, by tradition and practice, and by law, the right to have access to income tax returns. I personally think it is something that should be kept very closely held. A person's income tax return is a very precious thing to that individual, and therefore I am about to issue an Executive order that makes it even more restrictive as to how those returns can be handled. I do think the proposed piece of legislation that is coming to me, and subsequently will be submitted, as I recollect, to the Congress, would also greatly tighten up the availability or accessibility of income tax returns. I think they should be closely held, and I can assure you that they will be most judiciously handled, as far as I am concerned."

On September 20, 1974, President Ford issued an Executive order relative to the White House inspection of tax returns. And then, on October 9, 1974, again at a news conference.

Question. "On the matter of income tax privacy, Mr. President, could you explain the difference between your Executive order and White House practices—which is very tough on safeguarding the taxpayers—and the legislation which you sent to the Hill, which congressional experts say is weaker than that that went on in the Nixon administration, when there were reported attempts by the White House to subvert the Internal Revenue Service?" The President: "Well, if that legislation is weaker than the Executive order that I issued, then we will resubmit other legislation."

Now, I have to confess to my colleagues that, as you see this stack of the public record, and what you see against it—I repeat what I said before—the air over here as to what our response has been to this record, believe me, we are not doing our job.

That is why I thank the chairman and his colleagues for holding these hearings today, because that is a 2-year record of messing around with tax returns, tax officials and taxpayers. Yet is there one Senator

or Congressman who can guarantee that all is in order with IRS? In fact, can anyone in this room guarantee that what is contained in here is not going on right now? Of course not. Well, I believe the American people have a right to such a guarantee, not when some Senator gets his nose out of joint because he has got a tax audit—but now! And after I finish testifying, I guarantee you there will be the usual parade of officials pleading for the status quo. Or, what is worse, asking you to codify—and that is the problem with the administration bill introduced in the last session—what heretofore has been practice. And they are going to refer to the past as the acts of a misguided few, or to the future with dire warnings of weakening justice and furthering the cause of the subversive or criminal. That is why I think it important to give you the thinking behind S. 199.

Now, very briefly—I am not going to read the entire statement. I ask that that be included in the record but there are certain portions that I think are worth reviewing. Section 6103 of the Internal Revenue Code of 1954 is the present statutory provision governing disclosure of tax information on tax returns. Section 6103(a)(1) states that tax returns

> * * * shall constitute public records; but except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate, and approved by the President.

In addition to the President and IRS, tax information is presently being provided to the following: (1) Treasury officials having responsibility for IRS and for the formulation of tax policy; (2) the Joint Committee on Internal Revenue Taxation, Senate Finance Committee, House Ways and Means Committee, and other congressional committees which have responsibilities requiring tax information; (3) States, the District of Columbia, Puerto Rico, and possessions of the United States, for administration of their tax laws; (4) Federal agencies with law enforcement or administration responsibilities requiring tax information; and (5) Federal agencies needing certain statistical information. Tax information is also provided to the taxpayers themselves and their successors in case of death. Partners can obtain copies of their partnership returns, and stockholders owning at least 1 percent of the stock of a corporation can obtain copies of the corporation's return.

As you can see, this list is rather comprehensive. Let me elaborate further. In addition to IRS and other elements of the Treasury Department and the Justice Department, who justifiably must have access to tax return information, disclosure of income tax information is also routinely made available to the following departments and agencies of the executive branch as a result of Executive orders. The Department of Health, Education, and Welfare may inspect individual income tax returns for the purpose of administering provisions of title II of the Social Security Act. The Securities and Exchange Commission may inspect statistical transcript cards prepared by IRS from corporate tax returns or indvidual and corporate income tax returns for the purpose of gathering statistical information. The Advisory Commission on Intergovernmental Relations may inspect any income tax return for the purpose of making studies and investigations in connection with the performance of its function of recommending

methods of coordinating and simplifying tax laws and administrative practices.

The Department of Commerce may inspect income tax returns in the interest of internal management of the Government. The Renegotiation Board may inspect income tax returns, again in the interest of the internal management of the Government. Finally, there is an overall regulation which permits the head of any executive department—other than the Department of Treasury—or establishment of the Federal Government access to income tax information in connection with some matter officially before him.

To be fair, let me say that in every instance cited, the department or agency must specify in writing the information sought, and that such information obtained is to be held confidential, except that in some cases, it may be published in statistical form only.

The Internal Revenue Service generally considers the addresses of taxpayers provided on their returns to be of a confidential nature, especially where efforts are made to obtain them for commercial purposes. IRS will, however, furnish addresses to: (1) The Department of Health, Education, and Welfare to aid in locating runaway parents; (2) other Federal agencies to assist them in the administration of their responsibilities; (3) State tax officials, designated by the Governor to receive tax information for State or local administration purposes; and (4) educational and lending institutions, to assist them in locating delinquent borrowers under student loan programs guaranteed by a Federal agency.

IRS may also provide a taxpayer's address where a human reason is involved. For example, when a person is critically ill, IRS will furnish an address to a close member of the family or a Congressman attempting to assist a constituent.

All these facts concerning present disclosure laws and practices lead me to believe that there are just too many opportunities available for abuse. It makes one wonder how such broad access to tax information came about. Now, I have given you in the statement a summary of the disclosure aspects of our laws, and move from there to a discussion of the abuses unearthed by Congressman Litton as to the Agriculture Department and the use of tax returns; and then a summary of S. 199.

Now, Mr. Chairman, in order to facilitate the effective administration of our tax laws, each American takes on the duty of self-investigation, factfinding and reporting. It can be argued that a limited waiver of one's fifth amendment rights necessarily takes place in the course of such an operation. What is clear in any event is that this baring of the soul is an accommodation by citizens for their government for tax purposes—not for scientific purposes, not for nontax justice purposes, not for sociological purposes, nor for political purposes, nor for statistical purposes. Now, if you will stick to that simple premise, then I think your distinguished committee will see its duty clearly.

If, on the other hand, the taxpayer is being asked to offer up privacy for reasons other than tax collection, then say so. Put it on the form as to exactly what it is he is giving us information for. But understand this; if you do that, then you jeopardize the voluntary enforcement, the self-assessment aspects, of the best tax collection system ever devised.

For myself, failure on the part of government either because of laziness or expediency to seek its remedies and facts openly in the field or through the courts cannot justify circumvention of people's rights and liberties. Time and again, as we would talk to the various members of the bureaucracy who are opposing our legislation, we would ask why. The response? Do you realize the work we would have to do if we did not have this easy access, if we did not have this information? That is the response. Well, who gave it to them, and for what purpose? And then, we get right back to that simple, clear-cut concept that stands behind legislation proposed by Congressman Litton and myself.

So, I am not interested in laziness or expediency. I think each citizen of this country has done something commendable in taking upon his own shoulders the duties of reporting and investigating himself. This is not done with the idea in mind that we are going to cut down the work of the bureaucracy, or turn the Constitution down.

S. 199, if made law, would bring an end to the lending library image of IRS. Now, this legislation is tough on everybody, Mr. Chairman—the President, the Congress, the agencies. But all will be on a short leash with respect to taxpayer returns. But that is precisely why today, this hearing is essential; and no number of Fourth of July or Hello Bicentennial speeches can match one self-disciplining, living the Constitution act of the Congress, when it comes to restoring people's credibility in their Government.

So I hope, then, that the news from this hearing will concern itself with what you gentlemen do. My good friend, Bob Dole, said a few minutes ago he hopes the disagreeableness of the past year would be behind us. Senators, it will be behind us when we shut the book as a Congress; when we act in a constructive, positive sense. The history of the IRS is not at all hazy. The future of your children's privacy is, and hopefully less so after you act.

I thank you very much, Mr. Chairman.

Senator HASKELL. Thank you, Senator.

Before we proceed, Senator Byrd has another engagement, and I would like to call on him.

Senator BYRD. Thank you, Mr. Chairman. These are very important hearings. I would like to be here when Representative Litton testifies, and I am tremendously interested in Senator Weicker's testimony. I am also tremendously interested in the testimony which will be presented by five former Commissioners, and I am pleased that two of those five are Virginians, T. Coleman Andrews, Sr., of the city of Richmond, who was appointed by President Eisenhower, and Mortimer M. Caplin of Charlottesville, who was appointed by President Kennedy, and I might say in regard to the third one, Johnnie Walters, that while he is not a Virginian, he has now wide connections in Virginia and is with one of the leading law firms of my State.

I shall get back as quickly as I can. I have a meeting with Senator Buckley and other Senators on a subject which is even more important than this particular one, and that is the irresponsible budget which the Congress will be considering tomorrow. So I want to welcome all of you here, and I will be back as quickly as possible because I am tremendously interested in these proceedings.

I thank you, Mr. Chairman.

Senator HASKELL. Thank you, Senator Byrd. Senator Weicker, if it is satisfactory to you, we would ask Congressman Litton to make his presentation, then we will have questions for both of you.

Senator WEICKER. I would very much like that, Mr Chairman, since this is a matter we have worked on jointly for over a year.

Senator HASKELL. Congressman Litton, we look forward to hearing from you, and welcome to the committee.

STATEMENT OF HON. JERRY LITTON, A REPRESENTATIVE IN CONGRESS FROM THE SIXTH CONGRESSIONAL DISTRICT OF THE STATE OF MISSOURI

Mr. LITTON. Mr. Chairman, I am pleased to appear today on behalf of legislation to insure the privacy of tax returns.

First, I would like to compliment this committee for holding hearings on this important matter. I would like to associate myself with the remarks of my colleague, Senator Weicker, and to compliment him for his interest in this area he has put forth for almost 2 years. I have had the pleasure of working with the Senator on this matter for about a year.

Let me preface my remarks first by simply saying that in my opinion the IRS is there for one purpose: to collect taxes to run this country, not to collect information on the lives of the private citizens to turn over like some Gestapo agency to whoever may be in power in the Government. Something we have to establish in the beginning is—what is the purpose of the IRS. It is my feeling it is to collect taxes and not information on the private lives of people.

Because of my concern over restoring and maintaining the integrity of the American tax collection system, I have sponsored H.R. 616, the House companion to S. 199, more commonly referred to as the Weicker-Litton bill. I would like to point out that over 250 Members of the House of Representatives, well over a majority of that body, and two-thirds of the Ways and Means Committee, which will consider this matter in the House, are cosponsors of this badly needed reform. I consider its passage an essential part of the minimum legislative response to Executive and other related abuses we have endured over recent years.

Of all abuses uncovered in the recent past, none poses a greater threat to the principles of privacy and due process than misuse of personal income tax returns. The documented use of the Internal Revenue Service as an intelligence body to derive information harmful to enemies of the Nixon administration and helpful to its friends, flaunts the fundamental principles on which our Government was founded. I, too, would like to put Watergate behind us, but we have to realize and recognize that it happened and it can happen again unless this body takes some kind of positive legislative action.

The House Judiciary Committee in article II, subparagraph 2 in the Articles of Impeachment summarized the mass of information they had gathered against President Nixon in this area. It stated:

> He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in viola-

tion of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner

In outlining some dozen areas of Nixon's direct connection with possible criminal activity, Special Prosecutor Leon Jaworski included misuse of IRS information and trying to initiate IRS audits of White House "enemies" among the charges.

The Nixon administration not only sought tax information to use against enemies, but also legally sought to open tax returns of whole occupational groups for its inspection. Two Executive orders, Executive Order No. 11697 and Executive Order No. 11709, referred to by my colleague, Senator Weicker, required the Treasury Department to turn over farmers' income tax returns to the Department of Agriculture, allegedly for statistical purposes. This directly threatened the privacy of 3 million citizens and provided the model for similar orders directed against other occupational groups. The administration said they needed to look at farmers' tax returns because they were desperately in need of farm statistics, yet 12 days later, the administration omitted all funds from the budget for the traditional farm census.

I called for congressional hearings. I testified that if the tax returns of all farmers in America could be opened up to a big Government agency, the USDA, the same could be done to other classes of citizens, such as homeowners, or teachers, or wage earners. I said I feared that this was the first of other Executive orders to follow. Watergate had not yet erupted, and the enemies' list had not surfaced. However, my worst fears became reality when at these hearings involving the IRS, testimony proved that the Executive order opening up the tax returns of all farmers in America was indeed a prototype and model of future Executive orders to follow.

Following these meetings, President Nixon repealed the two earlier Executive orders. However, under present law, future presidents can issue the same kind of Executive order, opening up the tax returns of every American. These orders, which left Federal bureaucrats free to rummage, through income tax returns for statistical data obtainable from other sources, and the attempted corruption of the audit procedures, to harm enemies and help friends, have made us aware of how fragile is the privacy of our tax returns.

The evidence that I have cited is overwhelming and beyond dispute, furthermore, it clearly demonstrates the need for congressional reform of those laws governing disclosure of tax returns. However, I think it should not be concluded from the Watergate-related abuses that recent misuse of tax information was confined to the Nixon administration. State and local officials, as well as lower Federal employees, have been responsible for equally appalling abuses—utilizing tax returns as weapons in State political campaigns and aiding in the theft of such information for use by private detectives, insurance companies, and credit firms in order to gain information on citizens which, in many cases, was used to an individual's detriment.

I would like to make available to the committee correspondence I have had with the IRS relating to numerous documented examples of how taxpayers' tax returns were turned over to others, either for sale for political purposes or even in one case, in return for round-trip plane tickets to British Columbia for an IRS agent and his family. And, in one case, in Kansas City, Mo., an IRS employee who had sold

tax returns for $25 each received only a tongue lashing from the judge and was placed on 30 days probation.

From this information, I am sure that you will concur that there exists the need for enactment of tough legislation to see these practices come to a halt.

Senator HASKELL. Would you provide that for the record, Congressman?

Mr. LITTON. I would be happy to.

Senator HASKELL. You may proceed.

[The information referred to follows:]

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., August 22, 1974.

Hon. JERRY L. LITTON,
House of Representatives,
Washington, D.C.

DEAR MR. LITTON: This letter will confirm my telephone discussion with Mr. Rusty Hurst of your office regarding four disclosures of confidential tax information investigations conducted by this office.

The four cases we discussd are summarized as follows:

Mrs. Patricia McNally, a four-year employee of the Midwest Service Center, Kansas City, Missouri, was arrested for having sold confidential tax information to two private detectives who were also arrested and charged with conspiracy. Mrs. McNally was paid $25 in cash for having furnished information from a tax return relative to the earnings of a former husband of one of the detectives' clients. After pleading guilty, each detective was fined $250, was placed on probation for two years, and was incarcerated for several days. Mrs. McNally changed her not guilty plea to Nolo Contendere on October 29, 1973, and was placed on 30 days probation. Prior to sentencing, Mrs. McNally was strongly admonished by the judge who stated that he would have confined her had it not been for her small dependent child.

After being found guilty on November 7, 1973, of unauthorized disclosure of confidential tax information, former Revenue Officer Larry S. Dabrow, Philadelphia, Pennsylvania, was sentenced on February 5, 1974, to two years probation and fined $350. During a tax investigation, a special agent discovered copies of a taxpayer's income tax returns attached to a report by a private investigator who was retained by an insurance firm. After an investigation by the Inspection Service, Dabrow admitted that he had furnished copies of the tax returns to the private investigator for the purpose of retaining the good will of the private investigator who had been a helpful source of information to him on official collection matters. During his bench trial, Dabrow's attorney submitted a brief in which he stipulated the disclosure but based his defense on lack of willful intent, claiming that Dabrow had been motivated by a desire to maintain a good relationship with his source of information, and, in effect, had acted in the interest of the Government. The Court rejected this argument and found Dabrow guilty.

Mrs. Evelyn Cottrell Morris, an employee of the State of California Franchise Tax Board, was indicted March 6, 1968, following an investigation by the Inspection Service concerning her activities in selling information from Federal income tax returns. She was charged with three counts each of violating 18 USC: 641 and 26 USC: 7213(a)(2) in connection with the conversion, sale and improper disclosure of photocopies of the Federal income tax returns of three taxpayers. On May 6, 1968, she received a six month suspended prison sentence, was placed on probation for three years, and was fined $500.

After information was received that a private investigator, John A. Pearne, of San Jose, California, was able to obtain Internal Revenue Service records, an investigation by the Inspection Service disclosed that Revenue Officer James L. Seago, Sr., stationed at San Jose, California, gave Pearne, a copy of a tax return and received plane tickets to British Columbia for him and his family in return. Pearne and Seago were arrested and indicted on bribery, disclosure and conspiracy charges. On October 28, 1971, Seago was found guilty of unauthorized disclosure of tax information and conspiracy to disclose, while Pearne was found guilty of conspiracy. On December 17, 1971, Seago was sentenced to one year probation, and Pearne was sentenced to a one year prison term (suspended),

three years probation, and a $1,000 fine. Both convictions were upheld on August 9, 1972, by the Court of Appeals, Ninth Circuit, San Francisco, California.

We appreciate the opportunity of having been of assistance to you in this matter.

Very truly yours,

T. F. GEIBEL,
Assistant Commissioner.

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., December 30, 1974.

Hon. JERRY L. LITTON,
House of Representatives,
Washington, D.C.

DEAR MR. LITTON: In accordance with a request received from your office, we furnished by letter dated August 22, 1974, summaries of four cases where individuals were prosecuted for unlawful disclosure of confidential tax information. In subsequent telephone conversations had with your office, we were requested to furnish case summaries of any other significant disclosures we investigated even though prosecution was not sought or obtained.

As you are aware, Federal income tax returns are treated as information of a confidential nature but may be disclosed in accordance with the provisions of Section 6103 of the Internal Revenue Code and the Regulations issued thereunder. Section 6103(a) of the Code provides that income tax returns "shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." Treasury Department Regulations, Section 301.6103(a), issued pursuant to this Section of the Code provides that the taxpayer or his representative can inspect or receive copies of his or her own return; heads of the Federal Departments or establishments may inspect returns if the purpose of such inspection is to assist in a matter officially before the Department or establishment; the head of the District of Columbia, Puerto Rico and possessions of the United States may inspect returns if the purpose of such inspection is to assist in the tax administration of such governments; and the Department of Justice and United States Attorneys may inspect or receive copies of returns, if needed in the official performance of their duties.

Section 6103(b) of the Code requires that the Service permit inspection of Federal income tax returns by States if the purpose of such inspection is to aid in the tax administration functions of a State or its political subdivisions. State tax officials may furnish information obtained from Federal income tax returns to local tax officials, for purposes of local tax administration, if approval of such action has been given by the Commissioner of Internal Revenue in response to a written request from the Governor. Detailed regulations concerning these inspections are contained in Treasury Department Regulations, Section 301.6103(b).

Section 6103(c) of the Code requires that we permit inspection of corporation income tax returns by shareholders if they own one percent or more of the outstanding shares of the stock of the corporation. Regulations governing these inspections are contained in Treasury Department Regulations, Section 301.6103(c).

Section 6103(d) of the Code provides for inspection of returns by committees of the Congress. Regulations governing these inspections are contained in Treasury Department Regulations, Section 301.6103(d).

However, the fact that tax returns and related tax data are made available under the aforementioned Disclosure Laws and Treasury Regulations, does not change the confidential nature of the tax data released. Persons having access to the documents and/or information are cautioned as to the confidentiality of the information furnished as safeguarded for by the penalty provisions of Section 7213, Title 26, U.S.C., and Section 1905, Title 18, U.S.C. As evidence of our concern, we have investigated more than 200 complaints of alleged disclosure violations in the past three years alone. Attached is a statistical summary of the number of alleged disclosures we investigated since the program became formalized in March 1972. While most of the allegations proved to be without merit, four cases were prosecuted. Many complaints received from taxpayers were found to be without merit, when investigation showed that the taxpayers had tax liens filed against them which are a matter of public record. In other instances,

investigation showed that taxpayers themselves had turned tax data over to attorneys or courts in domestic proceedings.

Furnished are summaries of three cases where information was released by IRS in accordance with provisions provided for under Disclosure Laws and then apparently released by the recipient in a manner not provided for by the law and regulations.

(1) On May 8, 1974, newspaper articles appeared in the *Oklahoma City Times* and the *Daily Oklahoma* containing detailed financial information reportedly obtained from Governor Hall's 1971 and 1972 tax returns. Investigation showed that in December of 1973, the U.S. Attorney for the Western District of Oklahoma requested and received tax information from IRS relating to Governor Hall. Subsequently, on March 25, 1974, the U.S. District Court for the Western District of Oklahoma issued an order that all information received by the Grand Jury relating to violations of Title 26 of the U.S. Code be disclosed to IRS; and that all other evidence developed relating to violations of Title 21, Oklahoma Statutes, be disclosed to the Attorney General of the State of Oklahoma. In complying with the latter, the U.S. Attorney's office erroneously released tax information relating to Governor Hall to the Oklahoma State Attorney General's office, which in turn made the information available to members of the Oklahoma State Legislature.

(2) On August 22, 1972, news articles appeared in the *Raleigh North Carolina News* and the *Charlotte Observer* mentioning that IRS Regional Counsel had recommended criminal prosecution of 13 persons who were involved in Governor Bob Scott's 1968 campaign. The articles further mentioned the names, city locations, and some background information on the 13 individuals. Investigation showed that the disclosure was apparently made by the U.S. Attorney for the Eastern District of North Carolina. On September 9, 1972, the U.S. Attorney submitted his resignation.

(3) In February of 1973, a series of newspaper articles appeared suggesting that Governor Thomson of New Hampshire used information obtained from Federal tax returns for purposes other than tax administration. Investigation showed that New Hampshire State Law requires that all business returns filed with the State be accompanied by a portion of the Federal tax return. Accordingly, it was impossible to determine whether there had been a violation of the Federal Disclosure Statute since the information allegedly disclosed could have come from State records rather than from IRS under reciprocal exchange agreements.

We hope this information will be helpful to you. If we can be of any further assistance, please let us know.

Very truly yours,

W. C. RANKIN, Jr.,
Assistant Commissioner.

Mr. LITTON. At the heart of the problem is an antiquated section of the Internal Revenue Code, section 6103, which makes our tax returns public records. We ask our taxpayers to voluntarily and freely report the most confidential aspects of their financial status in the belief that such information will not be used in a manner which violates their right of privacy. In effect, each of us for taxation purposes is waiving our fifth amendment rights. But our law invites abuse and misuse of this information by stating that, unless otherwise limited, tax returns are public records. The Commissioner of Internal Revenue, Donald C. Alexander, was right when, commenting on section 6103, he told the House Foreign Operations and Government Information Subcommittee on August 3, 1973:

> I suggest that a better approach is precisely the opposite: tax returns should be confidential and private, except as otherwise specified.

The Weicker/Litton bill will protect the confidentiality of personal income tax returns and limit the use of these returns for purposes other than those for which they were intended. This bill would enact a new section 6103 of the Internal Revenue Code to provide:

All returns made with respect to taxes imposed under any provision in this title are confidential records and no such return or any information contained therein shall be disclosed except as provided in this title.

This bill is intended to limit use of income tax returns to the purpose for which the taxpayer intended them to be used—the reporting of his income for the purpose of assessing a tax against him. The only persons to whom this information can be divulged are the taxpayer himself, his authorized representative, officers and employees of the Internal Revenue Service and the Justice Department for enforcement of the Internal Revenue Code, State tax officials for the purpose of administering their tax system, the Joint Committee on Internal Revenue Taxation, and under the spotlight of public knowledge, the President.

The President and Attorney General can obtain tax returns only upon written request specifying the taxpayer whose return is to be inspected. The President must certify that he needs the return in the performance of his official duties. The Commissioner of Internal Revenue would be required by this bill to issue a quarterly report to the Joint Committee on Internal Revenue Taxation specifying the names of taxpayers whose returns are requested, the persons requesting them, and the dates requested so that Congress can provide an additional check against the unnecessary invasion of tax return confidentiality. In the future, what a President does with a taxpayer's return will be known to the Nation. Thus, his constitutional powers are not restricted, but his ability to move in secret is.

Upon request of head of any Federal department of agency or of the principal tax official of a State, the IRS Commissioner may furnish certain statistical information derived from tax returns, so long as the tax information does not disclose the identity of any taxpayer or any return. This information so furnished must be compiled by the IRS itself for some reasonable fee.

The Weicker/Litton measure would further amend section 7213 of the Internal Revenue Code, making the unauthorized disclosure or receipt of tax information a felony, punishable by fines up to $10,000 and/or imprisonment up to 5 years. With this change, Government officials seeking to pry open confidential tax files for political or personal purposes would at least face stiff criminal penalties.

There are those Government agencies who protest that this legislation will prevent them from obtaining the information necessary to administer or enact laws, that their need to know overrides any privacy interest that may be involved.

The Department of Justice and other executive branch agencies apparently see the filing of the annual income tax and its subsequent audit not as the principal revenue gathering mechanism for the Nation, but rather as an opportunity to annually audit citizens' personal activities. The IRS has demonstrated its capacity to collect revenue. It is not, and should not be a national police force or a gestapo-type agency. Neither should it be an executive branch clearing house of personal and financial data on the private lives of American citizens.

If an agency needs to know something that is contained in a tax return, why not ask the taxpayer directly? All information in tax returns can be obtained by other legal means. Because the tax return makes bureaucratic investigation easier is not sufficient reason to skirt standard judicial remedies or de facto amend the Constitution.

The bureaucratic insistence that tax returns must be public records so that agencies can know even more than the citizen intends them to know, threatens the stability of our tax system and thus the stability of government itself. The method in which taxpayers voluntarily comply with our tax laws and, in most cases, fully report their earnings is the envy of most other nations where dishonesty is often the rule rather than the exception. If taxpayers become convinced that the confidential data they can submit is being used for political purposes, how long will it be before taxpayer compliance and trust in our system of taxation is forever lost.

I urge your consideration and recommendation for enactment of this long overdue legislation. President Nixon's Executive order opening the tax files of three million farmers was perfectly legal even though it shocked Congress and it shocked the public. Earlier Executive orders of other Presidents have legally made tax returns available to the Renegotiation Board, the Federal Trade Commission, the Department of Commerce and the Department of Health, Education, and Welfare, and other agencies. Since April 14, 1909, to June of 1973, no fewer than 176 Presidential Executive orders have been issued making tax returns and return information available to States, Executive branch agencies and various committees of Congress. From the 72d Congress to the present, Congress has enacted no fewer than 47 resolutions authorizing regular and special committees to obtain tax returns.

Mr. Chairman, there is a principle at stake here: the use of income tax returns should be limited to the purpose for which the taxpayer intended them to be—the reporting of his income for the purpose of assessing a tax against him. This is the intent of the Weicker/Litton bill.

Mr. Chairman, I again want to thank this subcommittee for the opportunity to testify in support of our bill and I compliment you for holding these hearings, and will be delighted to answer any of the subcommittee's questions concerning it.

Thank you.

Senator HASKELL. Thank you, Congressman, very much indeed, for an excellent statement. I do, and I assume Senator Dole does, have questions which I will ask. I will ask both you or Senator Weicker, to answer them as you choose.

In your bill for example, you define a return, which is to be confidential, as material "filed under compulsion of law containing information necessary to determine tax liability."

What occurs to me is that a great deal of additional information can, from time to time, be supplied the Internal Revenue Service; for example, in the event of an audit, all sorts of information would be provided dealing with the individual's financial circumstances.

Do you consider that type of information as needing the cloak of confidentiality? Either one of you gentlemen?

Mr. LITTON. I might add that we are in the process of broadening the definition of that term in the legislation we have been working on to include other information that the taxpayer voluntarily provides the IRS.

Because, again, the taxpayer is providing this information to the IRS with the assumption he is doing it for the purpose of paying his taxes.

Senator WEICKER. I think, Mr. Chairman, the source is the test that I use what I am trying to protect is those matters that the taxpayer provides himself. I am going to have all I can do just to do that. Never mind other Government activities which discover information on individuals. I just do not think I can reach out that far.

What I am saying is this individual who, in effect, as we have stated, waives his fifth amendment rights, what he or she provides, that is what we are trying to protect. I am not going to tell the Justice Department they can or cannot investigate this person or that person. That is another subject.

I am trying to restrict myself to this very narrow area.

Senator HASKELL. But, Senator, as Congressman Litton has stated, the cloak of confidentiality might cover information submitted in the case of an audit.

Senator WEICKER. Absolutely. Absolutely.

Senator HASKELL. And I assume, for instance, when the Government, as it does, makes computer tapes of returns, it would be the intent to protect any information put on the computer tape?

Senator WEICKER. That is right. That is right.

Senator HASKELL. Now, gentlemen, your bill allows tax returns——

Senator WEICKER. Can I say one thing here, for the benefit of your committee and the staff, if you just keep that word "source" in front of you, I think that helps to answer the question that you have just asked.

What is the "source" of the information?

Senator HASKELL. I understand. Now, gentlemen, your bill allows the tax returns to go to Justice only for the enforcement of the Internal Revenue Code?

Senator WEICKER. Yes.

Senator HASKELL. Deputy Attorney General Tyler last week testified that his Department needs returns to help them in their organized crime strike force activities, for example.

He did testify that he should not have tax returns to make an assessment of potential jurors. On the other hand, he said that he should have the tax returns to prepare his case, perhaps, or to challenge the credibility of a witness in court.

Now what comment do you have on this in particular?

Senator WEICKER. I think this is a subject that should be thoroughly discused here now because it gets to the heart of the dispute.

I noticed in Tyler's testimony he said S. 199 would unduly restrict the availability and use of tax returns in criminal investigations and prosecutions not involving the tax laws.

He is absolutely right when he says that. And, that is the line we are trying to draw here. He has, as Congressman Litton has pointed out, available to him all of the normal processes that any law enforcement agency would use relative to getting the evidence and pursuing wrongdoing.

What I am denying him is this information which I and every other American citizen has voluntarily provided and has, I might add as we have indicated, waived a portion of his fifth amendment rights.

We are denying him that. That is right, absolutely. And the minute we start to fudge on this point, then believe me our legislation disappears and so will any attempt by your committee to close the loopholes.

Because everybody will come walking in here with an argument bandying around where it is organized crime strike force and, you know, it sets up an image, if you will, that demands the harshest, swiftest possible action.

But, who has ever said that the Constitution of the United States is an expedient, or an efficient document? It is not. So I do not intend to get into a debate on this with Mr. Tyler or anybody else in Justice.

They have available to them the court processes, the judicial processes to obtain whatever it is that they need. What they are telling you is that because Senator Weicker, Joe Smith, whoever it might happen to be, has been willing to testify against himself, this will save us an awful lot of time in bringing about convictions.

Well, you know that is why the provision is there in the Constitution. Because it certainly does make it complicated—more difficult—to get convictions. So I speak very strongly, and I think I also speak for Congressman Litton on this point.

We do not intend to hedge one iota. The information that we supply in our tax returns is strictly for the collection of taxes, and for nothing else. I do not intend—and I do not think Congressman Litton intends—it should be used for anything else. And, if it makes life more difficult for Justice, it makes life more difficult. So does the Constitution.

Senator HASKELL. All right, sir, let me take you one step further down the road, if I may? Let us assume that we have a case in court and it is a nontax case. Let us assume that under a court order, with a guarantee that the files be sealed a Federal District Judge should want the production of a tax return for the purpose, let us say, of impeaching a witness' credibility?

What is your reaction to that?

Senator WEICKER. No.

Senator HASKELL. Congressman, do you agree?

Mr. LITTON. I agree. All we have to do, if they want tax returns, is to let them go to the court. If they have a legitimate reason for getting it, they will get it, and not, if they do not.

Senator HASKELL. You would not then proscribe the authority of the Federal judge, under the circumstances that I outlined to force the production of a return for the impeachment of witnesses? Was that your answer? I think I understood the Senator a little bit differently.

Senator WEICKER. No: I think—look, I have no objection to the utilization of our court processes to obtain anything. But, insofar as just because it happens to be a case in the courts and because Justice asks IRS for the files, the answer is no.

Senator HASKELL. But, if the courts should issue an order?

Senator WEICKER. Oh, absolutely, sir. In a normal court process, that is fine.

Mr. LITTON. That is what I said. Let them go to the courts.

Senator HASKELL. All right, sir, that is the way I understood you. Now let us assume that in the course of an audit an Internal Revenue agent discovers evidence of a non-tax-related criminal activity?

What would be your response under those circumstances? Let us say they audit my return and I am engaged in the numbers racket, or something like that. Would you then authorize the transmittal of that information to the Justice Department?

Senator WEICKER. Again, I will use the word "source." If the source of this information was my tax return, no you cannot go ahead and use it.

Senator HASKELL. Or the books and records of a taxpayer? I assume your answer would be the same? It might well be discovered from examining the books and records of a taxpayer in the course of an audit that one is engaged in the numbers racket.

My query is, would it be proper for the Internal Revenue agent then to tell the Justice Department that it thinks Joe Doe is in the numbers racket?

These are difficult questions——

Senator WEICKER. These are difficult questions, but they are good questions. And, again, the answer as to whether you can notify them as to whether it can be used as evidence in a court case, I think you have to differentiate as to those two activities.

On the principle that I state, the answer clearly would be no. Let me get to the point. Here is what I think is in the back of so many people's minds when you bring up this whole subject of justice and prosecution. They think of Al Capone.

The fact that it had been alleged that he was engaged in certain activities, but in the final analysis the only thing he was nailed on was income tax.

What I am saying to you is that if you want to nail Al Capone or anybody else on income tax, you nail them on income tax . But what we are not going to do is to go on a general fishing expedition through the tax return and then whatever we end up with, we move ahead.

Now you still have available to you—and I want to repeat—you can go after Al Capone, or anybody else, on income taxes. But, insofar as these other activities are concerned you are going to have to establish a separate, distinct investigation.

Mr. LITTON. Let me add to that, if I might, Mr. Chairman. It is my understanding from some of the people within the strike force in the Justice Department that they are not so much interested in the information on the tax return provided by the citizen to the IRS and to the IRS agent, as they are in other information that the IRS agent gains in fulfilling his duties, other than that from gaining voluntary information from the individual himself.

It is my understanding that the IRS agents do other work, surveillance work on individuals including such things as where they go, what they do, and so on. I understand the Justice Department is very much interested in that kind of information as opposed to that voluntarily given by the taxpayer to the IRS agent.

And, I think we can draw a line at that point.

Senator HASKELL. I understand. Thank you, Congressman. We have a 10-minute rule. I have some other questions which I will come back to, but I would like to turn to Senator Dole at this particular time.

Senator DOLE. We have some other distinguished witnesses, too, so I will try to be specific in my questions. I think we are down to the nitty gritty.

How many employees are there in the IRS?

Senator HASKELL. The record shows it somewhere. I do not know how many—80,000 I am told by staff.

Senator DOLE. So I think we have to keep this in proper perspective, if we have 80,000 employees, whether it is in the Senate or the House,

you could probably find 1, or 2, or 12, or 50 who may have violated someone's confidence and may have sold a tax return or information from a return.

Now I am not certain we will ever legislate against this activity. So I do not really believe that we can indict the entire IRS for the acts of some few employees. And I do not intend to do that.

I agree with the concept of the Weicker-Litton proposal—in fact, I am a co-sponsor. But I have some questions that I think we need to clear up before.

I think the Watergate headlines are behind us. I think now we have to get down to the hard questions of what do we want to do, and how are we going to do it?

I would ask that it be made a part of the record—an editorial in this morning's Washington Post, called "The Future of the IRS".

Senator HASKELL. It will be received.

[The editorial referred to follows:]

[From the Washington Post, Apr. 28, 1975]

THE FUTURE OF THE IRS

The Internal Revenue Service has become a popular subject for congressional scrutiny. At least half a dozen panels are now looking into various aspects of IRS operations, from the treatment of ordinary taxpayers to recent political intelligence-gathering. But it is not yet clear to what extent Congress will follow through by considering the broad, basic issue of the role of IRS.

A good example of fastening firmly on a corner of the problem is the widespread interest in restricting access to income-tax returns. The need for tough new rules was amply shown during the Nixon years. Indeed, there are few more sensitive records systems in the government, since IRS is the only agency that collects detailed annual reports on the finances of most citizens. Yet that is just one aspect of IRS's extraordinary power over people's fortunes and lives. The agency also has exceptional authority to investigate citizens' activities, to collect private information by administrative summons—often, as with bank records, without the taxpayer's knowledge or consent—and to seize property in the most preemptory ways. Thus the basic question is how the whole panoply of IRS powers ought to be used.

Some answers are obvious. IRS should be scrupulously apolitical; its awesome powers should not be misused to help political friends, to harass those regarded as "enemies," or to collect information unrelated to the enforcement of the laws. But the answers are not so simple when one proceeds to the problem of how IRS's records and investigative strengths should be used in legitimate federal law-enforcement efforts.

At present, IRS does share its resources with other agencies. Last year, for instance, 8,210 returns—out of a total of 81.5 million—were made available to other federal offices; 7,676 of those, or 93 per cent, went to the Justice Department and U.S. Attorneys. Even more significant, IRS agents, with their specialized investigative skills, have been invaluable in recent probes of organized crime, fraud, and corruption in many states.

Many people, including IRS Commissioner Donald C. Alexander, believe that such general law-enforcement activities should be cut back, that the sharing of tax returns should be tightly curbed, and that IRS should function almost exclusively as a revenue-collecting agency. This, of course, has great surface appeal and some real advantages. It would greatly reduce the possibility that tax returns might be misused by other agencies, or that IRS might become entangled in improper surveillance projects again. It could enhance public confidence and might even produce more revenue. For instance, if taxpayers could be sure that their returns would not go to U.S. Attorneys or the FBI, corrupt officials, drug dealers and the like might even report and pay tax on all their illegal gains.

But the isolation of IRS along those lines has all the defects of its merits. As Deputy Attorney General Harold R. Taylor Jr. testified before a Senate panel last week, such strict curbs on the sharing of resources would greatly hamper the Justice Department's ability to prosecute white-collar crime, corruption and other

offenses. The enforcement of tax laws might also be hurt. Moreover, if denied access to IRS files and specialists, other federal agencies might be driven to create or enlarge their own financial intelligence units thus opening up new problems.

All this is not to say that the present system is perfect. The sharing of tax returns for non-tax law-enforcement purposes does raise privacy problems and no doubt limits some citizens' compliance with tax laws. The demands on IRS's limited manpower can be too great. Finally, if IRS is to continue to serve as an arm of general law enforcement, the agency's special powers to search and seize ought to be re-examined. Congress authorized such shortcuts of due process for tax-collection purposes, not so the agency could function as a proxy for other offices whose authority is more circumscribed.

The point is that, when one moves beyond the areas of obvious abuses, the choices involving IRS are more complex and consequential than they may seem. Tighter standards and more consistent oversight could reduce many problems, especially in regard to tax returns. But overall, defining the role of IRS is not a simple matter of balancing claims of privacy against those of law enforcement, for there are interests of citizens' rights and governmental effectiveness on every side. This is the kind of problem Congress often ducks. But if the current flurry of studies are to be very meaningful, such questions will have to be seriously addressed.

Senator DOLE. The article indicates the complexity of the problem. Now would your bill allow a partner to see the tax returns of his partnership?

Senator WEICKER. Yes.

Senator DOLE. How about other cases where the individual's tax liability is determined by the income of a different entity like the beneficiary of a trust?

Senator WEICKER. The answer is yes. These were technical points which we reviewed with various members of the staff, and the bill on these points is being redrafted. The answer would be yes.

Senator DOLE. All right, suppose Mr. Brown paid Mr. Green $10,000 for services and Mr. Green did not report this income. But, Mr. Brown took the payment as a deduction on his tax return. Should the Government be able to use Mr. Brown's tax return in a tax case against Mr. Green?

One does not report, and the other takes it for a deduction.

Senator WEICKER. The other one is not filing at all?

Senator DOLE. They are both filing. He just did not list this as income.

Mr. LITTON. You are asking whether to use the tax return of one individual, to pursue tax violations of another?

Senator DOLE. In other words, Mr. Brown paid Mr. Green $10,000. Mr. Green did not report it, but Mr. Brown took the payment as a deduction on his tax return.

Senator WEICKER. The answer would be yes; because—who was the fellow that reported it? Mr. Brown?

Senator DOLE. Yes; because he paid it and he wanted to get the deduction.

Senator WEICKER. Right. So, in pursuing the enforcement of the tax laws as concerns Mr. Brown, that obviously would be a valid matter.

Senator DOLE. We want to proceed against Mr. Green.

Senator WEICKER. I know. That would be the opening of the door. That would trigger valid activity, in my mind, on the part of the Internal Revenue Service.

Senator DOLE. You would permit that, without going to court? Or, would you turn it over to Justice?

Mr. LITTON. I think our concern is that the IRS is there to enforce the tax laws. And, in this particular case—at least in my opinion—it would be that they are enforcing the tax laws. We simpy do not want that information used for purposes other than that for which it was intended.

In my opinion, it would be all right to be used in that way.

Senator DOLE. I think these are the tough areas.

Senator WEICKER. Yes; but let me put it this way. It is a good question, Bob, but this is not what Justice is complaining about. Because you are strictly dealing with a tax matter, with both Brown and Green. It is a tax matter. It relates to the tax laws.

Senator DOLE. Right.

Senator WEICKER. Where the break comes is on some other activity of Mr. Green. That is the big one.

Senator DOLE. We are going to go to that next.

Suppose the witness is testifying in a nontax criminal case and lies on the witness stand, and that can be proved by Justice by using his tax return. In other words, he commits perjury, and you can prove that by his tax return. Now, should the Government be able to use his return to prove perjury?

Senator WEICKER. My answer is no.

Mr. LITTON. He could go to court, could he not, sir, to get the return?

Senator WEICKER. He could go to court—are you asking, in other words, the direct obtaining of the tax return from IRS by the Justice Department? The answer is no.

If the Justice Department goes to court and gets the tax return, the answer is yes.

Senator DOLE. Is that permitted in S. 199?

Senator WEICKER. Oh, yes. There is nothing to prevent Justice or any other Department from using court processes for obtaining information.

Senator DOLE. You would not object to that provision being there? I do not find it there.

Senator WEICKER. No, no; not at all.

Senator DOLE. All right, supposing you could——

Senator WEICKER. Let me comment, Senator Dole? You raised a problem. We do not have that in legislation. I did not think it was necessary. But I do think it is important enough to highlight. I have no objection at all to utilizing our court processes for the obtaining of evidence.

The legislation that we are putting forth here attempts to set up some sort of a block as between direct communications without—in other words, eliminating the court processes, as between IRS and the Justice Department, or any other agency.

Senator DOLE. So the same answer would be true? In other words, the first question was if you can prove perjury with his own tax returns. But, say you can prove he committed perjury by using a tax return of another taxpayer? Should the Government be able to use his tax return?

I assume it may be consistent, and it may not be.

Senator WEICKER. I am afraid I do not——

Senator DOLE. In other words, if I committed perjury and if you could prove it with my tax return, that is OK.

Senator WEICKER. Is it a tax matter that we are talking about here?

Senator DOLE. Yes.

Senator WEICKER. Yes; that is no problem.

Senator DOLE. If you can prove I committed perjury by using your tax return, is that OK?

Senator WEICKER. Go to court to get the tax return.

Senator DOLE. You do not object to that if it is done properly?

Senator WEICKER. No.

Mr. LITTON. Not at all. I think, again, what we are concerned about is whether or not the various agencies and departments use the court processes to get information, which they can get if they have reason to get it, as opposed to simply calling over to the IRS and having it sent over in the next cab.

Senator WEICKER. That is what they are objecting to.

Senator DOLE. What we are trying to find out is do we have everything in the bill? Do we need to expand the bill?

Senator WEICKER. I agree with you. I think it is a darn good point.

Senator DOLE. Now I have raised the question Senator Montoya did, and I am sure both of you have long before I did, about how do we make certain these safeguards follow the returns?

You have to attach your Federal return in Missouri, and in my State of Kansas. Do you have income tax in Connecticut?

Senator WEICKER. No.

Senator DOLE. You do not have to send your Federal return if you do not have a State return filed? Right?

Senator WEICKER. Right.

Senator DOLE. What we are concerned about is whether or not the taxpayer loses that right. Or, does it follow the return, insofar as penalties are concerned, if it goes to a State or local subdivision?

I think this is an area that concerns me. We may be getting down so far that the information may be made available, as you pointed out in your letter. You mentioned a case in Oklahoma and a case in New Hampshire where access may have been obtained about the Federal return in the State.

Now, how do we make certain that that does not happen?

Senator WEICKER. Well, you put your finger on probably the most neglected, and yet it is the greatest, area of abuse and potential abuse.

First off, clearly I think you should restrict any exchange of information between the IRS and the highest level of State government. Never mind this business of county governments and everybody else down the line getting it. I just would exclude that completely.

Senator DOLE. What if they have an income tax, though? That is the theory, the treaties with the States are based on that. That bothers me, too, but I wonder if it is all right for the State to have it, because they have a State income tax? And what is wrong with Cook County having it because they have a county tax?

Senator WEICKER. I think there is a great deal of work that needs to be done, both at the State level and the IRS level, as to tightening up the procedures here. I think that is what you are going to have to fashion.

And also I might add, to give to the Commissioner of the Internal Revenue Service the right to revoke any treaty with a State where abuses are discovered. We are not obligated to go ahead, and again, it is an accommodation by the Federal Government to the States.

Senator DOLE. Well, I assume the State, if we did not send our tax return along, could say, please answer questions 29 through 62, which they could copy from the Federal return.

So as I suggested the other day, we ought to send an original and three copies to the IRS, and they could mail out the copies and save a lot of man-hours in the IRS.

What about access by congressional committees? We have access. Do you think that that should be limited? And is it limited in your bill?

Senator WEICKER. Yes; it is in the bill. We do not spare anybody. We do not spare the Congress. We lodge this authority, and it is in several committees right now, and it ought to be taken away from the committees. I see no reason why Ways and Means should have individual tax records made available to Ways and Means or any other congressional committee.

Now, there should be one committee of oversight, and we lodge that in the hands of the Joint Committee on Internal Revenue Taxation.

Senator DOLE. But they are not legislative, are they?

Senator WEICKER. Yes; they are, to the extent they are an arm of the legislative branch of the Government, yes.

Senator DOLE. But we do not receive any bills on the floor from the committee.

Senator WEICKER. Well, I know, but we figure we are only going to have one entity, as indeed the President has the ultimate responsibility. We want to have somebody we can focus in on, in the Congress' side of things. And that is why in the legislation and the redraft of the legislation, even there the vote has to be by the membership. It has to be a record vote.

So, again, the individuals—the Congressmen and the Senators—who have asked for the individual return, are on the record as having asked for the return. That is the greatest safeguard to misuse of that power by any individual.

Mr. LITTON. If I might add, let me simply say I cannot see any particular situation where any legislative body—be it in the House or the Senate—would need to see a particular return of a particular taxpayer in order to carry out its responsibilities in writing useful legislation.

They would need to see statistics and other information that appears on tax returns, but I see no reason for them to have the identification of the taxpayer in connection with the information on each return they are studying. They would not have to have this to be able to write responsible legislation.

Senator DOLE. I appreciate that, but I can think of one example. Every year—I do not remember which month—there is always a big story "Two Hundred Millionaires Paid No Income Taxes." And everybody then rushes out with a press release on how we are going to snag these 200 millionaires.

Well, one way, I guess, would be to look at their tax returns in the Senate Finance Committee, or House Ways and Means Committee, and find out how they do it.

But, in any event, I think there is a legitimate reason, that we might want to have access——

Senator WEICKER. Well, Senator, no. I cannot agree. You know, I am sorry but I think 200 millionaires deserve the same protection of the Constitution of the United States as anyone else. No.

Senator DOLE. I just cite that as one example, because it always makes a big headline. There may be better reasons——

Senator WEICKER. I know it makes a headline, but it is still wrong. And, let me make just one point here. You know, if you come out with legislation that tightens the screws on the President, it tightens the screws on the IRS and the various agencies of the Government, but it does not tighten them on the Congress. That gets to this issue of credibility that I discussed at the outset of my comments.

If we are going to do the job, if we are going to do a job of protecting the taxpayer, we will go right across the board; and that includes ourselves.

Senator DOLE. That was my followup question.

What about Members of Congress—Senator Haskell, you, Jerry, and me as individuals—making inquiries of the IRS and asking for a review of the case, and otherwise complying with the request of a constituent who may also be a registered voter in our respective States or districts?

Is that a proper activity? Should we be permitted?

Senator WEICKER. Review in what sense?

Senator DOLE. Well, you get a letter from some taxpayer who says that the IRS made a mistake. They have imposed too much tax.

Senator WEICKER. Well I think there are two areas——

Senator DOLE. I am not asking for the tax return. I am just asking for a review. I am not asking for any adjustment.

Senator WEICKER. I will tell you. If you are going to—if one of your constituents writes to you or writes to me and says, "I have not gotten a refund check," that is one thing for us to go ahead and pursue.

As far as injecting us into a quasi-judicial proceeding, I am sorry but I do not think we should inject ourselves into that at all.

Mr. LITTON. Let me add, to your 200 millionaires, do we really need to know the names of the 200 millionaires to ascertain what practices they use to keep from paying taxes?

Senator DOLE. I do not imagine we do. I think it can make a nice story.

Mr. LITTON. That is my point.

Senator DOLE. I think you are right. We do not need to know the names. But every year it happens, and every year we speculate.

Mr. LITTON. Our legislation would permit you to see the information, but not the names of the individuals.

Senator HASKELL. Gentlemen, I have a couple of more questions. Your bill provides for—under certain safeguards—State taxing authorities to have access to returns, or copies of returns. Correct me if I am wrong there.

It occurs to me that if a State is informed by IRS that a deficiency has been asserted, or an additional tax has been paid, this might put them on sufficient notice. If I have to pay the Federal Government additional tax, and the State of Colorado is notified, the State of Colorado can then come directly to me. And I wonder whether this is not sufficient assistance to the States? I am really concerned about Commissioner Alexander's statement that in the year 1973, 61.5 million

returns and return information were spread around the countryside to various States.

Now I understand the State enforcement needs. But it occurs to me that if a State knows that I have to pay an additional $500 to the Federal Government for, say, calendar year 1972, that might be sufficient for their purposes. Do they need access to my return?

Mr. LITTON. They have more access than that under the present law.

Senator HASKELL. I know that.

Mr. LITTON. Present law permits the Governor to get the corporate tax return of any company.

Senator HASKELL. I realize that, but I am thinking more of individuals rather than corporations. But is that present provision in the law necessary?

Mr. LITTON. This is something that we have been struggling with for a long time—about a year—on this bill; trying to protect the confidentiality of the citizen and still permit the State to collect their taxes as they have in the past. We are making a technical change in our bill which would provide certain circumstances under which the Federal Government could prohibit States from getting these tax returns unless they provided certain safeguards that would assure the IRS that the tax returns receive certain confidential treatment.

I wish there was more we could do along that line, but I think all but two States do use the tax returns to some extent.

Senator WEICKER. Obviously, Floyd, the easy answer to your question is you just do not allow the States to have the Federal tax returns. But clearly that would impose a huge burden on the States. It is a knotty problem; that is why we are here testifying before your committee. I hope it is not just of our ideas, but the expertise that you and your committee have in trying to work it out. It is a tough problem.

Senator HASKELL. It is a problem, and I will ask State enforcement authorities, when we have them as witnesses, as to whether my suggestion would meet their needs. I do not know if it would or would not.

Then I have just a couple more questions. A question that I asked Senator Montoya: In the event of abuse of powers by the Internal Revenue Service, where there was not—we will use the word "scintilla"—of evidence of wrongdoing or error, and yet, for perhaps peripheral reasons, a protracted audit is precipitated, should or should there not be some type of civil remedy afforded the taxpayer under those circumstances.

Senator WEICKER. I think we both agree there should be. As a matter of fact, that is one of the provisions we have drawn into the bill.

Senator HASKELL. I have just one more question here.

This is on your source concept. An audit of a tax return takes place: information is not obtained from the taxpayer's books, it is obtained from an interview with a third party. Would you say that information had the same cloak of confidentiality?

Senator WEICKER. The answer is no, by virtue of the principles I have set forth.

Senator HASKELL. I just asked that as a clarifying question.

Now let us go to court process. I assume that if the Justice Department felt that somebody's tax return was necessary to the prosecution of a nontax criminal case, there would be nothing to inhibit the Justice Department from going to the appropriate Federal district court and getting an order for the production of the tax return. Am I correct in that?

Senator WEICKER. That is right.

Senator HASKELL. Gentlemen, I have no further questions. I want to compliment both of you on your depth of knowledge of this subject, and for appearing here today. Thank you very much. I hope both of you will——

Senator DOLE. They are going to remain, are they not?

Senator WEICKER. Mr. Chairman, may I thank you and Senator Dole for, as I said, getting off the dime. It is the first bright light we have had in 2 years in trying to get action on this. I want to especially thank you, Mr. Chairman, for setting up these hearings.

Just two things: if we do not pass legislation in the year 1975, protecting the taxpayer, you are not going to get any legislation protecting the taxpayer. It will be a forgotten matter, and it will come up again when the next horror show takes place. That is number one.

Number two, if you want to comprehend the effectiveness of any particular piece of legislation that is given to you, just remember this, because I know what is going to come in from the executive side. The thicker the bill, the less privacy will be achieved. Believe me.

Senator HASKELL. I think I would concur, Senator.

Senator WEICKER. Thank you Mr. Chairman.

Senator HASKELL. Gentlemen, I hope you will join us as we talk to the former Commissioners.

Mr. LITTON. Thank you very much.

Senator HASKELL. Gentlemen, we will proceed with an extremely distinguished and knowledgeable panel. These gentlemen are former Commissioners of Internal Revenue, and probably are the most informed people in the country on the subject we are going into. I appreciate each and every one of you appearing.

For the record, Mr. T. Coleman N. Andrews, Sr., Mr. Mortimer M. Caplin, Mr. Sheldon S. Cohen, Mr. Randolph W. Thrower, and Mr. Johnnie M. Walters. We appreciate your appearing. I do not know what format your presentation is going to take, but whatever you have decided, why just go ahead.

Senator WEICKER. Mr. Chairman, may I just say one thing before we start in order that there be truth in packaging here, and also, it gives me a source of great pleasure—for several years I studied under the tutelage of Mr. Caplin. He was a professor of tax law at the University of Virginia, and he was known as one tough professor. I cannot tell you the delight that I am experiencing here in having him on the other side and I can ask him some questions.

Mr. CAPLIN. I would like to say in response, that as the years go on, Senator Weicker's record as a tax student gets better and better. [General laughter.]

Senator HASKELL. He went from an A minus to an A plus?

Mr. CAPLIN. That is right. That is my recollection.

Senator WEICKER. That is right. That is right.

[The prepared statement of Senator Weicker follows:]

STATEMENT OF LOWELL P. WEICKER, JR., A SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, distinguished colleagues: This is an essential day. Essential not just as to the subject matter before this committee but essential to the credibility and stature of the Congress of the United States.

Let me explain why.

Several days ago my press secretary told me of press interest in these hearings and, more specifically, their interest in any "bombshells" I might unload. It is true that I continue to pursue evidence relating to abuses of power within Government. But the evidence I proffer your committee today has its significance not in the newness of other people's wrongdoing but in the staleness of Congress' response.

Mr. Chairman, colleagues, the stacks of paper before me are the substance of a two-year *public, public* record of wrongdoing connected with the I.R.S. The air between us is the substance of the legislative response to that record. If the executive branch of Government has taken licks for its failings then believe me, Congress' shame is as great. Not because we broke into anything but because we broke down. The danger in the country today is no longer suppression of the truth but the willingness to live with that portion of the truth which runs counter to American concepts of justice and constitutionality. Insofar as the mess can be cleaned up legislatively, let's get with it. Please, before any more horror stories, let's have one concrete, positive act by the Congress which can be interpreted as work rather than politics.

Why S. 199 or something akin to it? Because:

(1) Article II, paragraph (1) of impeachment of Richard M. Nixon, President of the United States. G.P.O. stock number 5270–02486. August 1974.

(2) Investigation into certain charges of the use of the Internal Revenue Service for political purposes. Prepared for the Joint Committee on Internal Revenue Taxation. December 1973.

(3) Information from Farmer's Income Tax Returns and Invasion of Privacy. Committee on Government Operations. October 1973.

(4) Joint hearings before the Committee on the Judiciary and Committee on Foreign Relations on warrantless wiretapping and electronic surveillance. April 1974.

(5) Hearings before the Select Committee on Presidential Campaign Activities. 1973.

(6) Final report of the Select Committee on Presidential Campaign Activities. July 1974.

(7) Miscellaneous press matters.

(8) Ford Press Conferences. September 16, 1974; October 9, 1974.

That's a two-year record of messing around with tax returns, tax officials and taxpayers. Yet is there one Senator or Congressman who can guarantee that all is in order with I.R.S. today? Of course not. Well, I believe the American people have a right to such a guarantee—not when some Senator gets his nose out of joint because he's been audited—but now!

After I finish testifying there will be the usual parade of officials pleading for the status quo. Or, what is worse, asking you to codify what heretofore has been practice. They will refer to the past as the acts of a misguided few, or to the future with dire warnings of weakening justice and furthering the cause of the subversive or criminal. That is why I think it important to give you the thinking behind S. 199.

PRESENT LAW

Section 6103 of the Internal Revenue Code of 1954 is the present statutory provision governing disclosure of tax information on tax returns. Section 6103(a)(1) states that tax returns "shall constitute public records; but, except as hereinafter provided in this section, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." In addition to the President and IRS, tax information is presently being provided to the following: (1) Treasury officials having responsibility for IRS and for the formulation of tax policy; (2) the Joint Committee on Internal Revenue Taxation, Senate Finance Committee, House Ways and Means Committee, and other Congressional committees which have responsibilities requiring tax information; (3) State, the District of Co-

lumbia, Puerto Rico, and possessions of the U.S., for administration of their tax laws; (4) Federal agencies with law enforcement or administration responsibilities requiring tax information; and (5) Federal agencies needing certain statistical information. Tax information is also provided to the taxpayers themselves and their successors in case of death. Partners can obtain copies of their partnership returns, and stockholders owning at least one percent of the stock of a corporation can obtain copies of the corporation's return.

As you can see, this list is rather comprehensive. Let me elaborate further. In addition to IRS and other elements of the Treasury Department and the Justice Department who justifiably must have access to tax return information, disclosure of income tax information is also routinely made available to the following departments and agencies of the Executive Branch as a result of Executive Orders. The Department of Health, Education, and Welfare may inspect individual income tax returns for the purpose of administering provisions of Title II of the Social Security Act. The Securities and Exchange commission may inspect statistical transcript cards prepared by IRS from corporate tax returns or individual and corporate income tax returns for the purpose of gathering statistical information. The Advisory Commission on Intergovernmental Relations may inspect any income tax return for the purpose of making studies and investigations in connection with the performance of its function of recommending methods of coordinating and simplifying tax laws and administrative practices. The Department of Commerce may inspect income tax returns in the interest of internal management of the government. The Renegotiation Board may inspect income tax returns, again in the interest of the internal management of the government. Finally, there is an overall regulation which permits the head of any Executive Department (other than the Department of Treasury) or establishment of the Federal Government access to income tax information in connection with some matter officially before him.

To be fair, let me say that in every instance cited, the Department or agency must specify in writing the information sought and that such information obtained is to be held confidential, except that in some cases, it may be published in statistical form only.

The Internal Revenue Service is required by Section 6103(f) to report, in response to inquiries, whether a named person has filed an income tax return in a designated district for a particular taxable year. However, IRS does not tell the inquirer when a return was filed or whether it was timely or delinquent.

The Internal Revenue Service generally considers the addresses of taxpayers provided on their returns to be of a confidential nature, especially where efforts are made to obtain them for commercial purposes. IRS will, however, furnish addresses to: (1) The Department of Health, Education, and Welfare to aid in locating runaway parents; (2) other Federal agencies to assist them in the administration of their responsibilities; (3) State tax officials, designated by the Governor to receive tax information, for State or local administration purposes; and (4) educational and lending institutions to assist them in locating delinquent borrowers under student loan programs guaranteed by a Federal agency.

IRS may also provide a taxpayer's address where a human reason is involved. For example, when a person is critically ill, IRS will furnish an address to a close member of the family or a Congressman attempting to assist a constituent.

All these facts concerning present disclosure laws and practices lead me to believe that there are just too many opportunities available for abuse. It makes one wonder how such broad access to tax information came about. Let me summarize briefly the history of our present disclosure laws.

DISCLOSURE HISTORY

For most of the Nation's history, Congress generally has attempted to restrict the disclosure of information on income tax returns. There have been, however, two conflicting views in Congress as to the degree of privacy or publicity to be maintained. One view has been for full publicity, the other that publicity of income tax information is an unwarranted invasion of privacy. The Revenue Act of 1862, which is considered the foundation of the present income tax system, provided for the inspection by any and all persons of the details of income tax assessment. The Revenue Act of 1864 provided that the list of assessments should be open to the inspection of any and all persons who might apply for that purpose. From 1864 to 1870 the annual assessment lists were published in newspapers in the apparent hope that interested persons would assist the tax collector in detecting evasion. The Revenue Act of 1870 prohibited the publication of assess-

ment lists, but they were still open to inspection by the public until the expiration of the income tax in 1871. In 1894, under the income tax act of that year, Congress provided penalties for divulging information disclosed on any income tax return and for permitting examination of such returns except as provided by law.

The inspection of individual tax returns under the so-called modern income tax law enacted in 1913 was derived from two predecessor laws affecting corporate returns. The Tariff Act of 1909, which imposed an excise tax on corporations, provided that corporation returns were to be public records, which is one of the few times Congress legislated publicity of the returns themselves rather than just the amount of tax paid. However, Congress reversed this action in the Appropriations Act of 1910 which provided that corporate returns should be open to inspection only upon the order of the President, under rules and regulations prescribed by the Secretary of the Treasury and approved by the President. These limitations on public inspection of tax returns were carried over into the 1913 Act and were applicable to returns on corporate and individual income taxes provided by this Act.

From 1913 to 1924, there were Congressional efforts to achieve publicity of income tax returns, but basic confidentiality was maintained. In 1918, a provision was enacted to provide limited information on taxpayers. The Commissioner of Internal Revenue was required to make available for public inspection in each internal revenue district a list containing the names and addresses of all individuals making income tax returns in the district. In 1924, the proponents of additional publicity prevailed. The Revenue Act of 1924 provided for a public listing of taxpayers and the amount of income tax each paid, and for inspection of returns by the Senate Finance Committee, the House Ways and Means Committee and by a special committee of the House or the Senate.

In 1926, as a result of recommendations of repeal by the Treasury Department and the tax writing committees because no additional tax had been collected and no useful purpose was being served, the requirement for public listing of individual taxpayers with the amount of tax paid was eliminated. The 1926 Act also added restrictions to access to returns by special Congressional committees. It required that before being permitted to inspect returns a select committee of the Senate or House be specially authorized to investigate returns by a resolution of the Senate or House or a joint committee be so authorized by a concurrent resolution. The 1926 Act also established the Joint Committee on Internal Revenue Taxation which was granted the same right to obtain data and to inspect returns as the Senate Finance Committee and the House Ways and Means Committee.

The provisions of the 1926 Act concerning disclosure continued until the enactment of the Revenue Act of 1934 which added a provision that each person filing an income tax return would make out a slip giving his name, address, total gross income, total deductions, net income, total credits and tax payable. This slip was to be made available for public inspection. This provision created considerable public furor. The country had not recovered from the terror of the 1932 Lindbergh kidnapping, and Americans conjured up the vision of a prospective kidnapper scanning these slips to determine who would be his next victim and the amount of ransom to demand. In response to this opposition, this famous "pink slip" provision was repealed in 1935 after only one collection of tax under the 1934 Act.

Also in 1935, another provision was enacted which opened individual income tax returns for inspection by State officials. This provision limited such inspection, as at present, to that necessary for the administration of State and local tax laws.

No substantive changes were made in disclosure requirements following these 1935 amendments until 1966 when legislation was enacted to repeal the requirement in the law since 1918 that each internal revenue district maintain for public inspection the name and address of all persons filing tax returns in the district. The 1966 legislation provided, instead, that upon inquiry IRS is required only to advise whether or not a particular person in the district has, or has not, filed an income tax return.

This use of confidential tax information by irresponsible White House personnel to punish enemies and reward friends cannot be brushed off as a product of the Watergate syndrome. If it could happen then, it could happen again, and we must take steps to assure that it doesn't.

Another attempt to obtain tax information which took place in the Nixon Administration would have, in my opinion, seriously breached the confidentiality

of the income tax returns of millions of taxpayers, but because of Congressional interference, it was stopped dead in its tracks. I am referring to the issuance by President Nixon of an Executive Order on January 17, 1973 authorizing the Department of Agriculture to inspect more than 3 million Federal income tax returns of "persons having farm operations" and extract certain personal financial information of the taxpayer for the purpose of compiling special mailing lists to make statistical surveys. It was the first time in American history that an entire class of citizens was singled out for such disclosure.

IRS regulations issued to implement the Executive Order stated:

"The Secretary of the Treasury, or any officer or employee of the Department of the Treasury with the approval of the Secretary, may furnish the Department of Agriculture (for the purpose of obtaining data as to the farm operations of such persons) with the names, addresses, taxpayer identification numbers, or any other data on such returns or may make the returns available for inspection and the taking of such data as the Secretary of Agriculture may designate."

Can you imagine a more blanket authority than that! The opportunity for misuse of this privilege was obvious, and fortunately Congress wasted no time in exposing it.

Led by Representative Jerry Litton of Missouri, a number of Members of Congress denounced this order and the regulations implementing it as a needless invasion of privacy. Hearings were held, and Department of Agriculture officials testified that they had been given broader powers than necessary for the information they sought. As a result of these hearings and the negative reaction in Congress, the President issued a revised Executive Order on March 27, 1973, narrowing the original authority. The key change in the regulations implementing this Order was to limit "other data" to "type of farm activity and one or more measures of size of farm operations such as gross income from farming or gross sales of farm products."

Additional hearings on the revised Order and regulations demonstrated that Congress, farmers' groups and civil libertarians were not mollified by the change. Congress justifiably feared that once the examination of farmers' returns was permitted, there would be clamor to inspect the returns of other specific groups—doctors, businessmen, homeowners and others. The President acceded to these objections, and the Order was withdrawn.

The personal information that American citizens provide on their tax returns should be used for the collection of taxes, period. If we want to continue to receive voluntary compliance by taxpayers with Federal income tax laws, then they must be given the assurance that the confidentiality of the information on their tax returns will be protected.

SUMMARY OF S. 199

Existing law, specifically section 6103 of the Internal Revenue Code, makes tax returns "public records." I believe just the opposite is true. Therefore, S. 199 includes new language stating that returns are *confidential* records and no such return or information contained therein shall be disclosed, except as provided by the bill.

The Weicker-Litton measure restricts access to tax return information for purposes of tax administration or enforcement of the Internal Revenue Code. *The only persons allowed access to tax returns would be:* The taxpayer himself and his authorized representative; officers and employees of the IRS and the Justice Department for the administration and enforcement of the Internal Revenue Code; State tax officials for the purpose of administering their tax systems; the Joint Committee on Internal Revenue Taxation; and the President, under certain limited circumstances.

The Commissioner of the IRS would be required to issue quarterly reports to the Joint Committee on Internal Revenue Taxation specifying the names of the taxpayers whose returns are requested, the persons requesting them, and dates requested so that Congress can provide an additional check against unnecessary invasion of tax return confidentiality.

To protect taxpayer anonymity, tax information in the form of statistical data *only* could also be made available to Congressional committees and other federal and state agencies. The President could obtain tax returns only upon his written request, specifying the return to be inspected in the performance of his official duties.

This measure would further amend section 7213 of the Internal Revenue Code, making the unauthorized disclosure or receipt of tax information a felony, punish-

able by fines up to $10,000 and/or imprisonment up to five years. With this change, government officials seeking to pry open confidential tax files for political or personal purposes would be least face stiff criminal penalties.

Very simply it is that in order to facilitate the effective administration of our tax laws, each American takes on the duty of self-investigation, fact-finding and reporting. It can be argued that a limited waiver of one's fifth amendment rights necessarily takes place in the course of such an operation. What is clear in any event is that this "baring of the soul" is an accommodation by citizens for their government for tax purposes—not for scientific purposes, nor for non-tax justice purposes, nor for sociological purposes, nor for political purposes, nor for statistical purposes, etc. Stick to that simple premise and this distinguished committee will see its duty clearly.

If, on the other hand, the taxpayer is being asked to offer up privacy for reasons other than tax collection, then say so. Understand, however, you then jeopardize the voluntary enforcement aspects of the best tax collection system ever devised.

For myself, failure on the part of government either because of laziness or expediency to seek its remedies and facts openly in the field through the courts cannot justify circumvention of people's rights and liberties.

S. 199, if made law, would bring an end to the "lending library" image of I.R.S. The President, Congress, the agencies would all be on a short leash with respect to taxpayer returns. But that's precisely why today is essential. No number of "Fourth of July" and "hello bicentennial" speeches can match one self-disciplining, living the constitution act of the Congress when it comes to restoring people's credibility in government.

I hope then that the "news" from this hearing will concern itself with what you gentlemen do. The "history" of I.R.S. is not at all hazy. The future of our children's privacy is. Hopefully less so after you act.

Senator HASKELL. Gentlemen, proceed in whatever way you wish.

STATEMENTS OF T. COLEMAN ANDREWS, SR., FORMER COMMISSIONER, INTERNAL REVENUE SERVICE; MORTIMER M. CAPLIN, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE; SHELDON S. COHEN, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE; RANDOLPH W. THROWER, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE; AND JOHNNIE M. WALTERS, FORMER COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. CAPLIN. We have no prepared statements, Senator. We thought that the most effective way was to answer questions.

Senator DOLE. Not many people come in and just volunteer; so we do have questions to ask. I know the chairman has many, but I just wonder as a general matter—and then the Chairman and I can get into specifics. You have heard the testimony this morning, and I am not certain whether once you are a former IRS Commissioner that you read all the legislation introduced. But you have been alerted to this, and I think you understand some of the concerns that the initiators of the legislation had, as well as those of us on the committee.

Are there any general comments where you think we may be way off base, or on the wrong course, in attempting to change the basic law on public confidential records? That might be a helpful way to start it off.

Mr. CAPLIN. I might say, Senator, that I think the course is a correct one. We have all functioned under a broad general statute; we have all had varying experiences. In looking back, I think everyone here did the best he could in good faith to comply with the law. But there is room for tightening up—vast room—and I certainly applaud

the various bills that have been proposed, and the efforts of this committee.

There are technical distinctions in the bills and I think they ought to be focused on. We ought to start, perhaps, with the tightest bill and then see where we go from there.

Senator HASKELL. I think we might proceed. We can develop this by questions.

Senator Weicker, we have a 10-minute rule, but we shall rotate.

Gentleman, the first thing that I have on my list, is the dissemination of Federal tax returns to State governments. We have, for example, been informed that tax returns, when they are provided to State governments may end up in the hands of private detective agencies or insurance adjustors.

We recognize the need to assist the States in enforcing their own tax laws. I have suggested to several witnesses the possibility that it might be sufficient if the State had been informed that a deficiency had been asserted, or an additional tax had been paid which would then put them on notice to enforce their own State laws. I would appreciate a comment on the value of my suggestion.

Mr. COHEN. Well, if I may, Senator, there are a couple of problems here. The States have been very jealous in holding tax administration within themselves. As you may well know, the Revenue Act of 1969 had the provision that any State may elect to piggyback the State collection of revenue on the Federal Government's return and thus save itself administrative burden, enact its own rate—it has no problem with rates—various things. The State merely has to confine itself to definitions which many of them do now, but for various bureaucratic reasons within the States, they will not do that.

If you are then going to have completely, either duplicitous or multifaceted tax administration, you are going to cause great difficulty, both for the multiadministration and for the taxpayer. We have to philosophically decide which is more burdensome for the taxpayer. You know, it is mandated cooperation right now. The Commissioner—whomever he might be—does not sit there, in his own mind, and decide that he will or he will not cooperate: it is mandated from the Congress that he will cooperate with the States.

Then many States now require the filing of the Federal tax return with the State tax return, because they have piggybacked the other way: they have just picked up the definitional material and made some minor adjustments. My State of Maryland, for example, does not require a filing of a return, but the starting point of my Maryland return is my adjusted gross income from my Federal return which really makes it dependent considerably on the Federal return. So that you have all kinds of interreactions. For example, the Federal Government, in a number of States, has said to the States, neither one of us has sufficient manpower to audit returns sufficient in number to get enough compliance, so we will jointly make up a selection program of returns—and let us assume that the State's capacity is 2,000 returns to audit and the Federal Government's capacity is 10,000 from that jurisdiction. They will jointly pick 12,000 returns and assign them for audit, and then exchange the information.

Now you might decide that philosophically that is bad, but then again, you might decide, well, both agencies have in mind the collection

of a fair and a just tax, based on similar or almost identical concepts. And it is, therefore, more efficient to both Government and the taxpayer to allow that.

At the same time, of course, I think we would all agree that, assuming that you do that, you must, of course, impose on the States a very heavy burden—the same heavy burden as imposed on the Federal employee for nondisclosure. And in fact, I am sure each of us has had the experience of violations. When I was Commissioner, we prosecuted some State officials who had violated their trust. They had, in that particular instance, supplied addresses, not income information; that is typically what they do, they supply addresses to collection agencies for $25 a head. So they were prosecuted and sentenced.

Senator HASKELL. Let me interrupt you for a moment, because I think this is germane to our discussion.

Let me read to you from one of the letters that Congressman Litton submitted for the record. This is from the letter of December 30, 1974, addressed to Mr. Litton by the Assistant Commissioner of Inspection. No. 3, I will quote.

> In February 1973, a series of newspaper articles appeared suggesting that Governor Thompson of New Hampshire used information obtained from Federal tax returns for purposes other than tax administration. Investigation showed that New Hampshire State law requires all business returns filed with the State to be accompanied by a portion of the Federal tax return. Accordingly, it was impossible to determine whether there had been a violation of the Federal disclosure statute, since the information allegedly disclosed could have come from State records rather than from the IRS under reciprocal exchange agreements.

Mr. COHEN. The same thing would be true in Senator Dole's case where he says in his State he is required to file a copy of his returns, so if there were disclosure by a local agent in your State, there would be no way in God's world anyone could tell whether he got that information from a State file or in cooperation with the Federal Government. The maintenance of the information in the Federal bureaucracy, on tape, is a better control than was formally had. That is, since the material is now on computer tape, you can more easily limit access to it than you could when there were great file rooms full of paper and anybody, or virtually anybody at one time, could go in. They later restricted the access to the hard paper, also, but it is much more difficult to pull out the information of Sheldon Cohen off reels of tape with thousands of names.

Senator HASKELL. Does this not suggest a problem that might be addressed legislatively?

Mr. THROWER. I think it does indicate the complexity of the problem we are dealing with. I would like to suggest, with respect to this specific problem, that where the information is merged in the hands of the State, the offense exists whether the source is from one or the other. And I would hope that would be addressed in the legislation.

So far as a more general comment, I would, again, endorse very strongly, the approach of entertaining the presumption that there be no disclosure except in Internal Revenue Service matters, and except where it is otherwise demanded by the public interest, then require each exception to be justified within itself. I think you would quickly come to the recognized exception in regard to State income tax enforcement.

There has been a very strong move in the country in the interest of the Federal revenue system, much more especially in the interest of the State revenue systems, and most especially of all in the interest of the taxpayers, to have conformity in order to avoid dual and parallel income tax systems imposing the hardships of each, or both, upon taxpayers. And I think on absoluteness in preventing the disclosure of information between the Federal and the State revenue enforcement agencies would militate against what is really in the public interest, which I hope would be the ultimate test as to what is done.

My experience and information, both from years of practice as well as from a term as Commissioner, has been that the States as a whole have been highly responsible, but certainly it ought to be—from these reports, it would be indicated that it should be processed very carefully, and that violations within the State should be prosecuted, just as freely as violations within the federal system.

Senator HASKELL. In this particular problem here where they say they cannot tell, you can certainly set up a presumption legislatively which I would think might address itself to the problem.

Mr. COHEN. You have problems with presumptions in criminal statutes.

Senator HASKELL. Yes; you do, but this is a real problem. Does anybody have any suggestion of how to deal with it?

Mr. THROWER. I would suggest if the State is going to utilize the information, that certainly it should subject its officials to Federal prosecution where the merged information is used.

Senator BYRD. Would the Senator yield at that point?

Senator HASKELL. Certainly.

Senator BYRD. Well Mr. Thrower, how would you determine whether the leak—or whatever you want to call it—was from Federal sources or from State sources, the responsibility is diluted.

Mr. THROWER. Well, of course, it is difficult in any criminal case, in any case of criminal disclosure, to determine the source of it. Whether it is within the broad Federal service or within the State, it is, nevertheless, a question of proving beyond a reasonable doubt that the individual indicted was responsible for the information.

Mr. COHEN. Senator—excuse me, Randy—Senator, you might require a State, in order to gain cooperation with the IRS, to have a statute similar to the Federal statute.

Senator HASKELL. That is a constructive suggestion.

My time has expired; I will turn to Senator Dole and we will continue around.

Senator Dole?

Senator DOLE. Well, we have talked about all of the information that goes to the various agencies. Without trying to go into each one—because you would understand better than I what goes to the FTC and what goes to Commerce and what might go to USDA—is it fair to conclude that there ought to be some tightening up as far as what IRS provides to other agencies.

Mr. CAPLIN. This involves a very personal reaction, and I think you will find shades of differences here. I do not think our experience as Commissioners of Internal Revenue is especially helpful in resolving the issue. All we can give are individual reactions, as tax practitioners and citizens, because we are weighing two competing values

here, very obviously: one is the value to the tax system. As Commissioners of Internal Revenue, we would want everything done to get better tax compliance. Under those circumstances, we would say, 100 percent privacy for all citizens. Anything you give the IRS will be kept securely in its custody without exception.

At that point, you have full benefit for the tax system.

On the other hand, each agency of government would make the argument why they could effectively use that information—another value. In other words, the SEC may say to you that it could indict a Vesco, to use a public name, if it had a tax return; and the question is, how much do you want to drain away from aiding the Internal Revenue Service in its compliance program by helping the SEC?

Now, it has been urged here this morning under Senator Weicker's bill that no agency of government other than the Department of Justice would have access to tax returns. They would have to go to the courts and use judicial procedures. I could live with that personally.

Senator DOLE. I think the Post pointed out this morning that that is where 93 percent of the 8,210 returns Mr. Alexander told us about last week may have gone. The other 7 percent have gone to different agencies.

Mr. COHEN. The statistical problem is a different problem.

Senator DOLE. Right, I think that is a problem; I do not know how that is going to come out.

Mr. COHEN. I do not know what Mr. Alexander's experience is, but I expect he does not have the resources, any more than any one of us would have the resources, to do the statistical work for any of the other agencies. We do a fair amount. The statistics of income are published by the Internal Revenue Service, again pursuant to congressional mandate that they be published. They are very useful devices for economists and for other people in the administration in planning, and the question is whether the more sophisticated kind of statistical analyses that are done by the Bureau of the Census or some other Government agencies ought to be handled either in-house in the Revenue Service or in those agencies.

I suspect that again, trying to get a consensus——

Senator DOLE. I think in his testimony he merely recited the figures. I do not think he went into that in the questions, but I think somehow during the course of the hearings he was asked about how many returns find their way to States and the figure 61 million popped up. And, of course, that became the focal point for the rest of the morning.

Mr. COHEN. You know, that is actually rolls and rolls of tape and probably very few hard copies.

Senator DOLE. If you boil that down, you would not have that many, but it is a rather striking figure.

Mr. CAPLIN. I do not see how you can prevent the States from getting that information. They could ask on their own tax returns for a duplication of exactly the same information on the Federal returns. The localities could do the same thing if they had an income tax and ask for total disclosure of all of the items on the Federal tax return. I really think you are running down the wrong track if you think you can prevent the taxing authorities from getting that information. The important thing is to provide safeguards and penalties to prevent unauthorized disclosures.

Senator DOLE. I think what we want to do—at least what I want to do—is to make certain that those who receive it treat it confidentially in nondisclosures, and I think as someone suggested that maybe the same penalty should apply. Mr. Walters?

Mr. WALTERS. Senator, I think we are tending to look at this as if every bit of information that IRS supplies to other Government agencies is per se bad. I do not believe that is necessarily so. This is a real world, and I think we ought to take cognizance of the fact that we may want some information from other agencies, and therefore we should not put ourselves in a sterilized tax vacuum, because if we do, we are going to harm ourselves.

Now, it is true—and I am sure no one in this entire world appreciates more than this group here at the table the necessity of treating returns confidentially and running this tax system properly and vigorously. Now, that being so, it seems to me what we ought to try to do is to look at the good things and try to improve those and correct the defects, and there are defects, but we tend to overplay and publicize the bad things—never see the good things.

If I may, and at the risk of being thrown out, let me just suggest—going back to something the chairman said in opening this hearing—I believe, Mr. Chairman, your third point was that we should avoid political misuse of our tax system, or something to that effect. I think that is absolutely true, and probably no one feels that point better than Johnnie Walters.

But let me suggest that when we continuously point out the bad and never see the good, we erode the system on a national basis.

For instance, when a congressional committee invites only criticism and this just naturally becomes national news, this erodes the system. I urge you in this hearing to look at both sides, because overall I think there is more good than bad.

Senator HASKELL. If the Senator would yield, I think that comment is well taken. However, what we are looking for here is what, if any, legislation is necessary to improve the system and instill even greater confidence in the IRS. That is the purpose of the hearing.

Mr. WALTERS. I agree, Mr. Chairman.

Senator DOLE. Is that the view generally shared by you gentlemen? There is some good in the IRS.

Mr. COHEN. It is our child or grandchild, or whatever.

Mr. CAPLIN. Most of us here are engaged in private tax practice, and we are daily involved with Internal Revenue Service and engaged in disputes with them, but I think we still have the highest degree of respect for the IRS. It is a remarkably good agency. I do not think that there is any doubt that it is the most effective tax system in the world, and we have all traveled about and viewed many tax agencies.

Senator DOLE. That is why other agencies like to borrow.

Mr. COHEN. That is a good point, Senator.

The problem that I always fought against was dumping too much responsibility on the IRS. Basically, it is designed as a single-purpose agency. It has a tax-collecting role.

Senator DOLE. We gave you another one last year on child support.

Mr. COHEN. That is right.

Senator DOLE. This committee.

Mr. COHEN. Right. When you start putting extra responsibilities that divert its attention, its management's attention, from the main goal, you defuse its ability to get its job done.

Now, Congress for years has been moving toward dumping—and many administrations too—putting more and more jobs on the shoulders of the IRS. This makes the agency less efficient.

Senator DOLE. It is sort of like the county clerk at the local level. You cannot find anybody to do it? Well, give it to the county clerk—and he is paid $312 a month.

Mr. Andrews, do you have any comments along the lines—Mr. Walters indicated we tend to focus on the bad. Maybe that is necessary to sort of weed it out, but maybe we do not highlight enough of the other.

Mr. ANDREWS. Well, there is nothing unusual in focusing on the bad. All we read and hear today is the bad. I would like to read a paper one time or listen to a TV that has got something good on it, especially about the United States.

I do not agree with some of the things that some of these gentlemen have said, but that is not hard to understand because I have been out of office for 20 years. When I was in, things were relatively simple, but my gosh, with TV and radio and with the computers, all of us now with a number, why frankly, I sympathize with you young fellows that are coming along here, but I have some very, very definite views and some very strong views about this situation, more from a philosophical standpoint, and also from the basis of my own experience.

If you gentlemen would like to hear them, I would be very glad to let you have them.

Senator DOLE. You could have let me have it, but the bell just rang.

Senator HASKELL. I think, Mr. Andrews, we definitely want your philosophy, and we want the philosophy of each of you. I think that probably—I know we are going to get into it.

I have a question I think which will bring out what your philosophy is, but why do I not turn to Senator Byrd, and he will pursue what areas—either that area or whatever area he wishes to, because we do have the time factor.

Senator BYRD. Thank you, Mr. Chairman.

I assume that the panel generally favors making the returns available to the States?

Mr. ANDREWS. I do not.

Senator BYRD. That is a clear-cut answer. What crosses my mind is a letter which the Chairman read from the Internal Revenue Service with regards to New Hampshire which said it was impossible to determine whether there had been a violation of the Federal Disclosure Statute, since the information could have come from a State source instead of from a Federal source. So, by making the returns available, does that tend to eliminate the effectiveness of the Federal Disclosure Statute?

Mr. THROWER. Senator, as I have indicated, I think if the information is going to be made available and merged in the hands of the States, then the offense to the federal system should exist from whichever specific source one might claim to have gotten the information. It is an impossible job, where the information is merged to prove that it came from a Federal source, rather than a State source within a single file.

I also would favor the proposal to raise the level of the offense from that of a misdemeanor to a crime. I think the experiences of the last year or two have shown the national concern in this respect and would indicate that it is a more serious offense against the Nation than under our laws it has previously been shown to be, and I think that these two things, plus a greater recognition of the responsibility on all hands and stricter enforcement would be highly protective in that respect. If it is not, the laws ought to be looked at again.

Senator BYRD. Thank you, sir.

Now, let me go to another area. The Commissioner of Internal Revenue is appointed by the President, of course. It is a Presidential appointment, and in a sense that throws it into the political field. I think by and large we have had excellent commissioners. Certainly, the five before us today had outstanding qualifications. They are highly experienced, tremendously able, and highly qualified in every respect.

My question is, would the Service benefit if it were not a Presidential appointment, but were for a term of say, 15 years, such as the Comptroller General's term is, or the proposed new FBI Director's term, which I think is 10 years? Would that be a better system than the present system we have of appointing commissioners?

Mr. CAPLIN. Senator, would not the President nominate this person and would he not be confirmed by the Senate in all events? He would have a fixed term, to be sure.

Senator BYRD. He would have a fixed term, which would be the safeguard of independence, but he, I would think, would be appointed by the President.

Mr. CAPLIN. Again, I think there are probably varying views on this; it relates to whether or not the IRS should be independent of the Treasury. I do not know if that is inherent in what you are really saying now.

Senator BYRD. That is inherent in it, yes.

Mr. CAPLIN. My personal view is that it is a very close question. I think that the IRS is strengthened by being a part of the Treasury Department. It has the Secretary of the Treasury who normally has ready access to the President, and he also has a certain standing vis-a-vis the Congress, which inures to the benefit of the Internal Revenue Service.

The third reason is the importance of having some close coordination with the Treasury's legislation program—in terms of the feasibility of certain legislative provisions. The Treasury needs the assistance and technical knowledge of the IRS, and frequently the IRS will want legislative assistance from the Treasury—to propose legislation which would strengthen IRS administration.

Now having said that, I think it is very important that there be standards enunciated which would govern the relations between the Treasury and the IRS. The IRS should be quasi-independent, and many Secretaries have made that clear by announcements, memoranda, and the like—for example, some have stated that the Treasury should not become involved with a current private ruling that the IRS is handling administratively.

Similarly, the Treasury should not ask the IRS to interpret the law in such a way that it carries out a policy that the Treasury has been unable to achieve up on the Hill. This has been a point of criticism in the duality of the relationship, but essentially I would go along

with the present system with those reinforcements. I am not particularly concerned about having a fixed period of time. I do like the idea of a flow of people into the IRS from the outside who have a sense of the public interests, who do not become bureaucratic. There is the problem that the longer you stay in, the more of a team player you become. You tend to accept the total philosophy of the agency, and may lose some of your ability to be a good critic. It is so important to recognize that the Commissioner is the only political appointee, if you will, who is representing the public in thinking of the taxpayer body as a whole.

Senator BYRD. Is there a contradictory view?

Mr. COHEN. I would second that in most respects. That is, the Commissioner brings two things to the job. He brings a fresh outlook, one that is not taken up in a long, complete involvement in the process from the beginning of his career, for example. He has had some experience elsewhere.

He also brings an independence. Most—I am pretty sure all of the Commissioners I have known have come to the job at a point in their careers when they did not need the job, and that is what they have to have. You have to have the ability to say, I can go back and do whatever I was doing, and I will be happy, and my family will be well cared for.

If you get to the position where a person is dependent on the job, then he loses the independence and the ability to say, either up here on this end of Pennsylvania Avenue or down at the other end of Pennsylvania Avenue, hell no, I won't do it, because he has to have that ability.

Senator BYRD. Commissioner Andrews was very independent when he was here, and he took courageous positions.

Mr. ANDREWS. Let me say, generally I do not have very much confidence in long-term appointments merely for the sake of achieving honesty and good administration. If I may speak personally, I had no difficulty in being appointed by the President and working under his direction. We got along very well.

Of course, we had an understanding before we started of what the rules were going to be, but there was no problem, and I do not see you solve anything by giving the Commissioner a 10- to 15-year term. I think if he had a regular term, and he really wanted to do a public service, that is fine. Let him operate the way we have been operating. Do not take him out from under the President. I think he should be there. I think he should be a part of the administrative setup.

This comes back to one of those philosophical things, and I will state it very briefly because obviously you gentlemen do not want to hear my philosophy.

Senator BYRD. The Senator from Virginia does.

Senator HASKELL. So does the Senator from Colorado.

Mr. ANDREWS. From the beginning of this country, the Government sought the man. You can go back and take all of your great men from the early days of this country. They were men who did not need the Government. They were men who had made their way, and the Government needed them, and the Government sought them, and they were public spirited enough to help make this Government what it was to start out with. After all, in the various times, somewhere, the form of

government left fools content that that which is best administered, is best.

You can have all of the legislation in the world, and you are not going to change that. That is philosophy No. 1.

Mr. THROWER. Mr. Chairman, may I comment briefly on this, which is a very important question, this matter of the relationship of the Internal Revenue Service to the Treasury and the longevity of the term. I have always considered that Commissioners were expendable and promptly proved the rule, but I think that the relationship of the Internal Revenue Service and the Commissioner to the Treasury should not depend upon the respective personalities of the two people and of their staffs, but that it would be helpful at this time when there is a very constructive broad review for there to be an examination and a statement of expectations or guidelines. I doubt that it would need to rise to the level of legislation, but I would think a study committee, perhaps initiated by the Joint Committee, the Senate Finance Committee, or a subcommittee, or the staff of the Joint Committee, to undertake to delineate expectations, would be helpful for new Secretaries and new Commissioners, and for a constancy that could be lost where people come into the leadership of the Treasury not from within the revenue system immediately and may have less appreciation of the requirements than those who have operated within the system for some years would know and appreciate.

I would welcome in response to this question some examination, certainly not at this time—but some examination as to what these relationships should well be over a period of time.

And in our discussion at breakfast, I think we recognized generally there would be some value in that being done. Thank you.

Mr. WALTERS. Senator Byrd, I am sure you want a unanimous comment on your question. May I make two comments?

First, I think it is essential that the Commissioner come and leave with an administration. I think you need, as Mr. Cohen pointed out, a fresh outlook, a new approach, in an effort to keep the career employees, which as you indicated earlier is about 75,000, moving alertly. I think we need that in our political system.

However, going on, I would like to endorse what Randy Thrower has suggested. I do think it would be helpful to have some reassessment of the relationship between Treasury and the Service. While, as Mr. Caplin pointed out, that is a healthy relationship, with IRS constituting about 80 percent of Treasury, I am sure it comes as no surprise to learn it does not have 80 percent to say about what Treasury does. I do not suggest it should, but I do believe that in all realms of government—congressional, executive, and other—your tax collection system has not been given its proper status.

Senator BYRD. Thank you, sir.

Senator HASKELL. Senator Weicker?

Senator DOLE. Could I just ask a question?

I think it might be along the point of Senator Byrd. You served, what, 2 years?

Mr. ANDREWS. Three.

Mr. COHEN. I am the longest, four.

Mr. CAPLIN. About three and a half.

Mr. WALTERS. Almost two.

Mr. THROWER. About two and a quarter.

Senator DOLE. I think that indicates or says something.

Mr. COHEN. Senator,-I have served longer than anyone has in the last 30 years.

Senator DOLE. If somebody asked you if you wanted a 15-year term——

Mr. COHEN. You cannot walk on eggshells every day for 15 years; you would get tired.

Senator HASKELL. Senator Weicker?

Senator WEICKER. Thank you very much, Mr. Chairman.

Let me just preface the question I am going to ask by a couple of observations as to why this demand for change nowadays, insofar as government is concerned. It is very simple, and this is our job as Congressmen, yours as former participants in our Government. We have arrived at the point where because of the investment that we have made in public education, because of television, because of the news being able to get the facts out to all of the American people rapidly and accurately, these people that form the United States of America are demanding logic to their Government. They are now participants in their Government. And as much as we always espouse being a Government of laws rather than of men, because of substantial ignorance among the American people they were satisfied with a Government of men rather than a Government of laws. But now they have acquired knowledge, and so they want a Government of laws, standards which they can relate to, and not just individual situation and the vagaries of personalities.

So that is what we have to do here today. It is a job that nobody has had thrust upon him before, because nobody cared. But they do now. They understand not just the meaning but the value of the word "privacy," and they do not see that coming to pass under our present system. So what we are trying to do in the best tradition of American democracy is to by law make sure that those systems are responsive and that they make sense.

So, my broad question to all of you is, what does need to be done to logically withstand public questioning to bring about credibility as between the taxpayer and the IRS? Never mind that before you could say everything is all right. That does not suffice any longer. It is not a question of being negative at all. It is a positive mission we are on. As I stated in my opening statement, I do not want to hear of any more horror shows. I want to have a positive legislative act. What would you recommend? Let me put in this way. If each one of you had one recommendation to make as to how you could improve this situation in gaining more confidence as between not Senators, not Presidents, but between the people and the Internal Revenue Service, what would you recommend?

Mr. COHEN. Senator, it is a complete dilemma in my mind because on the one hand dealing with individual taxpayers you need more privacy, as much as you can get. On the other hand, dealing with a mass of taxpayers, you need more publicity; that is, they must know what is going on in their Government. The Commissioner of Internal Revenue, whomever he might be at the moment, is at the vortex of that dilemma, and you fellows, fortunately or unfortunately as the case may be, have the job of spelling out the operating rules; because by and large they will carry them out. There is always going to be

Murphy's law, and somebody is always going to fail, so you do need those fail-safe laws, so somebody is going to pick up the wayward character whoever he might be in the system.

But, I think, Mr. Caplin put it pretty well before. That is, the ideal tax system is, I believe, one that has complete privacy between the taxpayer and his Government. But having said that I recognize that it is very difficult to discern the various breaking points of where complete privacy is.

Senator WEICKER. Let me just say, because I think I get both the thrust of your statement and of Mr. Caplin's. From the tax point of view, tax collections—I am not asking you to get involved in the makeup of our population or all of the other statistical data. Obviously statistical information is necessary for the government—but from a tax point of view, more privacy is needed.

Mr. COHEN. You cannot stop there, because you as the Commissioner or the Secretary cannot operate without that statistical information that tells you where you have to look: what are the pockets of noncompliance. Unless you do statistical studies, you do not know and you must use the statistical studies of other agencies to refine your information. So it is not quite that easy.

Mr. CAPLIN. I do not think there is any doubt but that the IRS is reinforced in its operations by telling the taxpayer that his tax return is sacrosanct as far as he individually is concerned. I do not think it has to tell the taxpayer that the material will not be recorded as part of overall statistical data. I do not think there is really any concern about nonidentified statistical use of tax return information.

If you are trying to figure how many people, let us say, with adjusted gross incomes of over $10,000 are taking itemized deductions, or what the amounts of certain deductions are in the aggregate, I do not see why there should be any objection. But if you could start out by saying that only tax people will have your name and relate it to a particular return, I think you have gone a long way to strengthen the confidence in the system, which essentially is a self-reporting system, self-assessment, self-computational. It is an honor system of taxation, and we really have to protect the integrity of that national asset.

Mr. COHEN. It is a confessional, and in that respect maybe we ought to treat it as a confessional.

Mr. THROWER. Senator, you have asked for one specific suggestion, if we could make only one. I think what has been indicated is that it would be very frustrating for us to limit ourselves to just one.

Senator WEICKER. I understand.

Mr. THROWER. And we are alumni and former commissioners; but our view is not wholly parochial. It is impossible for me to say I will support only what is in the interest of the revenue system and disregard the public interest as a whole because that is where the balance becomes difficult to find here. It needs to be finely attuned. It may well be that in one sitting or in one session the answer for all time cannot be found. It may have to be experimented with.

Nevertheless, to respond to your request, there has been one feature of the law that has concerned me for some years, ever since I was Commissioner, and that is that the law refers to tax returns and the regulations broaden that to tax return information. We within the Service undertook to provide the broadest, strongest kind of enforce-

ment of confidentiality. But I always seriously questioned whether in a criminal case, where a statute is narrowly defined against the Government, one could support the breadth of the regulations. I certainly think the tax return information should be incorporated along with tax returns because frequently the tax return information is much more confidential in nature than what is in the tax return. One does not put in his tax return information about intimate relationships with business associates or with family members.

You tended in your testimony to draw the line dependent upon the source, whether it came from the taxpayer or from another source. I would tend to qualify that a little bit so far as the rights of privacy are concerned, rather than the right against self-incrimination. Whatever the source, it ought to have, it seems to me, a protection. This kind of information is not given by a partner or a business associate or a wife or a son or daughter to be disclosed to the whole world. I would entertain this presumption against disclosure. I would extend it to all information given confidentially unless there is a consent to disclose.

But if I had one thing that I could do, I would extend the protection clearly under the statute to the totality of the information the IRS has received.

If I had one other—if I could slip in a second—under our law at present, the failure to file returns is not protected by confidentiality. Any citizen can call up and inquire as to the failure of another taxpayer to file a return. This is a vestige of old laws where returns were a matter of public information. During the War Between the States, tax return information under our then income tax system was available for all, and I think it was simply inadvertent that this remained and it is an embarrassment to the Service at times. At one time we had a Congressman under investigation for failure to file returns. He was subsequently indicted, but he was outraged during the course of the examination, that an enterprising reporter, having heard rumors and knowing of this privilege, made inquiry as to whether he had filed returns for a certain period of time. Under the law we were compelled, reluctantly, and after some delay, to provide that information.

Mr. COHEN. I am not appalled at that at all, Senator. The Congress about 7 or 8 years ago revised the law. Formerly it required the Commissioner and his Directors to maintain a list of all taxpayers. Now when we went to computers, of course, that was really impossible to do. So the statute was then changed so that the Service was put on the duty to respond affirmatively yes, or no, and that is all, when inquired of as to whether Sheldon Cohen or any other person filed a return.

Now on the other hand, the openness of government requires that all people cooperate with their Government. I think that it increases my confidence in paying my taxes if I know that everyone else that is similarly situated is treated the same. I would hope that this is an affirmative obligation to show that everyone does file returns. There is a philosophical problem there, I recognize that.

Mr. WALTERS. Senator, I would like to give you very briefly my one recommendation.

If I were only allowed one, I would recommend that we have consistently greater congressional oversight of IRS and the tax system. As you know, the present law provides that the joint committee will

have that oversight responsibility. The joint committee and its staff have a reputation par excellence. However, in the last few years we have had such vast numbers and amounts and volumes of tax legislation, that that committee is not adequately staffed to give the oversight that the system is due. If you did maintain adequate congressional oversight responsibly through a single committee, not a multiplicity, because if you have a multiplicity, then you are going to cause a deterioration of the system; some of the things we hear about today, while I think they are outweighed by the good, I think they nevertheless would disappear. I said this when I was Commissioner and I say this today, sir.

Senator HASKELL. Congressman Litton?

Mr. LITTON. In the interest of time I will make two very brief comments and then I will ask one question that can be answered with a yes or a no.

No. 1, the Federal agencies tell us it is a lot easier to get information from the IRS than to go to other sources. I say if it is easier, and that is what we are looking for, the easiest way to get information on the private lives of individuals, would be to put a wiretap on every 1,000 or so telephones and open the mail of citizens. Is the easiest way the best when dealing with individual freedom?

No. 2, Senator Dole indicated that there were abuses, but with 80,000 employees of the IRS, we should expect some. As of September 30, 1974, there were 89 such cases that were still pending.

Now, my question to which you can answer yes or no is, several of you indicated and testified that taxpayers are more inclined to provide factual information on their tax returns if they think the information that they are giving is confidential between them and the IRS. Is this information becoming less confidential, and if so, is our tax system, which one of you gentlemen said, is a self-reporting, self-computation, self-assessment system which depends on taxpayers providing factual information, because it is not as confidential now as it was before, less effective?

Mr. CAPLIN. I do not know if it is just only whether returns are less confidential or not. I do think the system has suffered because of the identification and publicity given to a series of problem areas and some improprieties. I do think that it is very important that steps be taken to restore confidence in the integrity of the Internal Revenue Service. With that in mind, I would think something on confidentiality of returns is highly important.

Mr. LITTON. Would you say Federal agencies are asking for more and more information from the IRS. If so, would not that information on tax returns then be less confidential now than it was 5 or 10 years ago?

Mr. CAPLIN. I do not really know the answer to that.

Mr. WALTERS. Not necessarily.

Mr. COHEN. With the numbers of people, it is probably a smaller percentage, greater numbers. You know, you really cannot measure its effect. It is disturbing, but whether it is deleterious in its results, it is hard to say.

Mr. ANDREWS. Without some very, very good statistical information, it would be impossible to answer your question yes or no.

Mr. THROWER. May I undertake to answer likewise, not with a limited yes or no, but to join with my colleagues here in emphasizing that this

is a constructive process that we are going through now; that there has been a learning process over the years; that the system today is probably stronger and more effective than it has ever been; that additional legislation hopefully will be forthcoming to make it even better.

But I think we have all wanted to emphasize that the pride and self-respect of these 75,000 people is one of our great national assets within the revenue system; and while we are pointing to defects and perhaps sometimes magnifying them in order to stimulate interest in getting improvement, we still want to preserve this asset of pride within the Service in doing a good job.

Mr. LITTON. Would you gentlemen say that if the tax return information between the taxpayer and the IRS were more confidential, the tax system would indeed be far more effective in direct relationship to the increased confidentiality.

Mr. THROWER. There is no question. I would say from the narrow interest of the Internal Revenue Service and the interest of the revenue system, except for use in the tax cases and the statistical information which, if it is reduced to clean data as Senator Montoya would suggest, that is, the Service cleans the data on a cost reimbursement basis rather than supplying the tapes is neutral—except for that, it would be in the interest of the Internal Revenue Service to give other agencies nothing, period.

But I would question seriously as a public citizen rather than as an alumnus, that that is in the public interest. I think these exceptions in the public interest need to be very carefully examined. I think you and the Senator have pointed up a very difficult one, and one with respect to which I appreciate all of the reasoning that you have indicated. But I would be disinclined to agree with it, and that is to make information within the Internal Revenue Service that is relative to a criminal investigation by another agency unavailable, except in court. This is for all practical purposes to make it unavailable at all, because unless the nature of the information is known, it would not be called upon. You see, if it were truly a fifth amendment right, the court itself would protect it and it would not be available.

I think the question is not one of self-incrimination so much as it is one of privacy. While I would strictly control it and require a showing of probable cause within the administrative process—I take no exception to that—I do not think it ought to be blocked altogether.

Mr. LITTON. If it is a fifth amendment right, it ought to be protected anyway.

Mr. THROWER. If it were, I think the court would have long ago protected it with respect to income tax matters; and this information has frequently been used. Take, for example, the instance of——

Senator WEICKER. Could I stop here one second?

I think it is important. This is an interesting part of the debate. I think there is no black and white on it. But I have got to try to pull us back into what I consider to be the proper focus. The job of Senator Haskell, Senator Byrd and myself, Congressman Litton, is a general oversight responsibility. We have a general responsibility as to all aspects of life in this Nation. But what I am saying is, your responsibility and the responsibility of your agency of Government is not the same as ours. It is not a general responsibility. It is a specific responsibility, the collection of taxes.

Now, I realize we by practice have gotten away from that premise to where you are expected to do many things, aside from the collection of taxes. I suppose what we are trying to do today is to bring you back to your original purpose, to see that you are the most effective in that area.

Mr. COHEN. I wish you would change the pronoun. It is they.

Senator WEICKER. And the further you have gotten away from the specific, the less the effectiveness; so do not take upon yourselves the burden of the entire Nation. That is what has happened, and I think that is where the pitfall has been.

Mr. CAPLIN. I think I started out that way, Senator—that we really have no special expertise before this committee, other than in the tax collection side. When it comes to whether the Department of Justice should have returns or the SEC, you could bring 100 witnesses in who would probably be just as effective as we would be on that value judgment.

Mr. LITTON. Thank you, Mr. Chairman.

Senator HASKELL. Gentlemen, I have a question. I am going to read from a 1961 memorandum of Mr. Caplin's that came to my attention, and since I think it focuses on a problem, I would like to get your reaction as to whether you would leave the existing statute as it is or whether you would recommend a change. I quote from the memorandum:

> On January 26, Mr. Bellino, Special Consultant to the President, called my office and requested permission to inspect all files on [name deleted] and others. Although we had no precedent to guide us we decided that Mr. Bellino in his capacity as a representative of the President could inspect our files without a written request. This reflects the view that Section 6103 of the Code specifically provides a return shall be opened upon order of the President, and since Mr. Bellino's official capacity constitutes him a representative of the President, the action taken is regarded as conforming to law. Based on this decision we permitted Mr. Bellino to inspect the files relating to [deleted].
>
> Since that time we have also permitted him to inspect tax returns and related documents pertaining to other persons.

Now I would really appreciate the views of each one of you gentlemen—I am assuming you agree to that interpretation of 6103—as to whether it is proper public policy to permit an agent of the President the access that 6103 grants him.

Mr. CAPLIN. Senator, inasmuch as that is a memo that I wrote, I think I ought to respond first.

No. 1, you cannot understand this memorandum without looking at the full context. If you read the very next paragraph you will see that on that same day there was a letter written by the Attorney General requesting that Mr. Bellino be given the authority to examine returns. If you read another paragraph, you will find out that Mr. Bellino was also given authority later on by the McClellan committee. He previously worked for the McClellan committee as a chief investigator. At the time referred to in the memorandum, he was located in the White House. He had three responsibilities: One, as a Special Assistant to the President; two, as a Special Assistant to the Attorney General; and three, as an investigator for a senatorial committee.

Senator HASKELL. This is all of equal importance. The problem exists as to each of the three.

Mr. CAPLIN. Exactly. And in fact, there is a background that is informative. Before Mr. Bellino came over, the Attorney General of the United States had telephoned me to say that he was requesting authority for Mr. Bellino to examine certain files, and that there would be a letter forthcoming authorizing this. This letter was later delivered. So I think you have the total context here. To my knowledge, not a single tax return was sent to the White House.

Senator HASKELL. Let us examine the premise, let us start with the premise that the law now permits the White House upon, let us assume written request—I am not sure that is spelled out in the law—can have its agents or employees examine any number of returns it so desires. Let us assume that is the law. What are each of your reactions to that as a matter of public policy? Let me start with Mr. Thrower.

Mr. THROWER. Mr. Chairman, I would certainly welcome legislation which would define the circumstances under which information would be made available, and consequently limit the otherwise free availability of information to the staff of the Chief Executive. The problem that a Commissioner has, and we find that these problems occur from administration to administration, is that a large staff of people come into the White House who have not had the background and experience and really do not themselves know and appreciate the rules or the guidelines or have a sense of propriety about the enforcement of the revenue system. And I think some definition of this from the Congress would be very helpful and I am sure welcomed by every future Commissioner. I think we are in accord on that.

Senator HASKELL. Mr. Walters?

Mr. WALTERS. Thank you, Mr. Chairman.

I endorse what Mr. Thrower says. I would also add I think it would be very helpful if legislation such as is proposed were enacted; that at some point in time, maybe not immediately, but within a reasonable period of time, the Commissioner be required to file with the Joint Committee details as to returns requested. I think that would be very helpful.

Senator HASKELL. Mr. Caplin?

Mr. CAPLIN. Yes. We had discussed this this morning before this meeting, and I think we are all in agreement. For one thing, we do not know why anybody in the White House would ever want a tax return.

Senator BYRD. May I interrupt there?

Senator HASKELL. Certainly.

Senator BYRD. You just signed a letter granting the White House access to a tax return.

Mr. CAPLIN. I said anybody in the White House. This was part of a total investigatory effort and it was made on the premises of the Internal Revenue Service.

Senator BYRD. But he was in the White House. Bellino, or whatever his name is, was a part of the White House.

Mr. CAPLIN. He was also a part of the Department of Justice.

Senator BYRD. And here you are saying that because he was a part of the White House that you were giving him access to the information.

Mr. CAPLIN. He was also part of the Department of Justice, Senator, and it was really in this dual capacity that he was given authorization.

Senator BYRD. Why should the Department of Justice be put above the White House?

Mr. CAPLIN. The Department of Justice under the Presidential regulations, of course, does have the authority to examine returns on the written request of the Attorney General. But I would say this: Inside the White House itself, if there is no other relationship, they would be interested in the tax status of someone—a possible Presidential appointee—to know whether or not he was under tax investigation, whether he had a tax delinquency, and the like.

Senator BYRD. He can do that by calling you on the telephone to find that out.

Mr. CAPLIN. That's right. Exactly.

Senator BYRD. He does not need the tax return to ascertain that.

Mr. CAPLIN. Exactly. They would probably want a report from us. They do get something called a type X report.

Senator BYRD. Let me ask you this. While you were a Commissioner, were there any other individuals associated with the White House who had access to tax returns other than Mr. Bellino?

Mr. CAPLIN. Not that I know of; and for Mr. Bellino that was only for a very short period of time, again, in a dual capacity.

Senator WEICKER. If the Senator would yield, as I understand it, in a triple capacity; which points up exactly what we are trying to get across in this bill—when his capacity is representing the President, his capacity as a member of one of the agencies, the Justice Department, and in his capacity as a member of a congressional committee, Senator McClellan's committee; that's the whole point right in a nutshell.

Senator HASKELL. I might say if the Senator would yield, that really my question on availability deals—I phrased it in terms of the White House. I should have also phrased it in terms of Justice and Senate Committees.

So is it your feeling, Mr. Cohen, that certainly from the White House viewpoint, barring the status report, that there really is not much reason for the White House to look at individual tax returns?

Mr. COHEN. Absolutely none. I spent 4 years there, as we discussed before, and never in that 4 years was any document allowed out of the building, nor were any of those officials allowed inside the building to review them. I believe the position that we discussed this morning as espoused by Mr. Thrower and Mr. Walters is a sound one, and that is that I think the general rule is the President has no business seeing a return. It is my understanding his staff is not trained to analyze it, and if he does not trust you, then you ought not be the Commissioner of Internal Revenue. That is, if there is a particular job to be done and it is within the Revenue Service's competence, the Revenue Service ought to do it, and he ought to have confidence it will be done right or it shouldn't be done at all.

Senator BYRD. Would you yield?

Senator HASKELL. I yield to the Senator.

Senator BYRD. Would you identify the period of time you served as Commissioner?

Mr. COHEN. January 1965 to noon on January 20, 1969.

Senator HASKELL. Mr. Andrews?

Mr. ANDREWS. Mr. Chairman and gentlemen, before I became Commissioner, I had an understanding about this: That no one was to have unauthorized, and by that I mean contrary to the law, access either by getting a copy or coming into our office to look at the returns or otherwise, to anyone's tax return. That applied to the President as well as everybody else, and the President said, I think you are right.

Now, as I recall it, there was one such request from the White House. There were many from Congress, I might say, and committees, before they finally decided, after thoroughly testing me out, that I was not going to budge on that question. And I called the Secretary of the Treasury and I told him that I had this and I told him, you know, this is contrary to my understanding. He said it sure is, and don't you give them a damn thing. That's exactly the way he put it. And he said I'll call you back. He talked to the President, and the President said forget it. That was the end of it; I never heard from him again.

But it took a little while for me because when I went in the office, as you know, the mess in the Revenue Department was pretty much a big campaign issue with President Eisenhower, and it took a little while for me to convince people that the President really meant business. He did not want any more of the improper use of the Revenue Department that had been going on, and after a while it disappeared, and I would say within a matter of 3 or 4 months. I never had any trouble after that.

It is just a matter of whether or not you are willing to do what the law says to do and to not make any exceptions for anybody, because when you make exceptions you are in trouble.

Senator HASKELL. If I may make a comment, Mr. Andrews, I think that the law is, to say the least, fuzzy at the moment, and that is really what we are addressing ourselves to. You had an understanding with your President which was an understanding between you and him.

Mr. ANDREWS. I think at the time he had a right to request it, but I didn't agree with it and he didn't either.

Senator HASKELL. Senator Byrd.

Senator BYRD. I reserve my time.

Senator HASKELL. Senator Weicker.

Senator WEICKER. I have nothing further, Mr. Chairman. I think it is just clear that if our concern is the taxpayer, and if our concerns are tax collections, there is no problem. The problem arises when you start giving overly much consideration to Presidents, to agencies, and to Congressmen. That is where the problems start. And I would hope that the legislation that will come to pass out of this committee will concern itself with those two areas, and I do not think there are any problems at all.

I thank you very much for allowing me to participate.

Senator HASKELL. Congressman Litton?

Mr. LITTON. I have only one comment, and that is that President Ford issued an Executive order recently that puts restrictions on him with regard to his access to tax returns. Of course, he can alter this by issuing an Executive order in 5 minutes and change it.

Would it be your opinion—and any of you gentlemen—that the Executive order issued by the President which places restrictions on him, be made law so as to put similar restraints on future Presidents?

Mr. COHEN. I worry whether constitutionally you can do it. I think Mr. Walters' comment, that is, a report after the fact within the next days or the next month after requested to do so, would solve it. Although I think in my own mind if I had been requested to do so, and it had been insisted upon, I think I might not have been there the next day.

Mr. ANDREWS. If I might add this, that if you have a problem with how you handle the mechanics of it, it would seem to me that any request should state specifically the reasons why that request is being made, in writing, and, that copies of those letters be sent to the appropriate committee of Congress—maybe the joint committee, or this committee, or whatever committee is proper—so that the record will show why that request was made, and not just a blanket authority to do so and so.

Mr. LITTON. I appreciate the gentleman's comments, because that is specifically the language used in the bill we have introduced.

Thank you, Mr. Chairman.

Mr. ANDREWS. Well I am glad we agree about something.

Senator HASKELL. Mr. Thrower, I think you had a comment?

Mr. THROWER. Mr. Chairman, I simply wanted to suggest, in response to this line of inquiry, that I would not think that the President, himself personally, nor anyone with his authorization, should be permitted to make a disclosure of tax return information that is not in accordance with the law.

And I think it would be useful to have legislation that is clearly applicable to all. I have studied this matter and have given it great attention—the matter of the relationship with the White House, with respect to tax return information. And, I have studied the history of several administrations in this respect, and I feel confident that each Commissioner of the last several administrations, certainly extending over 15 years, would have been strengthened and fortified if he had had legislation which recognized some restrictions in the White House with respect to its use of tax return information.

Senator HASKELL. Would you say the same thing as to the Attorney General?

Mr. THROWER. I would say the same thing with respect to the Attorney General.

Senator HASKELL. And, to committees of Congress?

Mr. THROWER. I would welcome the same thing with respect to the committees of Congress. And I do not mean by this that I have in mind any abuses or violations in this area. But we are looking to the future, and not to the past. And, certainly, the potential is there and I think this is a wonderful opportunity which the Internal Revenue Service would welcome, to have this strengthened and clarified.

Now, with respect to Mr. Caplin's memorandum which I examined when in office, what he was dealing with was not a matter of his own discretion, but a matter of law.

Senator HASKELL. I understand that. That was existing law at the time.

Mr. THROWER. And his hand would have been strengthened if he had this kind of law on the books at the time.

Senator HASKELL. Senator Byrd?

Senator BYRD. I have no further questions.

Senator HASKELL. I just have one last question. The law dealing with improper disclosure now is, I think, fairly weak. It has weak penalties. I have forgotten what the fine is—$1,000 and up to 1 year in jail, and it is a misdemeanor.

To Mr. Thrower and Mr. Walters, under your administration there was evidence in the record of Senator Ervin's Watergate committee, that certain subordinates of yours gave out tax return information. In light of that, and in light of the need to impose on State officials proper respect for confidentiality, would you go along with Senator Weicker's and Congressman Litton's section of their bill which considerably strengthens the penalty for unauthorized disclosure of tax returns, and tax return information?

Mr. THROWER. I certainly would, Mr. Chairman. Mr. Walters?

Mr. WALTERS. So would I, Mr. Chairman. Anything to strengthen our tax system.

Senator HASKELL. Thank you, gentlemen. I would very much appreciate it if you have any further statements that you want to make, please go ahead.

Mr. Walters?

Mr. WALTERS. May I just volunteer one thing, Mr. Chairman? I am sorry Senator Dole is not here, because he raised this question. And that is, about the propriety of Members of Congress to intercede with IRS on behalf of constituents.

Having served both in the Tax Division at Justice where we prosecuted criminal cases, as well as civil, and also as Commissioner of IRS, I recommend that Members of Congress be careful because, in addition to getting their constituents in deeper trouble, they can get themselves in trouble.

Senator HASKELL. I think most of us are aware of that.

Mr. WALTERS. I agree with Senator Dole, that you should be able to do that under our system of government, and I agree you should. However, I would always recommend that you check on the status and also that you have some understanding of the factual situation. Is it just a complaint of harassment? Or, is there harassment on both sides? And, if it is a criminal case, I would strongly urge you to stay away from it.

Senator HASKELL. I think most Members of Congress are very well aware of that.

Mr. Andrews?

Mr. ANDREWS. Mr. Chairman, did I understand you to say that if we have anything further to say we can write you a note on it?

Senator HASKELL. Yes, sir. And if you have anything further to say right now, and want to, please say it, sir.

Mr. ANDREWS. I have some observations about this thing that I would like to make.

Senator HASKELL. I wish you would make them right now. We would appreciate hearing them.

Mr. ANDREWS. Okay, I would be glad to do it. I think I made it perfectly clear that I do not believe, on the basis of my experience both as a Commissioner and as a tax practitioner up to the time I left the Service—I am not a tax practitioner now and have not been since I left here—but, on the basis of my experience, I do not believe that it is possible to protect the privacy of a taxpayer's tax return if you allow anyone other than that taxpayer to have access to his tax return.

And that includes the Department of Justice as well as the President's office and others. Just remember that we have got today the easiest means of communication in the world.

We have computers. We have photocopiers of a vast variety. And, all you have got to do is take that tax return and put it in the hands of a person and he can walk down this hall and copy it. And, once it is copied—once it is released, gentlemen, the fat is in the fire.

There is no such thing as privacy any longer. It is gone right out the window. Now, why is this so? I am going to say some things here which you probably are not going to like very much.

It is true, because the income tax law was, in the very beginning, a punitive measure. And it has been ever since. It is getting more and more so every time Congress revises it. I do not say that it necessarily is intentional, but you remove one loophole and put others in.

Loopholes—they are called loopholes but actually I think Congress is entitled to at least the assumption that they mean to do well. [General laughter.]

But this thing is so complicated. You know what it is for a taxpayer today. It is impossible for a taxpayer of any means at all to make his own tax return. He has got to go out and hire very expensive talent—like my lawyer friends here who are in the business and cleaning up on it.

You get a stack of papers this high [indicating]—that you are supposed to read and know, in order to make your own return—which is impossible today for anybody. Nobody makes his own tax returns out.

But, the tax law requires you to make a tax return that nobody in the world can possibly prepare. Putting him to that expanse, on top of the taxes, is, in my opinion, just absolutely burdensome, unjust, and not necessary.

That was not the only reason the tax law was passed, gentlemen. If you go back—and this was in 1913 a principal reason for passage was to enable people of great means to find a haven for their income and still control their interests. If you do not think this is so, just take the record from that day forward and you will see that there has not been very much change in the control of your great establishments once they have become great.

Now I am not a liberal. Do not misunderstand me. I am as conservative as anybody here. But I say to you that the problem is—one of the problems is—that it has been made too easy for the people who have got too much to preserve it, while the fellow who is in between gets squeezed of all the juice that is in him.

Senator HASKELL. I have a bill which I think, of you were in the Senate, you could cosponsor.

Mr. ANDREWS. Okay. I would like to remind you gentlemen of something. You are sitting right next to a gentleman over there who has, in my opinion, a great heritage he can look back on. It was his grandfather who was the speaker of the House of Delegates of the General Assembly of Virginia who defeated the income tax amendment in 1913 in Virginia. We never subscribed to it. We were dragged along and we have to live under the burden of it. [General laughter.]

But, that is what happened, he spoke so eloquently against it, it was not adopted, and we still pay the taxes, though, and I hope we do it reasonably well.

So what we have done now, gentlemen, we have arrived at the point that Senator Byrd's grandfather said we would arrive at, that we would be overrun by all manner of investigators and checkers and auditors and one thing or another—and I say nothing against them because as a Commissioner I came away from the Revenue Department with the highest admiration of those people down there. They have got a tough job to do, and they are only doing what the law requires them to do.

But we are still overrun with investigators, auditors, and checkers, of one kind or another. We have gotten to that point now that you are confronted with. I think you are certainly to be commended for trying to do something about it, but you are not going to do anything about it by legislation, in my opinion, except that which is extremely specific and leaves nobody accessible to that information except the tax people and the taxpayer himself.

Apparently, anyone who is willing to sink to the depths of indecency and personal lack of ethics that are required in order to do this, can get anything he wants to know about a person's tax return, in one way or another.

I had a young man tell me not too long ago—this young man had struggled very hard. He had built up a nice business. But he had to borrow money to do it. And incidentally, the tax law now makes it extremely difficult for anybody to get a business started by borrowing money. In fact, it is a very dangerous thing to do.

Who, therefore, is going to make a success in life unless he has got the money already? And who has got the money already the way things are today?

This young man said there were some people who wanted to buy his business. He said, no soap; I am not interested in selling. They said, we know all about you. We know you have borrowed up to your ears, and we can make it so you will have to sell your business.

And so they did. He later found out that that information went to those people via a copy of his tax return. Now, where they got it, he does not know. I do not know. But apparently it is pretty easy to get in one way or another.

Now these, gentlemen, are just a few of the things that are troubling me—not only as a former Commissioner, because I think I had a reasonably easy time; I had a good President and a good Secretary to back me up. And when I got to the job of quitting and went back home to work again——

[General laughter.]

Mr. CAPLIN. We left in exhaustion.

Mr. ANDREWS. Maybe you didn't relax enough. Now I must say something unpleasant. I shall do so with appropriate delicacy, I hope. The good Senator who presented this bill said we have got to reestablish credibility.

With all the delicacy I am capable of, gentlemen, I have got to say to you that where it must start is here on this Hill. Let me recall one occurrence that happened when I was Commissioner. There was one Member of the Congress—I remember it very clearly—whom we found that had so many bank accounts he could not even keep track of them himself. Finding them was no Easter egg hunt. He had hidden them so thoroughly—he had hidden some of them so thoroughly that even he could not find them. [General laughter.]

But he maintained he did not do any wrong. The court disagreed with him, and the judge sent him to jail. And that gentleman, while he was in the reformatory, voted by proxy in his committees, right in this Congress from his reformatory cell. There was not a single Member of the House, there was not a Member of the Senate. there was not a Republican or a Democrat who suggested that he be kicked out and he served out his term and was reelected.

Gentlemen, just as charity begins at home, I respectfully suggest that credibility must begin here on this Hill. Thank you.

Senator HASKELL. Thank you, Mr. Andrews. Thank you, gentlemen, very much, indeed. The hearings are adjourned.

[Whereupon, at 1:20 p.m., the subcommittee recessed, subject to the call of the Chair.]

Appendix A

Transcripts of Television Programs Dealing With Possible Internal Revenue Service Abuses

APPENDIX A

ABC NEWS CLOSEUP: IRS: A QUESTION OF POWER AS BROADCAST OVER THE ABC TELEVISION NETWORK FRIDAY, MARCH 21, 1975—10-11 P.M., EDT

(Produced and written by Paul Altmeyer, narrator: Tom Jarriel, reporters: Brit Hume, Paul Altmeyer)

PROLOGUE

TOM JARRIEL. If you're a taxpayer seeking assistance from IRS, a word of caution. IRS won't back up its own advice. . . .

Why?

This car, belonging to this couple was seized by IRS. It was all a mistake. It took the couple eight months and cost over 1,200 dollars to get the car back. . . .

Why?

IRS demanded this couple immediately pay 119.000 dollars. It was all done with the power of something called jeopardy assessment. . . .

Why?

If you think your income tax return is a confidential matter between you and IRS, you're mistaken. It isn't. . . .

Why?

IRS gets letters, some of them anonymous letters written by IRS employees. They're called "squeals" and they can trigger audits. . . .

Why?

In the next hour, ABC News will attempt to answer these questions as we investigate IRS, one of the least examined and most powerful institutions of our government.

TOM JARRIEL. Good evening. I'm Tom Jarriel.

We Americans pay our taxes voluntarily. We have a good system. What we intend to examine in the next hour is the instrument of that system—the Internal Revenue Service.

IRS . . . in one way or another, just about all of us are affected by it. It's an enormous subject.

On this report we confine ourselves to several specific areas that we think deserve examination.

Our starting point—the small and average taxpayer dealing with IRS.

Millions of Americans contact IRS seeking assistance on filing their tax returns. Taxpayers do so at their own risk. If you are later audited, it makes no difference that you received help with your tax return from IRS personnel, because IRS is not bound by its own advice.

IRS says it has posted signs in its offices telling taxpayers that they are responsible for the information in their returns, but there were no signs in one New York City office of IRS the day we filmed there.

Reporter Brit Hume and producer Paul Altmeyer spoke with IRS Commissioner Donald Alexander about the taxpayer assistance program.

DONALD ALEXANDER [IRS Commissioner]. To be bound by our own advice, we'd have to make absolutely certain that we fully understood the exact question; not the question that was actually put to us, but the question that should have been put to us.

LOUISE BROWN [Tax Reform Research Group]. Most people don't know that the IRS won't back up its own advice.

TOM JARRIEL. Washington . . . Louise Brown is a staff member of Ralph Nader's Tax Reform Research Group and a member of the IRS Commissioner's Advisory Group.

LOUISE BROWN. Now, these people get five weeks of training before the tax season starts, then thousands and thousands of inquiries start pouring into the IRS offices.

ANNOUNCER. Document: This IRS training outline indicates that taxpayer service representatives receive as little as one hour of training in certain areas of complex tax law. Personal Exemptions—1 hour, Medical Expenses—2 hours, Interest Income—2 hours.

DONALD ALEXANDER. Sure, we'd like to have more training. But there are certain things we can do within our budget and certain things that we can't do.

TOM JARRIEL. Although IRS has increased the number of taxpayer service representatives, the so-called blue ribbon service they have been promising has yet to be implemented. At the same time, members of Congress and their staffs have been receiving their own kind of blue ribbon treatment for years. Two highly skilled revenue agents and two taxpayer service representatives serve the House and the Senate during the tax season.

DONALD ALEXANDER. Now on Capitol Hill, we have a major job to do because that office gets a lot of customers and some of those customers are very important people . . . and some of them are not important people at all.

LOUISE BROWN. But they serve only 18,000 people. Those are the number of people that comprise the Hill staff, staff and Congressmen. On the other hand, in the District of Columbia, we have about 300,000 taxpayers, all of whom are served in only one place. They have seven taxpayer service representatives and a supervisor to take care of all of them.

PAUL ALTMEYER. Is that fair?

DONALD ALEXANDER. Well, as I said before, we are phasing out some of the special nature of the services we have rendered on Capitol Hill. Certainly, a phaseout takes a little time to accomplish, and is wrenching to some extent to those who have previously been given somewhat better service.

PAUL ALTMEYER. Members of Congress and their staffs, however, still get better service than the average taxpayer?

DONALD ALEXANDER. Oh, they get service at a higher level, yes.

TOM JARRIEL. More than two million taxpayers will be audited this year. IRS statistics show that depending upon where you live and where you stand economically, your chances for an audit can vary widely.

BRIT HUME. Is this because IRS audit standards differ from district to district?

DONALD ALEXANDER. I don't think so. I think it's because audit needs differ from district to district. The middle west, for example, requires and gets less numbers of audits in proportion to the number of taxpayers than do the east coast and west coast.

PAUL ALTMEYER. Is this because the district director there is doing a better job?

DONALD ALEXANDER. I don't know. I wish I knew. It may be that in certain areas of the country our offices are more efficient and more effective. It may be that the attitudes of taxpayers are somewhat different. It may be a combination of factors. I'd like to find out.

TOM JARRIEL. It is the small taxpayer who has the toughest time dealing with IRS. ABC News has surveyed thousands of complaints from average taxpayers about their treatment by IRS. The most common criticisms: impersonal letters, an incomprehensible tax law, confusing appeal rights, and an overwhelming bureaucracy.

ALBERT LUZON. He wrote them several letters trying everywhere possible to get these people to listen to the case.

TOM JARRIEL. St. Bernard Parish, Louisiana . . . The case of Albert Luzon, like many tax cases, is a complicated one. It involves the issue of withholding taxes for Luzon's crew members. We are not examining the merits of Luzon's case or IRS's case, but rather Luzon's dealings with IRS.

Attorney Joseph Raggio represented Luzon in his dealings with IRS.

JOSEPH RAGGIO. The problem that I've found is that the bureaucracy of the Internal Revenue Service is so large that no one up until the last stages really is able to make a decision about what can be done and what shall be done.

ALBERT LUZON. We tried every office, every person, every auditor, everybody in the office. All they would tell, just only say well, maybe he would try this office. I mean we'd go there, and said, no I can't do nothing for you and the case is closed. So we just kept running around, so I didn't know what to do.

JOSEPH RAGGIO. I called Mr. Jacobs, who is the assistant to the director in New Orleans. I explained to Mr. Jacobs my problem. He referred me to Mr. Phillips, who, in turn, referred me to Mr. Casanova. In the meantime, that Mr. Casanova was going to refer this matter to Mr. Bob Adams. Mr. Adams suggested we make an offer to compromise. We submitted these to, not to Mr. Adams, but

a gentleman by the name of Mr. John Bettencourt, and this was sent to Mr. J. Newman. He talked to Mr. Bob Adams and Mr. Adams indicated that he had already made up his mind that Mr. Luzon in truth and in fact owed the money.

ALBERT LUZON. I don't understand the government at all. I don't understand. I don't know what to say about them.

TOM JARRIEL. IRS, one of the largest Federal agencies and one with which most Americans have some dealings, has no complaint office of its own.

PART TWO

DONALD ALEXANDER. Revenue officers who are charged with our collection responsibility have a great deal of discretion.

BRIT HUME. Isn't that really an extraordinary amount of power?

DONALD ALEXANDER. It is a large amount of power, and for that reason, it needs to be used very wisely, and very carefully, and very responsibly, and I hope we're doing that.

TOM JARRIEL. The next area we examine—IRS collection powers.

An IRS collection officer has vast power. To collect unpaid taxes, he has the power to seize and sell almost all of a taxpayer's possessions. No court order or hearing is required. This power can be exerted even when there has been a mistake, and the taxpayer doesn't owe any money at all.

Kelso, Washington . . . Willard Reese and his brothers run a forestry service.

To cover their employees' withholding taxes of seven thousand dollars and late filing penalties of nine hundred dollars, the Reese brothers wrote a check for ten thousand dollars.

Bank records show that the check was deposited and cashed by IRS four days after it was written.

But this fact was not known by the local IRS office, which issued a final notice of seizure. The Reese brothers made several attempts to contact IRS. But the collection officers seized the Reese brothers' property, and other property, totalling eighty-five hundred dollars.

WILLARD REESE. And this car actually at the time was not paid for. It belonged to a third party. And we had three vehicles, one of which is this white one behind me, and they were all paid for sitting here, and they could have been seized just as well as the car for the nine hundred dollars we owed.

ANNOUNCER. Document: According to IRS' own inventory, a total of 148 items belonging to the Reese brothers was seized, including buildings and the automobile which belonged to another party. Among the other items seized: a fishing rod, a garden hose and a carton of dishwashing liquid.

WILLARD REESE. Our attorney and I went, took our company books, over to the Longview IRS office. We determined that the ten thousand dollars not only covered our quarterly but the penalty, and also we overpaid, so this applied to the next quarter. Through this, the IRS man then told us that we were not in the wrong and they were not in the wrong, and that this whole thing should be forgotten as soon as possible.

TOM JARREL. St. Petersburg, Florida . . . James White, a carpenter was working in the home of a man, who the previous night had been arrested on a drug charge. An IRS agent arrived and asked White who owned the car parked outside the house. White said that he did.

JAMES WHITE. Where's the papers? So I handed him the papers and all he did; I handed him the title with the owner's name, but the title had been transferred to me and my name was on the title. And he says, "thank you," and opened his briefcase and threw it in his briefcase and stuck a seizure notice on the front of the car.

TOM JARREL. White was not involved in the drug charge. Months went by, and eventually a Federal district court ruled that IRS would have to return the car to White.

JAMES WHITE. Eight months to get the car back. It cost me a total of almost, some place in the range, I can't say exactly, between twelve hundred, fifteen hundred dollars for my expenses. And you know, in the time while they had the car, between cars and attorneys' fees, time off from work to appear at claims court, time to go down and see the IRS agents, everything. It was a hassle.

TOM JARRIEL. Of the almost one million seizures and levies made annually, the majority are paychecks and bank accounts. This has the most effect upon average and low income taxpayers.

Cincinnati . . . Certified public accountant Gil Bernhardt was asked to intercede in a case involving a laborer who had paid in full his Federal income tax return.

GIL BERNHARDT. He had the receipted slip from the collector. Now in October, his employer was instructed by the Internal Revenue Service to take this money out of his check. And of course the employer contacted the employee, and the employee says, "I've paid those. I've got the paid receipts." And the employer says, "I can't help it. I've got a notice of levy here from the Internal Revenue Service which I have to honor." So they took the man's money. And of course, he's got a wife and a family. And they took all of his paycheck that week.

TOM JARRIEL. These were just a few of the many cases discovered by ABC News where IRS seizure powers were overapplied.

One of IRS' most powerful seizure weapons is the jeopardy assessment. A power granted by the Congress, enabling IRS to move immediately if it feels a taxpayer is about to hide or remove his assets from the country.

DONALD ALEXANDER. The purpose of jeopardy assessment is to take an immediate and a strong action where necessary to protect the interest of the government because of an immediate likelihood that by an action of the taxpayer, whether willful or not, the government is going to be deprived of revenues that are owing to it.

TOM JARRIEL. K. Martin Worthy, a member of the American Bar Association's Section of Taxation and a former Chief Counsel of IRS.

K. MARTIN WORTHY. Under present law, the right of the Commissioner to make such a determination is absolute.

DONALD ALEXANDER. Mmm, not exactly an absolute right, because it cannot be used by the Service without regard to the consequences of misuse.

LOUISE BROWN. We know of cases where jeopardy assessments have been declared to the tune of five hundred thousand dollars when the actual assessment was fifty thousand dollars, and when the taxpayer fought it through the courts, he ended up with no assessment at all.

ED MCCANSE. Without any warning they slapped a jeopardy assessment on me for one hundred, nineteen thousand dollars.

TOM JARRIEL. LaGrande, Oregon . . . Ed McCanse is a retired cattle rancher and lumberman. McCanse, his wife, Lydia, and their two daughters sold a cattle ranch, and McCanse then transferred some funds to Canada. While undergoing a routine audit, IRS determined that its money was in jeopardy. McCanse was hit with jeopardy assessment of nearly one hundred, nineteen thousand dollars.

ED MCCANSE. It wasn't until they slapped the jeopardy assessment on me, I didn't really know what it was. I knew that they put a lien on my house, on our home; they tied up my stock in the mill; any wages or any monies due me from the mill; they took my bank account from the bank down here; but I still didn't know what it was all about.

TOM JARRIEL. Under the law, McCanse had ninety days to file a petition in Tax Court. During this period, IRS can seize, but not sell assets. But in McCanse's case, IRS threatened to sell his stock in a lumbermill. Faced with this threat, McCanse sold the stock himself, paid IRS, and then began a three and a half year fight to recover the money.

ED MCCANSE. You think you're in the right, and you know you didn't owe the money. And I seriously considered just meeting a brick wall or a cliff with that old Chrysler at about one hundred, twenty miles an hour, collecting insurance, because I'll tell you, if you are under that kind of a strain for three and a half years. I'll tell you, things just don't look right. You take any way out.

TOM JARRIEL. After a three and a half year fight, IRS admitted McCanse owed nothing. McCanse received the one hundred, nineteen thousand dollars back plus twenty-four thousand dollars interest.

ANNOUNCER. Document: In a letter to McCane's Congress, the head of the Collection Division of IRS wrote, quote, "We sincerely regret the problems that the McCanses encountered. We are satisfied, however, that the decision to use the jeopardy assessment procedure was appropriate." . . . end quote.

TOM JARRIEL. McCanse estimates it cost him five hundred thousand dollars in his fight with IRS. His only recourse for recovery was to petition Congress to pass a bill allowing him to sue IRS. Under the law, IRS is not liable for errors in judgment made in the collection process.

ED MCCANSE. They are not responsible for any mistakes they may make. They can, like in my case it cost me years of pure unadulterated hell, all the money and uncertainty and worry and they couldn't care less.

PAUL ALTMEYER. But isn't jeopardy assessment often used as a threat if the taxpayer refuses to sign a waiver to say, his rights of statute of limitations?

DONALD ALEXANDER. No, no, it is not.

TOM JARRIEL. Muleshoe, Texas . . . ABC News discovered that jeopardy assessment was used as a threat.

Tom Watson is a retired farmer. When he and his wife, Nettie, made a gift of half their land to their six children, they paid a Federal gift tax on it.

Creston Faver, a certified public accountant, represented the Watsons.

CRESTON FAVER. We filed the proper gift tax returns and paid the proper tax, and usually the statute of limitations is three years on examination. So we received a call from the Internal Revenue Service that he wants an extension of time. What happens if we don't sign it? He says. "Well, if you don't, we'll slap a jeopardy assessment on it."

TOM JARRIEL. The Watsons agreed to an extension of the statute of limitations on an examination of their gift tax. Had they not, and with the power of jeopardy assessment used to its fullest, IRS could have seized the Watsons' land, their home, their bank account, and other assets.

The total gift tax that the IRS agent wanted to examine, in his case, amounted to eighteen hundred dollars.

DONALD ALEXANDER. Well, that agent was not doing his job correctly. And, as I said before, there are bound to be some cases where people stray from the job that they should be doing.

TOM JARRIEL. Critics contend that IRS is using its seizure powers in a questionable manner in its so-called, "Narcotics Project." Here IRS makes use of jeopardy assessment and the termination of a tax year. After a narcotics arrest, IRS may close a suspect's tax year and demand an immediate payment of taxes. This can tie up all of a suspect's assets while he is still in jail.

LARRY HEDRICH. Well, I didn't receive no notice of any action until the bank sent me a notice saying that they had withdrawn all my funds for back taxes.

TOM JARRIEL. Larry Hedrich had his entire bank account seized by IRS. It was money left to him following his father's accidental death. The account was seized by IRS after police had found two marijuana cigarettes in Hedrich's car. The charges were later dropped.

Jerry Busby, a former Justice Department attorney and now in private practice, represented Hedrich.

JERRY BUSBY. Eventually, we got back sixty-eight hundred of the sixty-nine hundred dollars they seized, but it took us a year and a-half to get it back. In the meantime, Larry incurred attorney's fees to me in the amount of a thousand dollars. It had cost approximately two hundred dollars to hire an accountant to do all the accounting work.

He lost his automobile. He still hasn't gotten that back. It's been sold now for fifteen hundred dollars. All totalled, it probably cost his in excess of three thousand dollars, simply because the IRS failed to take any normal precautions and procedures in attempting to determine if this money was actually taxable.

LARRY HEDRICH. It seems strange to me that the government could have so much power as to do this to someone without even asking him why they done it.

DONALD ALEXANDER. We are taking a close look at jeopardy assessments to make sure that they are used only when they should be, and not used improperly, are not used in situations where their use isn't warranted by the circumstances.

PAUL ALTMEYER. Are you confident that they are being used in that manner?

DONALD ALEXANDER. I wish I could tell you that I am confident that everybody in the Service is doing his or her job right all the time. I'm not.

TOM JARRIEL. The Supreme Court in two cases now under consideration, will decide upon the constitutionality of IRS' power of jeopardy assessment.

The basic seizure powers of IRS were first granted by Congress in 1866. They have never been substantially curtailed. They have, however, been expanded upon and broadened.

PART THREE

TOM JARRIEL. The next areas we examine—the confidentiality of your tax return and some of the information IRS has been gathering.

If you think that your Federal income tax return is a confidential matter between you and IRS, you're mistaken.

FRANCIS BERGMEISTER [Former IRS Inspector]. We obtained the tax returns of this individual and showed them to the FBI agent.

TOM JARRIEL. Philadelphia . . . Former IRS Inspector, Francis Bergmeister.

FRANCIS BERGMEISTER. I will say, and I'm not trying to defend what I did, I think what I did was the proper thing.

TOM JARRIEL. Phoenix . . . Former Justice Department attorney Jerry Busby.

JERRY BUSBY. If I required a tax of a taxpayer, other than the one we were trying his case, we could obtain that information. We simply had to make a request for it. I can never recall an instance when a request I made was turned down.

TOM JARRIEL. Under the law today, your Federal income tax return is available to many Federal agencies, even minor ones, to many committees of Congress, and to most of the fifty states.

Republican Senator Lowell Weicker of Connecticut and Democratic Congressman Jerry Litton of Missouri.

Senator LOWELL WEICKER. I've called it, you know, a lending library over there and that's pretty accurate.

Representative JERRY LITTON. The way the law now reads the governor of any state in the United States has the right to gain access to the tax returns of any corporation in the country.

TOM JARRIEL. Concord, New Hampshire . . . Governor Meldrim Thomson had been in office only a matter of weeks when he sent an aide to a state tax office. There, the Governor's aide examined five confidential tax files. In New Hampshire, these files also include Federal tax return information.

Lawrence Blake was head of the New Hampshire Business Profits Tax Division. He reported to the State Attorney General the Governor's attempt to gain the tax information.

LAWRENCE BLAKE. The Governor's agent dictated a letter of authorization to the Governor's secretary, and upon receipt of it, he signed it on behalf of the Governor.

PAUL ALTMEYER. That's a pretty easy way to look at tax returns, isn't it?

LAWRENCE BLAKE. It was brought out later that further procedures should have been followed.

PAUL ALTMEYER. Now some of the individuals whose returns the Governor's agent wanted to see, they are generally considered to be political enemies of the Governor, are they not?

LAWRENCE BLAKE. It's generally thought that they were political enemies of the Governor.

TOM JARRIEL. One of those who had his tax returns examined by the Governor's aide was Stewart Lamprey, former President of the New Hampshire State Senate.

STEWART LAMPREY. When your own files are invaded, it comes as quite a shock and you really give it some thought after that.

TOM JARRIEL. ABC News made several attempts to interview Governor Thomson. He declined.

LAWRENCE BLAKE. Each time that this is disseminated to another level of government, it weakens the overall confidentiality of the information.

TOM JARRIEL. At the Federal level, tax returns are disseminated widely to such agencies as the Post Office Department and the Railroad Retirement Board.

Under one Presidential executive order, the income tax returns of three million farmers were to be given to the Department of Agriculture. After Congressional protests, the order was rescinded.

DONALD ALEXANDER. We're troubled by some of the things that have occurred in the past in connection with Federal returns and Federal return information being given to as many people for as many purposes as it is today.

Representative JERRY LITTON. The IRS is there to do what we all thought it was there to do all along and that's to collect taxes to run our country, and not to collect information on the private citizens of this country.

TOM JARRIEL. Our next area—IRS information gathering. This safe on the sixth floor of the IRS building in Washington contains files of the now disbanded Special Service Staff of IRS. It was formed in 1969 to gather intelligence on "dissidents" and "extremists." The safe now contains files on eight thousand individuals and three thousand organizations. The intelligence was gathered from amongst others the FBI, the Justice Department, and in some cases, simply newspaper clippings.

Randolph Thrower was IRS Commissioner when the Special Service Staff was formed.

RANDOLPH THROWER. One of the responsibilities, and it was a sensitive responsibility, was to assure the fact that exempt organizations were not engaging in political campaign activities or in substantial legislative activities.

TOM JARRIEL. ABC News gained access to the list of names of the eight thousand persons and three thousand organizations contained in the Special Service Staff files. These files, it should be remembered, were compiled on "dissidents" and "extremists."

ANNOUNCER. Among the names and organizations are . . . Sherman Adams . . . Kareem Abdul Jabaar, listed as Lew Alcindor . . . Jose Jiminez . . . Connie Stevens . . . Julie Andrews . . . Tony Randall . . . Elizabeth Taylor . . . Mrs. Burt Lancaster . . .

Friends of the FBI . . . The National Organization for Women . . . The American Conservative Union . . . The United Jewish Appeal . . . The American Jewish Committee . . . The U.S. Commission on Civil Rights . . . Common Cause . . . The American Library Association.

BRIT HUME. Can you think of any reason why their names would turn up as files of the Special Service Staff document?

RANDOLPH THROWER. It would tax my imagination.

PAUL ALTMEYER. What safeguards are there in the future to insure that such collection will never take place again?

DONALD ALEXANDER. I think the integrity and understanding and views of the people in charge of the Internal Revenue Service.

TOM JARRIEL. While the Special Service Staff has been disbanded and Commissioner Alexander has promised to destroy the SSS files, questions have recently arisen about another group formed within IRS, again in 1969. It is the Intelligence Gathering and Retrieval System.

DONALD ALEXANDER. That's a system in our Intelligence Division to acquire and store information with respect to our present and potential targets of criminal investigations.

As to the scope of the system itself, I'm sure that there were at least several hundred thousand names on the system in total.

TOM JARRIEL. On January 22nd, IRS ordered all information gathering by IGRS stopped until further notice.

Within the last week, a Miami woman charged that she had been recruited by IRS in 1972 to gain information on the sex lives and drinking habits of many prominent Florida residents. IRS is investigating the matter.

Another woman, Elizabeth Bettner, this week told ABC News that she was recruited in Miami by IRS Intelligence to gather information on Florida political figures. One person she was investigating—a man whom she ran against for public office.

LEM TUCKER. Did you continue to investigate him while you campaigned against him?

ELIZABETH BETTNER. Yes.

LEM TUCKER. Did you continue to investigate him . . .

ELIZABETH BETTNER. I was one of many investigating him.

LEM TUCKER. Did you continue to investigate him after you lost to him?

ELIZABETH BETTNER. Yes, I did.

LEM TUCKER. Does that sort of thing cause you any moral doubts?

ELIZABETH BETTNER. No, because the gentleman's no longer in office.

LEM TUCKER. But you had two chances at him?

ELIZABETH BETTNER. Well, the gentleman was questioned by grand juries. He was under investigation. As a matter of fact I believe he is still under investigation.

ANNOUNCER. Document: This is an IRS Sensitive Case Report which ABC News obtained. The report concerns Rabbi Emanuel Rose of Portland, Oregon. He was listed as a "sensitive case" because of his—quote—"prominence . . . in the community" . . . end quote.

TOM JARRIEL. The Sensitive Case List begun in the 1950's was compiled by IRS to alert top officials and the White House when a case involving a prominent person was apt to attract public attention.

Commissioner Alexander suspended the Sensitive Case List last November, but in his directive he said—quote—"Field offices should keep appropriate management levels advised" . . . end quote.

PAUL ALTMEYER. That sounds as if everything has changed, nothing has changed.

DONALD ALEXANDER. Well a lot of things have changed.

The sensitive case system itself is out. We need to know and exercise the responsibilities in the national office, things that are of major importance to tax administration that are happening in the field.

PAUL ALTMEYER. Well, does the sensitive case system have a new name or . . .

DONALD ALEXANDER. No, there isn't any sensitive case system.

We've gotten rid of the thing: saved an awful lot of paper and an awful lot of work. The system we have now, or lack of system, doesn't involve individual people, important, sensitive, significant, or otherwise. It does involve actions which are important to tax administration.

PAUL ALTMEYER. I'm sorry, but I don't follow. Does it still involve individuals?

DONALD ALEXANDER. The collections of individuals, yes. Individuals because of who they are, no.

TOM JARRIEL. The Special Service Staff, IGRS, and the Sensitive Case List. These have been but three of IRS' information gathering activities. Next, we'll examine the political use to which some of this information has been put.

PART FOUR

ANNOUNCER. Document: From a transcript of a March 13, 1973 meeting between former President Nixon and John Dean . . .

PRESIDENT. "Do you need any IRS . . . unintelligible . . . stuff?"

DEAN. "No, we have a couple of sources over there I can go to. We can get right in and get what we need."

TOM JARRIEL. The final area we examine—White House pressures upon IRS.

There is a very real temptation on the part of any administration to use tax returns and the awesome power of IRS for its own political purposes.

ABC News has obtained confidential memos from the Kennedy administration—correspondence between the White House, the Justice Department, and then IRS Commissioner Mortimer Caplin.

ANNOUNCER. Document: From one of the confidential memos:—quote—"At the suggestion of the Attorney General the Revenue Service reviewed its activities on the tax exempt status of extremist organizations."

TOM JARRIEL. The memos show White House and Justice Department pressure for a widespread campaign to examine the tax exempt status of so-called extremist organizations. The overwhelming majority of the organizations examined were conservative.

BRIT HUME. Do you consider such outside pressure on the Service to be proper?

MORTIMER CAPLIN. Any time that we got any sort of outside pressure, and I would say that it was minimal, we are concerned.

TOM JARRIEL. Mortimer Caplin, former IRS Commissioner under President Kennedy.

MORTIMER CAPLIN. Now it is my recollection that the President at that time had been disturbed by certain right wing organizations. At the same time when the request came to the Revenue Service, we realized immediately that we could not engage in any one-sided investigation of ideological organizations.

PAUL ALTMEYER. Really, during the Kennedy years, wasn't the focal point right-wing organizations?

MORTIMER CAPLIN. Let me say this, we felt that it was not proper in discharging our responsibilities to look just into one segment. We had found that the history of the prior administration had been heavily geared towards left-wing organizations.

TOM JARRIEL. Perhaps at no time in its history has IRS been under more White House pressure than during the Nixon years. The Special Prosecutor's Office is still investigating if anyone in IRS buckled under that pressure.

In addition to Donald Alexander two other men served as IRS Commissioner during the Nixon years.

The first was Randolph Thrower.

RANDOLPH THROWER. I thought this effort to politicize the IRS as I appraised it could have the effect of damaging the President greatly and his administration, certainly reflecting upon the IRS and the revenue system.

TOM JARRIEL. Thrower was succeeded by Johnnie Walters.

JOHNNIE WALTERS [formerly IRS Commissioner]. It can be argued that we might have made some mistakes but I don't think we made any scandalous mistakes.

TOM JARRIEL. Boston ... Attorney Lawrence Goldberg was being considered for an appointment to the Committee to Re-elect the President. Watergate executive session testimony by then White House aide Jack Caulfield, documents that he obtained parts of Goldberg's tax returns for 1968 through 1970.

LAWRENCE GOLDBERG. He was specifically asked who gave him the information on my financial status. And his answer was—quote—"I asked Mr. Acree to provide information on Mr. Goldberg's financial status." And then in another question later this was reiterated where the question was "And that was provided to you by Mr. Acree, is that correct?" Mr. Caulfield answered, "That is correct."

TOM JARRIEL. Former White House aide Caulfield declined an invitation to appear on this report.

The Mr. Acree to whom Mr. Caulfield referred in his testimony is Vernon "Mike" Acree, former IRS Assistant Commissioner for Inspection. He is currently the United States Commissioner of Customs.

Acree and his attorney spoke with ABC News off camera. Acree let us take silent pictures of him.

Acree says he has no recollection of Goldberg—quote—"as being the subject of a request by Mr. Caulfield for a check."—end quote.

LAWRENCE GOLDBERG. I have made some informal inquiries and I have been told that there is no civil remedy.

TOM JARRIEL. Acree acknowledges that he made between twelve to fifteen name checks for Caulfield at the White House because Caulfield was an agent of the President.

But an extensive examination by ABC News of the IRS Manual shows this was outside Acree's jurisdiction. Acree concedes that he made no such name checks for anyone in the White House in the three previous administrations in which he had served.

MORTIMER CAPLIN. I would have expected that if there was any inquiry from the White House that the then Assistant Commissioner, who was Mike Acree would have contacted me. I would have been greatly disappointed if he didn't. And I think ultimately I would have been disturbed.

TOM JARRIEL. Acree also concedes that the name checks he made during the Nixon administration were done without the authorization or knowlelege of either of the Commissioners under whom he served.

BRIT HUME. Were you aware that he was making such name checks, especially for Jack Caulfield at the White House?

RANDOLPH THROWER. No, I would have been shocked to have learned that that was going on without my being advised and I think I would have been disinclined to acquiesce in that.

BRIT HUME. I wonder if he did so with your permission or with your awareness?

JOHNNIE WALTERS. I was not aware of that.

TOM JARRIEL. Acree told ABC News he never asked permission to transmit IRS information to the Wite House because he considered it—quote—"a pro forma piece of business."—end quote.

This Federal Court decided in one tax case that there was political pressure.

The case involved the Center on Corporate Responsibility, a group examining big business abuses.

Susan Gross was a director of the Center on Corporate Responsibility. When the Center applied for a tax exemption, IRS held the case for more than two years. The Center went to court. IRS then denied the exemption. Judge Charles Richey of the U.S. District Court ruled in favor of the Center, writing, "The inference of political intervention has been unmistakenly raised."

SUSAN GROSS. He found that the procedures whereby our application had been denied, were, indeed, extraordinary. That the application had, in fact, been approved by all of the regular review, career review panels within the Service, and it was not until our application was turned over to Barth that there was any, anything negative done about it.

TOM JARRIEL. Roger Barth served as both an assistant to the Commissioner and Deputy Chief Counsel of IRS.

Barth was an advance man for Julie and Tricia Nixon in the 1968 campaign. ABC News has learned of two of Barth's refernces for the IRS job.

PAUL ALTMEYER. Were Julie and David Eisenhower references for you?

ROGER BARTH. I believe I did use them as reference, yes, because I did know them.

TOM JARRIEL. Randolph Thrower appointed Barth.

BRIT HUME. Was this a factor in your decision?

RADOLPH THROWER. It was reported to me that he had been very effective in their travels about the country; had some responsibility in the arrangements. Of course, this spoke well for him.

BRIT HUME. Were you authorized by either of the Commissioners that you served under to furnish the White House with income tax return information or with information from the Sensitive Case List?

ROGER BARTH. Yes. Part of my technical job description was to serve as the Commissioner's personal liaison with other departments, and agencies and Congress, and this would include the White House.

BRIT HUME. Did you authorize Roger Barth to furnish the White House information from individual tax returns?

RANDOLPH THROWER. Oh, no, no.

BRIT HUME. Did you authorize Roger Barth to furnish the White House information from the sensitive case reports?

RANDOLPH THROWER. There would be no occasion, and so far as I know or recall, no authorization for Roger Barth to communicate any of this information directly, and I have no information that he did.

BRIT HUME. Did he ever seek your approval for such activity?

JOHNNIE WALTERS. No.

TOM JARRIEL. Ronkonkoma, New York . . . Robert Greene of the newspaper "Newsday," headed an investigative news team that did a series on the business activities of Bebe Rebozo. Greene was later audited.

Greene's case is one of the most intriguing ABC News encountered in its investigation.

First, because of the nature of the audit; second, because of the quality of a Congressional investigation; and third, because of something called a "squeal" or anonymous letter to IRS which can trigger an audit.

ROBERT GREENE. Caulfield indicated in his testimony that he and Acree worked out a situation whereby an anonymous letter would be dropped into the IRS file containing allegations of one sort or another about me and my income, and that this would almost automatically initiate an audit by the IRS.

ANNOUNCER. Document: From the Watergate executive session testimony of former White House aide Jack Caulfield—quote—"Mr. Acree led me to believe that an anonymous letter did go out in a fashion where it would not be considered illegal."—end quote.

TOM JARRIEL. Acree maintains that he once had a general discussion with Caulfield regarding how IRS audit procedures were initiated. Acree told ABC News about the Greene case. Quote—"Did I write a letter, no. Did I ever ask anyone to write a letter, no."—end quote.

We asked former IRS Deputy Chief Counsel Roger Barth about anonymous or "squeal" letters.

BRIT HUME. Mr. Barth, what is a "squeal"?

ROGER BARTH. A noise that a tire makes [laughs]. That's the only squeal I know of.

PAUL ALTMEYER. It's an anonymous letter . . .

ROGER BARTH. Oh, oh . . . then you would be referring to the matters that came up during the Watergate investigation as to how one would go about instigating an audit of somebody; you'd write an anonymous letter. Any, any citizen can do that who's got ten cents.

PAUL ALTMEYER. Are there safeguards right now that can prevent an IRS employee from generating a "squeal" letter himself?

ROGER BARTH. I would say no more than there are safeguards against an ordinary citizen dropping a letter in the mail. Theoretically, that is correct.

Anybody can mail a letter into the IRS about anybody, saying what they want.

TOM JARRIEL. Obviously, an IRS employee with detailed knowledge of an individual case could write the type of anonymous letter which would trigger an audit.

FRANCIS BERGMEISTER [former IRS inspector]. There were two different occasions on which I employed what you call "squeal" letters.

TOM JARRIEL. Former IRS Inspector Francis Bergmeister described how he employed "squeal" letters while he was with the Service. He used the "squeal" letter to protect a confidential source. He describes it as a proper investigative tool.

FRANCIS BERGMEISTER. As a result of this correspondence, which was addressed to the District Director here in Philadelphia, an audit ensued.

PAUL ALTMEYER. Who wrote that letter?

FRANCIS BERGMEISTER. Actually, another Inspector and myself authored it. The letter itself was written by the secretary of the Regional Inspector here in Philadelphia, Mr. Emanuel Shuster. She actually wrote the letter.

PAUL ALTMEYER. Why did she write it?

FRANCIS BERGMEISTER. We requested her to write it. We wanted the letter in the hand of a woman so that it would appear more authentic as far as the district was concerned.

PAUL ALTMEYER. Now, you were an upright revenue officer who used this as an investigatory tool. Would it be possible for some unscrupulous person within IRS simply to sit down and write a letter about any taxpayer?

FRANCIS BERGMEISTER. I can't appreciate that what you are saying is not a real possibility. Why not? Certainly. Anybody could do it. You could do it today; I could do it today; anybody could do it.

BRIT HUME. Did your investigation show whether or not there was a "squeal" in the Greene case?

DONALD ALEXANDER. I don't recall.

ROBERT GREENE. When the story of my audit broke, the initial IRS reaction was that that was a New York State audit; don't blame us. However, the State of New York replied, and this is factually so, that every year routinely the Federal government sends over approximately twenty-thousand Federal income tax returns to the New York State Department of Taxation and asks them to audit those returns for the Federal government.

TOM JARRIEL. The returns are audited under the IRS Federal-State Exchange program. Commenting on the Greene case, the director of that program said, if "unscrupulous" officials within IRS "had been willing to violate the law," they could have gotten New York State to conduct the audit without the state officials knowing the real motive.

BRIT HUME. Has IRS ever conducted an investigation to determine whether Bob Greene was audited illegally?

DONALD ALEXANDER. The IRS conducted an investigation, and more important, the Joint Committee on Internal Revenue Service, conducted an investigation.

TOM JARRIEL. The Joint Committee on Internal Revenue Taxation has the function of overseeing IRS practices and procedures. The Committee's counsel telephoned Greene.

ROBERT GREENE. I was called by the counsel to the Committee who opened up his conversation with the remark "I understand you're complaining about being audited." I carefully pointed out to him that I hadn't made any complaint. That Mr. Dean and Mr. Caulfield testified before the United States Senate that from the White House they had initiated an audit of me, and that I had been audited. He wanted to know if I had any other proof. I said, "No, no other proof than the sworn testimony of the Counsel to the President and his assistant. And the fact that I was audited." There was no question about the fact that I was audited.

DONALD ALEXANDER. I'd like to read you something from the Joint Committee Report. "The staff had talked to Mr. Greene, the New York revenue agent who audited Greene's state return and other people in the New York State Department of Taxation, and as a result believes that his audit by New York State was unrelated to his being classified as a White House enemy." Our investigation showed the same thing.

ROBERT GREENE. As a person who does investigations myself, I wouldn't say that that's the most complete investigation I ever saw.

We're citizens. Our recourse under this is very small. If government chooses to abuse its power there is very little, as far as I'm concerned, that you can do about it.

TOM JARRIEL. The Joint Committee on Internal Revenue Taxation, the watchdog of IRS, has never held a hearing on IRS practices or procedures.

DONALD ALEXANDER. What I hope will be the case in the future which will be Congressional oversight on a regular basis.

PAUL ALTMEYER. Is that badly needed?

DONALD ALEXANDER. It certainly is. It's badly needed.

TOM JARRIEL. We share Commissioner Alexander's view.

Congress has not been doing its job in the vital area of overseeing the activities of the Internal Revenue Service.

Two new subcommittees have been formed in the House and Senate. They have a definite job cut out for them.

The last major investigation of IRS by the Congress took place more than twenty years ago. Since then Congress has let its oversight function slip and slip badly.

Somehow the political pressures placed upon IRS during the Nixon years got lost in the larger Watergate story. While the Special Prosecutor's office is still investigating those pressures, Congress again has been lax in pursuing a vigorous examination into those matters.

When we began working on this report, we assumed, as I guess most of us do, that our income tax return is a confidential matter. As we've seen it is not.

Congress now has bills before it designed to tighten up the confidentiality of our tax returns and the easy access to them. Legislation is badly needed in this area.

The seizure powers of IRS were given by the Congress for legitimate reasons. Those powers are awesome, and as we've seen, they can be abused. Clearly, the Congress has to review how IRS is using those powers.

We began this report by saying that our voluntary tax system is a good one and we'd like to re-emphasize that point. But what we have examined in the last hour are questions of power and they are questions that demand some answers by Congress.

This is Tom Jarriel.

Good night.

IRS: A QUESTION OF POWER—CREDITS

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FULL TEXT

ANNOUNCER. NBC News presents Many Unhappy Returns, a report on your taxes, by David Brinkley.

COMEDIAN. Section 72B. Gross income does not include that part of any amount received as an annuity under an annuity, endowment or life insurance contract, which bears the same ratio to such amount as the investment in the contract as of the annuity's starting date bears to the expected return under the contract as of such date this sub-section shall not apply to any amount to which sub-section D small one relating to certain employee annuities applies.

* * * * * * *

DAVID BRINKLEY. While there must be a way to tax the American people fairly and decently Washington has not found it, and in fact has spent very little time looking for it. People of middle and lower incomes are forced to hand over money they need for their own families and beyond that if the people's basic legal rights remain intact, in practice they are often violated. The tax collectors have a tremendous and excessive power and it can be abused.

Instead of a fair and reasonable tax law Congress and the Internal Revenue Service have created a paper blizzard of laws, rules, regulations, orders, interpretations, opinions, each with a long list of exceptions and exceptions to the exception. There are miles of paper densely printed in bad English, nobody can understand. One of our great jurists, the late Judge Learned Hand, said the language of the tax rules is like a lot of bugs running around a page.

In other areas, the courts will throw out cases based on law too vague to be understood but in tax laws this rule of common sense does not apply and citizens are required to obey it even if they cannot understand what it means. And then, to pay the penalty if it is later decided they are wrong.

Historically the American people have been willing to put up with almost anything if persuaded it was their patriotic duty. When the tax system as it is now, known began in World War Two they were persuaded, as heard in the quaint rhetoric of the old movie theatre newsreels.

NARRATOR. More planes to write final peace and freedom in the skies. Give your help. Back the attack in remembrance of Bataan.

NARRATOR. Speaker Rayburn administers the oath and Congress is officially open. Immediate issues for debate are reduction of non-essential government spending, the rationing program, and the income tax plan of New York banker and department store treasurer, Beardsley Rummel.

BEARDSLEY RUMMEL. With the new legislative year, a new opportunity is presented to correct an old defect in our income tax procedure.

INTERVIEWER. Mr. Rummel, how would the individual taxpayer benefit?

RUMMEL. Each of us will be better able to meet the present and to attack the future if we are paid up in our income tax and being out of income tax debt we can pay as we go out of what we earn.

NARRATOR. March 15th is the big day for filing tax returns, but March 15th is the last day to file. You remember last year's tax line? These were long lines, but this year's will be longer if you wait until the last minute. About 50 million people will file returns this year.

BRINKLEY. What was called a victory tax continued, of course, long after the victory was won, most of it continues now. But after the war the U.S. did acquire huge and expensive new responsibilities around the world and they had to be paid for.

The American people paid willingly as no people ever had before or have since.

But government, not unlike individuals, is brilliantly creative in finding or inventing some urgent need for every dime that can be collected while always demanding more. In 30 years of practice the methods of extracting money from working people have been polished and honed and raised to the level of pop art, sending tax collectors, their hands out, into every small crevice of American life.

Watermen on the Chesapeake Bay have been digging oysters since the 17th Century, over the centuries developing their own ways of working. They make a living but nobody here gets rich and this ancient picturesque trade has gone its own way until now. A boat owner took out with him each day a stern man to help. Stern men moved as freelancers from boat to boat and the deal was they got a percentage of the catch which they sold. They were paid in oysters, not cash. But no more. Now Internal Revenue claims stern men are employees and demands the watermen collect income and social security taxes, do the figuring, keep the records and the papers, and send the money to Washington.

Even if they are employees, which is at least debatable, it is all a little bewildering to a rural people who can dig oysters but who can barely deal with government forms, papers and ambiguous rules.

Now, when they might have been out digging they're having meetings trying to see how to deal with this.

MAN. When I'm going to work I have to carry a gas meter. Make sure if you're going to deduct your mileage for both ways that you bring something back in that truck even if it's just an empty gasoline can.

WOMAN. That's right.

MAN. If you're driving down to the boat to go to work, or driving back to the boat coming home from work, that is not a deductible expense of itself unless you're hauling something, unless you're transporting tools or equipment or supplies. I don't think anybody's got a problem with that, huh?

MAN. When you work for 20, 25 years this way it's . . .

MAN. It's a hard job . . .

MAN. It's a hard job to break it and in one sense they're asking us to turn against your friend.

MAN. They don't want anymore self employed people anymore; you've got to work for somebody else. You can't be self employed. You've got to work for somebody else.

MAN. We go down here tomorrow morning and go to work. My boat won't start or yours won't start; you can't hardly say, well, come on, go with me today to keep you from losing a day's work or me from losing a day's work, because if you do this then you've got to turn around and file a damn tax number, you got to do this, that, and the other for to carry a friend for one day to keep him from losing a day's work.

MAN. It's costing you money to do a friend a favor.

MAN. That's right. You can't even be a friend to a man anymore.

MAN. I broke down and my boat was on the railway, I didn't have no way to work, so I had to go with somebody else. But we kept track of what we made and we filed our taxes on it and I can't see where it's no different doing it that way.

MAN. And when this thing came out I had to tell the man that he could no longer work with us. Don't you know I lost that friendship and we've been friends for nearly 50 years.

BRINKLEY. Now the stern men are unemployed, some are on welfare, the harvest of oysters is down, the prices are up, and they blame it on the IRS.

No doubt Internal Revenue in ruling here conforms to the law as it chooses to read it and it sees itself as doing its duty and following the law laid down by Congress, but it's one of many small but vivid examples of how in 30 years we have expanded this paying of taxes from a routine necessity to a way of life. A way of life in which every aspect of working for a living, regardless of how ancient and settled, all of it must give way to the demands of the IRS rules, and forms, and the demands of its computer.

The American people were never asked if that was what they wanted and increasing numbers of them now complain they don't.

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MAN. Section 123B insured living expenses sub section A.

COMEDIAN. Section 123B insured living expenses, sub section A shall apply to amounts received by the taxpayer for limited expenses incurred during any period only to the extent of the amounts received do not exceed the amounts by which one the actual living expenses incurred during such period for himself and members of his household resulting from the loss of use or occupancy of their residence, exceeds to the normal living expenses which would have been incurred for himself and members of his household during such period.

BRINKLEY. Lawrence Fox is a full time tax lawyer with a busy practice in Washington trying to help a variety of clients find their way through the mazes and minefields of the Federal tax rules.

Well, you work in this field professionally full time, you don't know everything that is in the code, do you?

LAWRENCE FOX. No.

BRINKLEY. You can't understand everything that is in the code, can you?

FOX. No.

BRINKLEY. And you can't explain it to your clients, can you?

FOX. No, which disappoints your clients sometimes.

BRINKLEY. What do you think the answer is, a huge bonfire?

FOX. I think a huge bonfire would be good.

BRINKLEY. Do you understand it all?

FOX. No, I don't understand it all. I'm very fond of Chinese puzzles and that's probably the reason I went into tax law in the first place. But it is a major undertaking to try to comprehend sections 341E of the Internal Revenue Code. It goes on for a couple of pages uninterrupted by such things as periods or capital letters. And it almost defies a human understanding.

BRINKLEY. Is it fair to force people on threat of prison to obey a law that no layman and few tax lawyers, if any, can understand? Is it fair to force people to hire and pay professional help to figure their taxes, and then if the professional help is incompetent or careless, as sometimes it is, the taxpayer is still personally liable?

It is true, of course, that Internal Revenue offers free advice and help in preparing tax returns up to a point, but a common complaint is that the temporary part time help assigned to this work is poorly trained, giving answers that cannot be relied on.

Three years ago, the Wall Street Journal took the same set of figures to five IRS offices in five different cities and got five quite different answers. Not only that, if Internal Revenue itself figures your tax for you there is no guarantee even that will stand up. It can and does come back later, audit returns its own people computed, refuse to accept its own figures and demand more tax plus interest. It says this happens because of the pressure of work and lack of time. But whatever the reason it happens and the taxpayer is victimized by his own government again.

Nevertheless, the American people with a remarkable docility that other governments might envy continue to pay. Commissioner Alexander.

Commissioner ALEXANDER. This year we're getting more returns earlier from more people than ever before. Maybe part of that's due to the recession that we're in. People are out of work, want their refunds, and were getting the refunds out to them faster than we ever did before. But we're finding that these are good returns, that people are doing their job very conscientiously. Sure they're looking for every deduction, exemption and credit they're entitled to and they darn well should, but they're reporting their income well. We don't see a taxpayer revolt this year. We think generally people comply with our tax system very well.

BRINKLEY. Is it fair to load on the American people a law so complex that almost nobody can understand it, forcing them to hire professional help to deal with it, and then if the professional help turns out to be incompetent the taxpayer's still at fault, still must be responsible. Does that seem fair to you?

ALEXANDER. That's a loaded question. Let's take the first part of it, the complexity of the law. This agency and I are surely in favor of simplifying the law. We think that basic simplification is necessary to have a better tax system in the future than the one we have now. Now a lot of these complexities in the code and a desire to do equity, a desire to draw fine distinctions between A and B and then I have a code that recognizes and takes in effect these distinctions. But limitations get ingrafted onto general rules and then exceptions to the limitations, then limitations upon the exceptions to the limitations, and by the time we end up we've got something too complicated for people to find their way through. So we need basic simplification.

If we have a simplified law for the ordinary taxpayer, then the ordinary taxpayer will be able to comply with his or her responsibilities without paying someone for that privilege.

BRINKLEY. And beyond the complexity, there is the sheer staggering amount of money taken from working people who particularly now may need it more than Washington does.

Claude Cogar has been a baggage handler for United Airlines in Washington for 8 years, went through high school but no further, works hard indoors and out, in good weather and bad, and last year he made $14,500, slightly above the average American income. With three children and a small house in a remote, inexpensive suburb of Washington called Dale City, he and his wife barely get by.

CLAUDE COGAR. A year or so ago we were saving money. Last year we could afford to trade our car, our old wagon in for another wagon. It's not a new one but we could trade it in. If something would happen to that car right now and I'd have to trade it and I couldn't afford a regular size car and have to go to a sub compact.

Mrs. COGAR. Our need is just—our food bill has gone way, way up. We've made more this last year than we've ever made before and we don't seem to have nearly as much to show for it. We haven't been able to save very much money and when I go through my check receipts all I see is bills, bills, bills, bills, bills. And I used to see shoes and suits and travel expenses, and now we just see doctor bills, gas bills, electric bills, oil bills, and it just seems like his whole paycheck has gone on food. Food is a very big item right now.

I see where rates has gone up so much, and the gas rate, and the electricity and all those things has gone up so much also. I guess the taxes went right along with them. If we could just get one full paycheck every other month or one a year, even, that would be nice, you know, just one time. If they would declare that the month of June you have to pay no taxes. It would be wonderful.

BRINKLEY. Last month the Cogars, saving the cost of hiring somebody to do it for them, sat down to figure their taxes.

Mrs. COGAR. Okay. I don't think we're going to be able to pick up any doctor's expenses this year.

COGAR. That's what you say every year. Might as well organize this mess.

Mrs. COGAR. We don't have any extra deductions this year. The extra baby.

COGAR. Don't really need another deduction like that right now.

BRINKLEY. It turned out that if he gets the refunds he expects, Cogar will pay $1,048 in Federal income tax, plus state taxes, plus Social Security, $2,428 in all, or about $47 a week every week, or 17% of all he makes, plus of course other taxes, gasoline, property, sales and so on and on.

Mrs. COGAR. Your tax form got smaller this year. Look how small it is.

COGAR. The tax bills are smaller.

BRINKLEY. A question, perhaps rhetorical and the answer will not be found in the tax laws but in the basic, social political philosophy of government in

the United States. Is the tax system based, as claimed, on ability to pay or on ability to collect?

As he looks over the rules, the taxpayer finds one sour little joker after another. If he sells the house he lives in at a loss, it is his; if he makes a profit they tax it, even if it is not a real profit but only inflation. If a working person gets a pay raise even if not big enough to keep him even with inflation he moves into a higher tax bracket and has to pay more. If a person gives money to a college to help educate other people's children it is deductible. If he pays money to a college to educate his own children it is not.

A married couple with one child. If the wife works they hesitate not one second in taxing everything she earns. But there are many limitations on how much, if any, she can deduct for paying a babysitter. Is all of this fair? Obviously it is not.

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COMEDIAN. Only amount received by such an individual as retirement income as defined in sub section C and is limited by sub section D, but this credit shall not exceed such tax reduced by the credit allowable under section 32 small 2 related to tax withheld at source on tax free covenant bonds section 33 related to foreign tax credit and section 35 related to partially tax exempt interest.

MAN. Section 6331 for much of the property or rights to the property either real or personal as may be necessary to satisfy the unpaid balance of assessment set forth herein together with additions provided by law including B . . .

MAN. What is it now?

MAN. $4,992.

MAN. I want the exact amount. How much have I paid you?

BRINKLEY. Here's the IRS in action seizing a man's business because it said he failed to keep his agreement to pay up his back taxes.

MAN. And you're going to seize this place for $4900 and I had worked—and nobody can deny that I had to work since the 21st of October to pay you off.

Am I right, Mr. Kent?

BRINKLEY. Six weeks ago the Supreme Court ruled Internal Revenue had the right to search private bank records any time, even when it had no evidence of any crime and no knowledge of who committed it if there was one. The Court said, quote, We recognize the authority vested in tax collectors may be abused as all power is subject to abuse, however the solution is not to restrict the authority so as to undermine the efficacy of the tax system, unquote.

Well, the Constitution says the right of the citizens to be secure in their persons, houses and papers against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person or thing to be seized.

Well under this ruling a tax agent can search with no warrant, no oath, no affirmation, no probable cause and no description of the person or thing to be seized. Power like that, as the Supreme Court said, can be abused.

John Norton owns and drives one truck in Seattle, Washington, does hauling jobs, makes very little money. He drives his truck alone and occasionally when he arrives with a load he hires some local idler for a few minutes or an hour to help him unload, pays him $5 or $10 in cash and leaves. Well fine. Until Internal Revenue announced these people were his employees. He had to withhold income tax and Social Security and owed $2200. They seized his truck and put him out of business.

JOHN NORTON. They took the money I had in the bank out, then went to my employer, garnisheed my wages and they sent me a bill for more years; then they come down with a lien, took my truck away from me, a truck that cost $34,000, said I owed them $1538, took the truck and put it up in an area that belongs to the government, then went down to the bank and took out $15 and some cents, $14 and some cents, about the last penny I had in the bank. Prior to that they'd taken out of my savings account, closed it out. I only had $59 in it. But the worst part of it all was this money went out when there wasn't a thing to eat on, there wasn't—nothing. Nothing. Just flat out. Everything. It went. And they had a $34,000 truck, which I think would have covered the $1500 lien. And on top of it going to the bank to get the rest of it.

I guess they looked around to find out if I had anymore. Now I'd hire somebody for an hour or two to help me unload or load part of a load. Hire a man with a forklift to take something heavy off the truck and I'd pay him. The Internal Revenue had said, Where is the withholding tax and Social Security for these

helpers? How can they be my employees? I never saw them before. I'll never see them again. Don't even know their names. And when I make an agreement with them to pay them so much to take this off, why that's it. And if I were to take Social Security and withholding tax from these people, I'm liable to get my lumps.

BRINKLEY. Eventually he borrowed enough to pay them off to get his truck back, though it appears that under the law he owed them nothing.

About a million times a year the IRS seizes money or property or both simply on its own assertion that the money is owed. But it is legal. The public may find and does find it to be harsh, excessive and offensive but under the curiously generous and forgiving eyes of Congress and the Courts, the IRS has power that in other law enforcement agencies would not be tolerated. Again, power like this can be abused.

In Portland, Oregon, this was a big lumber mill, thriving, and employing 330 people. In a change of ownership, the new owners acquired a tax bill of about 2 million which they admitted, agreed to pay and IRS agreed to accept $30,000 a month until it was paid. When about half was paid the mill had to move, asked IRS if it could make smaller payments. After some bargaining, suddenly, without notice tax agents seized the plant, closed it down, put it out of business and all employees out of work. About 100 of them lost their pensions. All assets were seized and sold. Now where the mill once stood is bare ground. The IRS got its money but it took three years, whereas the mill had offered to pay it off in two and a half years, and it got the money at the price of destroying a productive, tax paying business and throwing 330 employees out of work. Elan Ellis was vice president of the mill when it was seized.

ELAN ELLIS. It was completely by surprise and I was personally just flabbergasted. I couldn't believe it and it was something that I of course knew had happened to someone else but it's never happened to me and we had always had the advice that as long as we paid our tax bill, and according with the contract that we had and had had for two or three years they wouldn't do anything. We had a going company. We had plans for the future. We had plans to pay off the remaining tax debt. And it was on a firm basis. And as a result a lot of people lost jobs, a lot of suppliers who were owed at that time were not paid and they consequently didn't pay taxes on their debts. I just can't understand why they did it, other than the fact that the head of the collection department here just felt like that he should close it and take our receivables. We had about, I believe, about 2 million dollars in the accounts receivable at that time.

And I remember at one of the meetings he said to me, that group of—when I look at your statement and see two million dollars in receivables, to me that looks like a big pile of dollar bills. And that's money that I can get. And that's money that's due us. And he thought about it and he maybe dreamed about that two million dollars in receivables again and just decided, well, we'll just go after it.

BRINKLEY. Why would Internal Revenue do that? Close a plant, put people out of work, when the taxes owed were being paid. Counting the payments to the unemployed, the income they did not earn and pay taxes on, and other losses, the Federal government must have come out of this deal with a net loss. We asked Internal Revenue for its side in these two cases, the truck owner and the lumber mill, and here's what they told us.

In the case of the truck driver, they said that simply was how they read the law. Period. As for the lumber mill, the mill said without lower payments it could not continue in business. IRS says it believes the mill would be liquidated before the tax was paid and so they seized it. The mill said it still wanted to bargain and had no plan to liquidate. Those are their two versions of the facts.

Another view on why IRS seems overly anxious to seize private property comes from Stanley Proscott, who until he retired three years ago was the collections agent for Internal Revenue in Ventura, California.

STANLEY PROSCOTT. My production record was up, down, the middle, on an average it was pretty good, anl yet I was subjected to pressure. I was told you don't use enough levies, you don't use enough seizures. And I said, well, is my production that bad? No, but your production would be better if you did use these measures. Which I didn't agree with and I didn't do.

One thing that is overlooked is that when you punish the taxpayer who is usually the working member of the family, you're also punishing his wife and his children, dependents. But that—you're not supposed to consider that.

BRINKLEY. Another explanation of the tax collector's aggressiveness often heard is the charge that agents doing audits are on a quota system. That is if in doing audits they don't gegouge more money out of the taxpayers it looks

bad on their record, they don't get promoted, and they may even be fired. And beyond that the agency does not have good results to show the Congress the next year when it goes asking for a higher budget. IRS says quotas are against its policy and Commissioner Alexander issues firm orders never to use them. But there is much evidence they are used anyway.

Vincent Connery, a former revenue agent, now president of the Treasury Employees Union, told Congress there was a quota system and here's what he told us.

BRINKLEY. Mr. Connery, are internal revenue agents under heavy pressure to produce?

VINCENT CONNERY. Yes, they are. They're unbelievably so.

BRINKLEY. What is the source of this pressure? Where does it originate?

CONNERY. The source of the pressure originates, as we see it, from top IRS management in conjunction with their relationship with the Congress to justify getting additional dollars. They make promises to the Congress, implied or otherwise, that if they get so many dollars they will return so many dollars in uncollected taxes.

BRINKLEY. What happens to an agent if he does a number of audits and doesn't bring in much money? If he decides the taxpayer has paid his fair share, doesn't owe anymore and doesn't bring in any additional money? What happens to him?

CONNERY. He becames generally an ex-agent.

BRINKLEY. Many audits are brief and routine, done with normal courtesy and no problem, but tax agents doing audits are pushed by their superiors to find more money somehow when they feel their records need improvement so they and the agency will look good and people will get promoted. In this, the agent as well as the taxpayer is victimized. If the taxpayer in an audit feels like a hen among foxes it is easy to see why. The laws are so complex and tricky, appeals and court fights so slow and expensive, most taxpayers cannot afford the time and money to fight. And so when more tax is demanded, they just pay it.

Even if IRS is covered by all of the usual laws, it too often operates as if it were not. An ordinary person caught in this trap without the time, knowledge, and money to fight for his rights effectively has lost them.

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COMEDIAN. Section 6401C, abatements, credits and refunds. An amount paid as tax shall not be considered not to constitute an overpayment totally by reason of the fact that there was no tax liability in respect of which such amount was paid.

WOMAN. We're just ordinary taxpayers. We don't have any tax expertise, we're not accountants, we're not. . . .

BRINKLEY. Most people can't afford the time and money to fight, but occasionally one does anyway. For example, Phil and Sue Long of Seattle, Washington, took IRS to court and forced it to make public a lot of its secret rules, documents and procedures. Without them much of what is now known about its working methods would not be known. Now they lecture about their findings on the subject as here in a college classroom.

SUE LONG. One of the things that we tried to do to solve our own case, but it's gotten much broader than that, is to find out what rules IRS is going by when they audit the taxpayers, what procedures they were following. I mean how can you make out the tax return unless you know what the rules are. Surprisingly, you can make less than $10,000 and you file an itemized return, your chances of audit are much higher than if you make more than $10,000 which is a very interesting anomaly, shall we say.

Also, depending on where you live in the country, your chances of audit may be twice as high for the same kind of income as someone who is someplace else, just because that's the way IRS chooses to allocate its manpower.

And what the data shows is no matter what you look at, it's just tremendous differentials; it makes a tremendous difference who you are, what your resources are, and where you happen to live, as to what your taxes are if you come in contact with the Internal Revenue Service.

BRINKLEY. Don Clark, Omaha, Nebraska, is a traveling salesman of industrial flooring. He is on the road living in motels most of the year, works hard and in his best year made $20,000.

DON CLARK. It's a salesman's axiom that you never have a bad call. If you make a call where you're not successful in selling it puts you one step closer to

the successful call that's going to result, but any time that's lost out of my territory is bound to affect my production. You have to make the calls.

BRINKLEY. He says Internal Revenue has audited him ten times for no reason he can find and no reason they will tell him.

Mr. Clark, in these ten audits you have had, how much time would you guess you have had to devote to them?

CLARK. There has to be an estimate because the only physical time I can account for is what I spent physically in their office across the desk from their examiner. But I would think at least in the area of 50 or 60 days involved in the ten audits altogether.

BRINKLEY. 50 to 60 days of your time and it has turned out to be a transfer of $5 in taxes.

CLARK. Yes, in tax money, to the best of my knowledge there has been a net differential in these ten audits encompassing approximately 20 years of time, a net remittance of perhaps $5 on my part.

BRINKLEY. 60 hours work to get $5.

CLARK. 60 days.

BRINKLEY. I mean 60 days work to get $5.

CLARK. Yes.

BRINKLEY. I don't see how that could pay off, do you?

CLARK. No, I certainly don't. I don't think they're getting their money's worth out of my audits.

MAN. What we've done to cure the problems of the Mr. Clarks of this country is provide for a turnoff in our computers. If there's a no change audit, in 1974, then the computer will have built into it that fact as well as the other factors that led to the return being selected in the first place, the combination of numbers on the return that the computer decides or warrants that return selection for audit.

But the new fact will be built in, the fact of the no change audit, the computer will turn off. It will say to the return of the Mr. Clarks in the future, don't audit this one because this produced no change last year, forget it.

BRINKLEY. With so much paper to handle the IRS must rely on computers, and in the case of Don Clark and others like him if the computer throws out his return for audit year after year, even though nothing is never found wrong, the bureaucratic routine is to obey the computer and to call him again. Always refusing to tell him why. For a salesman it means loss of income. The tax agents are paid for all of these hours and days, he is not.

Alexander says now, at least, they're trying to change this. One small tax reform.

In the popular literature, tax reform usually means taking more from the rich with the implication that if the rich paid more all others could pay less. Well if anyone believes this view of how Washington works he is naive. If Washington took more from the rich it would take more from the rich, period. Beyond that there are so few people in the very high brackets that if all income over $100,000 a year were taxed at a 100% it would bring in about 2% of the Federal budget. Even if all of that were applied to reducing the tax rate, which it would not be, it would save the average taxpayer about $24 a year.

It is an obvious unfairness for any rich person to escape paying taxes, but in fact very few of them do escape. A fraction of 1%. By the Treasury's figures the average taxes paid in the higher brackets is extremely high and so there is not that much more to get. Talk of soaking the rich is politically popular and on grounds of fairness and grounds of ideology may be pleasing to contemplate, but there is very little money in it and for the rest of the taxpayers no real help.

Whatever reforms are made will have to be made by the House Ways and Means Committee since it writes the tax laws, and now it has a new chairman, Representative Al Ullman of Oregon.

Representative AL ULLMAN. We do need a major simplification. I've been looking at the problem for several years. And now that I'm the chairman I'm going to be making some moves toward basic structural simplification of the Internal Revenue Code, and this is a complicated capitalistic society. If we didn't have the complications of so many types of business operations, so many types of investment operations, which are a key to the system, to making it work, then we could have a flat tax on everyone but that's not really possible, and therefore...

BRINKLEY. A poll tax, so much a person per year.

ULLMAN. Yes. You can't do it because that would almost bring the system to a standstill and a free enterprise, capitalistic system has got a lot of faults, but it's

the best thing compared to anything else and the only way you could make it work is to recognize its divesity in the tax code.

BRINKLEY. A basic reform widely discussed is this. Write down your adjusted gross income. That is, every dollar of income minus only what you spent to bring it in. Your adjusted gross income with no deductions for interest, charities, union dues or anything else. Take a percentage of that figure and that is your tax. That would allow a tax form three lines long. No complexities, on huge audit apparatus, no tedious records of bookkeeping, no arguments. And the tax rates could be cut just about in half with no loss to the government.

Joseph Peckman, an economist at the Brookings Institution and one of the foremost scholars in this field, we asked him about this kind of reform.

JOSEPH PECKMAN. There are various groups in society that tend to try to protect their outward advantages, and these are not only groups with large amounts of wealth, although the stock exchange, for example, will argue in favor of capital gains preferential treatment, but there are also organizations, for example, that will try to protect the special exemptions for the aged. The real estate lobby will defend itself not only on the ground that the national interest requires additional construction of apartment houses but also on the ground that any change in the tax laws might interfere with construction of the general owner occupied homes that we have in this country. Charitable organizations will object to modifying the charitable deductions. And so on down the line.

You would think that this would be an attractive program but I'm afraid that in practice when Congress gets to look at each one of these separately, they don't find them attractive.

BRINKLEY. Mr. Peckman among others has discussed it. It is the idea of a flat tax on gross income with no deductions whatsoever.

PECKMAN. No deductions whatsoever and that would permit a very low rate.

BRINKLEY. Right, it would mean the tax rate could be cut approximately in half.

PECKMAN. Sure as one expands the tax base necessarily a lower rate is produced in the same aggregate.

BRINKLEY. What do you think of that?

PECKMAN. Standpoint of tax administration that would be a major step toward simplifying the law so that the public could understand it better and we could administer it better.

BRINKLEY. On that reform the expert opinion is not that it can't be done but that it won't. Mainly, they say, because civic, charitable and religious organizations believe that if contributions to them were not deductible they would not get as much. But deducting gifts saves only a fraction of it and perhaps their fears are exaggerated.

In any case, that hardly seems a good enough reason to carry on the present system, since essential as taxes are the way we collect them has become an excessive, tiresome burden on the public's time, patience and sense of fairness.

Tax collectors have powers that no other law enforcement agency is allowed to have and sometimes they are abused. If people feel they are forced to pay too much on any reasonable scale of fairness, they are right.

MRS. KOGER. $13,000 and where did it all go?

BRINKLEY. Again, the example of Claude Koger, the baggage handler. Is there anyone in Washington who needs his money more than he does? If so, who is it?

MRS. KOGER. Aren't going to have much for charity to take off this year—couldn't afford it, huh.

KOGER. Nope.

MRS. KOGER. Every year I say we're going to give more.

KOGER. Hmm, do not deduct. Federal Social Security tax, Federal excise taxes on your personal goods, or for transportation, telephone or gasoline. Fees for hunting, dog license, car inspection, or driver's license. Taxes you pay for another person, water taxes, or taxes on liquor, beer, wine, cigarettes and tobacco.

MRS. KOGER. Actually, we can't take any of these taxes off.

KOGER. According to what this says, no.

MRS. KOGER. Oh, my God. That's about $15. That's at least $15 there we can't take off.

KOGER. Now, this goes someplace else. That goes in another pile. Put that with the W2 forms.

MRS. KOGER. I did.

KOGER. Okay, now the one I gave you for the house . . .

MRS. KOGER. Here.

KOGER. Put that with the separate file, because that's to be deducted. All those that go with the W2 have to be added.

MRS. KOGER. I sure don't have any charities.

KOGER. Would you quit complaining about the charities.

BRINKLEY. Sen. Montoya of New Mexico has had hearings on this and says he is flooded with mail as he never was before. He has touched a raw, throbbing public nerve. He will pursue it.

Another agency, the Administrative Conference of the United States, is investigating and will report in a month or two. Polls, letters to Congress and other evidence is that people feel they're abused and the evidence is they are. Only Congress can stop it and it would be irresponsible of their government to expect them to put up with this forever.

COMEDIAN. Section 273, items not deductible, amounts paid under the laws of estate or territory the District of Columbia a possession of the United States or a foreign country as income to the holder of a life or terminable interest acquired by it, bequest or inheritance shall not be reduced or diminished by any deduction or breakage by whatever name called. In the value of such interest due to the lapse of time.

ELLIS. When I look at your statement and see two million dollars in receivables, to me that looks like a big pile of dollar bills and that's the money that's due us.

ALEXANDER. Limitations get engrafted on the general rules and the exception to the limitations then limitations upon the exception to the limitations.

PROSCOTT. I was subjected to pressure. I was told you don't use enough levies.

CLARK. And I had a $34,000 truck which I think would have covered that $1500 lien.

MRS. COGAR. If they would declare in the month of June you would have to pay no taxes it would be wonderful.

ANNOUNCER. NBC News produced this program and is responsible for its contents.

Appendix B

Communications Received by the Committee Expressing an Interest in These Hearings

NATIONAL GRANGE,
Washington, D.C., May 7, 1975.

HON. FLOYD K. HASKELL,
Chairman, Subcommittee on Administration of the Internal Revenue Code, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Grange, representing thousands of farmers, rural residents, urban and suburban members, has a keen interest in the U.S. Census of Agriculture. In fact, the Grange assumed a strong position against the Administration when it advocated postponing the 1974 Census of Agriculture.

The Grange advocated the Census in 1974 because it was strongly believed that agriculture needed up-dated statistics on the invasion of agriculture by corporate conglomerates. Without this information we, as an organization representing small to medium size farmers, would have no way of knowing the extent of penetration by non-farm interests into agricultural production.

The Grange in November of 1973 recognized the farmer's right of privacy regarding the examination of his income tax returns by agencies other than the Internal Revenue Service. The delegate body adpoted the following resolution:

"FARMERS' INCOME TAX RETURNS

"Whereas, it has been proposed that the Department of Agriculture be permitted to inspect farmers' income tax returns, and

"Whereas, we feel enough information is reported by farmers to the Department of Agriculture through numerous agricultural statistical reports, and

"Whereas, we feel if one department is granted permission to inspect individual income tax returns, other departments will follow in taking this liberty: Now, therefore, be it

"*Resolved*, That the National Grange go on record opposing the examination of farmers' income tax returns by any other personnel than those associated with the Internal Revenue Service."

However, after stating this position, we do believe that the Census Bureau should have access to information regarding name and address from the 1040 forms of the I.R.S.

We have representation on the Agriculture Advisory Committee to the Census Bureau and in this capacity we support the position of the Bureau in seeking to maintain the availability of IRS information. Without such information the statistical gathering in the U.S. would not only be hampered but, if the service was to be maintained, it would lead to duplicative cost by the Bureau in maintaining accurate and adequate mailing lists.

We urge you and your committee to amend S. 199 to permit the Census Bureau to maintain their access to the necessary information from 1040 forms of the IRS.

We would appreciate this letter being made a part of the hearing record on S. 199.

Thank you.

Sincerely,

JOHN W. SCOTT,
Master.

DEPARTMENT OF TAXATION,
OFFICE OF THE TAX COMMISSIONER,
Columbus, Ohio, April 23, 1975.

Senator ROBERT TAFT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TAFT: I am writing you to express my concerns regarding S. 199, presently in hearings before the Subcommittee on Administration of the Internal Revenue Code. This bill, introduced by Senator Weicker, et al., would restrict the discloure of federal income tax returns.

Initially, let me state that I share the Senator's concern for the confidentiality of a taxpayer's income tax return. The Ohio Department of Taxation has always held and will continue to hold tax return information, state or federal, in the strictest of confidence. I also can appreciate the fears expressed by Senator Weicker.

However, the subject bill's attempt to insure the confidentiality of tax returns results in severely narrowing the current exchange of information programs conducted by the I.R.S. and the states, including Ohio. As you know, Ohio's personal income tax is based upon federal adjusted gross income, and therefore, heavy reliance is placed upon access to federal income tax data for any meaningful compliance on this tax.

Specifically, the bill clearly authorizes state tax officials to inspect federal tax returns, but is quite nebulous regarding the availability of magnetic tapes, computer printouts, or other electronic reproductions of extracted tax data. Whether general lists of Ohio citizens filing federal returns would be subject to disclosure is in doubt under this bill.

In addition, the bill deletes current authorization to release tax data to municipal governments levying income taxes. On their behalf, denial of access to area taxpayers' names and addresses (not dollar income amounts) would void virtually their entire enforcement programs.

The bill also requires the I.R.S. to report quarterly to the Joint Committee on Internal Revenue Taxation all tax returns furnished, to whom furnished, and the date furnished. If such a reporting requirement applies to electronic reproductions of tax data, like magnetic tapes containing thousands of names, then such an administrative reporting burden will certainly result in narrow and delayed acceptances of requests by the states.

In conclusion, our citizens' rights to confidentiality must be weighed against their rights to a fair system of taxation,—one where the tax burden is borne by all. I feel both these desirable goals could be accomplished if the subject bill was amended to be more specific in the areas I have indicated.

I would appreciate your support on this problem and your efforts to correct it.

Sincerely,

GERALD S. COLLINS,
Tax Commissioner.

HOLMES F. CROUCH,
Saratoga, Calif., May 8, 1975.

FEDERAL TAX RETURN PRIVACY AT THE PREPARER'S LEVEL—THREE DANGERS

STATEMENT TO THE FINANCE SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

MR. CHAIRMAN: The concept of "right of privacy" in this country is embedded in Amendment 4 of the U.S. Constitution. Yet, this fundamental right of taxpaying citizens has been eroded, distorted, abused, invaded, and violated by the arrogant bureaucracies of government in general, and by the Internal Revenue Service in particular.

The Internal Revenue Service interprets Amendment 16 (the power to lay and collect taxes) as its charter to violate all other constitutional rights of citizens. As a result of this view by the Internal Revenue Service, we are now at the dangerous threshold of full, outright Tax Dictatorship. This view apparently is being supported by recent court decisions denying the right of privacy to persons other than hard-core criminals.

Protection of privacy starts at the very lowest levels: the preparation of the individual tax return. This protection is needed at all subsidiary steps of the preparation (work sheets, bank deposits, and supporting documents) as well as at completion and submission of the final return.

As a professional tax return preparer with frequent contact with the Internal Revenue Service and its endless forms and multitudinous regulations, I want to identify three specific dangers to the right of privacy that need immediate legislative correction. The Internal Revenue Service has gone too far, and virtually has destroyed grass roots confidence in, and respect for government in this country.

Danger.—Movement has been underway for some time by the Internal Revenue Service to force all tax return preparers to keep for at least three years a copy

of all tax returns which they have prepared. A penalty of $50 has been proposed for each instance in which a copy of the return is not retained. Imposing penalties to get others to violate the individual rights of citizens is typical of the sick bureaucratic mind of the Internal Revenue Service.

Most taxpayers do not want, and in fact object to, tax return preparers keeping copies of their tax returns. They object to this even for one year, let alone three or more years. And for good reason. Taxpayers simply dislike—and distrust—having their private financial information being kept by others. There is always the risk of this information being divulged to persons and bureaucracies other than for whom intended. And there is a new, growing risk today: burglary and theft by teenagers and drug addicts. What young thieves are suddenly realizing is that stealing tax returns from tax preparers provides a unique source of financial information on persons to be victimized. Several of my own clients in reporting thefts to me for tax deduction purposes, have told me that their tax files had been rifled and in some instances portions removed.

Consequently, I feel that legislation must be enacted to prohibit any tax return preparer from keeping any tax returns he has prepared for others, except by express written permission of the taxpayer.

Danger 2.—Internal Revenue agents love to drop in, unannounced, on tax return preparers and demand that the preparers turn over all records and work papers on a specified client or clients. When the preparers insist that these records and work papers are the private-confidential information of the individual taxpayers, federal agents intimidate the preparers. The agents hand to the preparers an administrative summons (pocket subpoena) and warn the preparers against contacting the taxpayers concerned.

Most taxpayers believe, and rightly so, that all work papers and backup records prepared by preparers are the private documents of the taxpayers themselves. Especially so, since it is the taxpayers who pay to have their work papers prepared. Certainly, the government does not pay for these documents. Clearly, then, they are not "third party records" subject to the public domain, as the Internal Revenue Service insists. This blatant intrusion of privacy through allegations of third party records (therefore, public domain) is the high road to the destruction of all financial privacy in this country.

Consequently, I feel that legislation must be enacted to prohibit any tax return preparer from turning over any work papers or other tax-related records to any government agent without the express knowledge and consent of the specific taxpayer concerned.

Danger 3.—Upon notifying a taxpayer or his tax preparer of an audit, a favorite trick of the Internal Revenue Service is to immediately contact the taxpayer's bank or other financial institution and press for a printout on all deposits and all nondeposit transactions the taxpayer has made. In a rather sickening manner, most banks and financial institutions cave in to these requests and veiled threats, and too accommodatingly turn over all financial data on a targeted taxpayer. This puts the taxpayer at a disadvantage and keeps him/her off guard during an audit, not knowing when the "other shoe" will fall.

This direct road into the financial affairs of taxpayers has been paved by fuzzy-worded court decisions and naive judicial assumptions that the Internal Revenue Service will be mindful of the constitutional rights of the taxpayers that it attacks. This jeopardy to privacy is largely the result of Public Law 91-508 (Currency and Financial Reporting Act). More and more today, banks and financial institutions are being served with demands from revenue agents to surrender financial data on citizens. Usually, the third-party-records argument is used. This argument is probably not much different from that used in Communist Russia and Communist China.

Consequently, I feel that legislation must be enacted to prohibit any tax return preparer, any bank, or any financial institution from turning over any data or information concerning deposits and cash transactions of taxpayers to any government agent without probable cause and without judicial process.

The above three dangers at the tax preparation level are sufficient to destroy all financial privacy. These dangers must be removed.

There are many who feel that the road to Tax Dictatorship in this country already is too solidly paved, to ever correct the abusive power of bureaucracies such as the Internal Revenue Service. This is why—or, certainly one reason why—confidence in government is at an all-time low . . . and head lower. Unless accompanied by strong Congressional watchdog subcommittees, corrective legislation against abusive bureaucracies won't work any more. Taxing bureaucracies

never give up; they can always find a toenail argument to abort and distort any legislative intent.

Mr. Chairman, whatever legislation evolves from your subcommittee intended to protect the right of privacy of citizens, I hope you put *teeth* into it. The teeth must be specifically directed at the Federal (and State) bureaucracies; the teeth must specifically prohibit the circumvention of legislative intent; and the teeth must provide for penalties against the bureaucracies and their personnel.

For reasons above and others, it is my belief that any protection of privacy legislation—if it is to be effective at all—must start at the tax return preparation level.

Respectfully submitted.

HOLMES F. CROUCH,
Tax Practitioner.

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS.
Chicago, Ill., April 18, 1975.

Hon. FLOYD K. HASKELL,
Chairman, Subcommittee on Administration of the Internal Revenue Code, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: I understand that a hearing is to be held on April 21 on S. 199 and other bills which would classify information on Federal tax returns as confidential and limit the inspection of such a return or the disclosure of information from such a return to the persons or representatives of designated in the bill.

This subject is one of considerable interest and importance to the heads of the tax departments of the several states since practically all of them have formal agreements with the Internal Revenue Service for the mutual interchange of information to identify nonfilers of returns, to verify the accuracy of data included in a return, and generally by cooperative activities to improve the effectiveness of tax administration.

The text and explanation of S. 199 has been sent to the heads of the state tax departments with a request that they communicate their views to you and the members of the subcommittee. In view of the limited time remaining before the hearing it may not be feasible for many of them to do so. Therefore, in order to give the subcommittee some indication of the potential effect of S. 199 and similar bills on these IRS-state exchange programs I submit to you herewith my own appraisal which on the basis of experience and observation, is quite likely to be representative of the views of state tax administrators.

Taking S. 199 as a point of reference, the bill makes several changes in the present law: the substitution of the Commissioner of Internal Revenue for the Secretary of the Treasury in respect to the rule making authority; the substitution of the head of the state tax agency for the governor of a state as the requesting authority; the elimination of the authorization to transmit Federal income tax information to a political subdivision of a state; and the addition of a requirement that the Commissioner of Internal Revenue report quarterly to the Joint Committee on Internal Revenue Taxation listing the returns furnished for inspection and the name and position of the state tax officials making the request.

As to the first three changes enumerated above, it may be reasonably anticipated that none of them would have any substantial effect one way or the other on existing programs.

The fourth change, the reporting requirement, might possibly be one of concern for state tax administrators on the ground that the effectiveness of the exchange programs might be reduced if the record-keeping requirements imposed on the Commissioner were onerous enough to result in the elimination of some exchange programs. For example, it is not clear how the reporting requirement would be interpreted in respect to a reel of magnetic tape containing summary data items extracted from several thousands returns and transmitted to a state on a tape to facilitate the processing and matching these items with similar items on state tax returns, also, to identify nonfilers. A reasonable interpretation of the reporting requirement in such cases, say by reference to the number of returns abstracted and the state of filing would not, I think, cause any disruption of these valuable programs.

I take it that the bill would authorize the head of the tax department of the District of Columbia to enter into an agreement with the Commissioner of Internal Revenue just in similar manner as the head of a state tax department and

that this is covered by the definition of "State" in Sec. 7701(a)(10) of the Internal Revenue Code.

I am not certain whether the definition of a return is limited to those documents required to be filed by the taxpayer. Abstracts of audit reports, of field investigations and other information relating to the tax liability of an individual or corporation are included within the exchange program and there should be no change in that respect. Read literally, only the "return" itself and information in it is confidential and governed by the "authorized inspection" provisions of the bill. The associated materials in the taxpayer's file are not within this definition and presumably not confidential.

A final point on the bill which occurs to me is the relationship, if any, between the reporting requirements in, for example, S. 199 and those in the recently enacted Privacy Act, P.L. 93-579 approvd December 31, 1974. In that connection, it is appropriate to point out that the managers of the respective bills stated on the floor of both houses that there was no intention to interfere with the practice of the Internal Revenue Service in furnishing information to the State taxing authorities (*Congressional Record*, December 17, 1974, p. S21815 and December 18, 1974, pp. H12246-7.)

I have discussed S. 199 with Charles A. Byrley, Executive Director of the National Governors' Conference. He is in agreement with the substance of the views expressed here and you will no doubt hear from him directly.

With every good wish, I am

Sincerely,

CHARLES F. CONLON,
Executive Secretary.

STATEMENT OF THE NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives, on behalf of its 147 cooperative organizations representing more than three million farmers and rural residents, wishes to comment on S. 199, a Bill to amend the Internal Revenue Code of 1954.

Farm marketing and supply cooperatives are regular users of agricultural data collected by the quinquennial Census of Agriculture. Such data, collected and compiled both by country, and by enterprise and farming operation, is critically needed in the daily operations of cooperatives that serve American farmers. It would be difficult, if not impossible, to maintain increasing standards of efficiency and effectiveness without such data as provided by the U.S. Census Bureau.

Farmer cooperatives currently market 70 percent of the nation's dairy products, 35 percent of its grain, 30 percent of its fruits and vegetables, 30 percent of its cotton, and 15 percent of its livestock. In addition, farmer cooperatives supply 33 percent of American farmers' fertilizer, 32 percent of their petroleum, 20 percent of their seed, 20 percent of their chemicals, and 18 percent of their feed and feed products. These farmer-owned and controlled businesses now do an annual gross volume of nearly $30 billion, helping to provide the nation with the world's most plentiful food and fiber.

Census of Agriculture data is critical to those marketing and farm supply operations. A case in point is the recent severe shortages of fuel and fertilizer that hampered farming operations during the 1973 and 1974 crop years. Adequate data did not exist on regional demand and usage of major fertilizer ingredients, such as nitrogen, phosphate, and potash. Yet, such utilization data was necessary in order for the U.S. Department of Agriculture to project accurate regional needs by farmers, and to assist commercial suppliers in allocating existing supplies. The Census of Agriculture was selected as a major source of such data, and the item was added on forms for the 1974 questionnaire.

Another case in point was the regional utilization and on-farm storage of farm fuels, including breakdowns to propane, gasoline, and distillates. Again, no such accurate national source was available; and again, the item was added to the 1964 Census of Agriculture. Data on these and numerous other farm inputs will now help assure U.S. farmers of adequate quantities of farm equipment and supplies in crop years to come.

The Census of Agriculture also provides U.S. agriculture with crop, livestock, and financial data needed for design and implementation of national farm programs. There simply is no other national source of county-tabulated data from the Census of Agriculture.

The National Council of Farmer Cooperatives is proud to participate in the Census Advisory Committee on Agriculture Statistics, and wholeheartedly supports the continuation of an effective quinquennial Census of Agriculture. The National Council is in full concurrence with the following recommendation, adopted on April 18, 1975 by the Census Advisory Committee:

The Census Advisory Committee on Agriculture Statistics, consisting of independent, non-government users of data traditionally obtained through the U.S. Census of Agriculture, urges that names and addresses and general classification information previously available for Census use be permitted to remain available for future Censuses of Agriculture.

The Committee wholeheartedly believes that the Census of Agriculture is the prime source of county data needed for effective agricultural programs. It had consistently provided the most complete and effective source of such data.

Changes in the current method of contacting bonafide farmers, specifically through Internal Revenue Service lists of farmers' names and addresses, would greatly increase data collection costs, while reducing the completeness and effectiveness of future Censuses of Agriculture. The Committee is convinced that adequate safeguards to protect farmers' privacy do exist under Title 13 of the U.S. Code.

The Committee hereby urges the U.S. Congress to allow the Bureau of the Census to retain its access to names and addresses of bonafide farmers that are currently available from IRS and other agencies of government.

The National Council also supports the policy of personal privacy for farmers filing income tax returns with the Internal Revenue Service. Income tax returns should be retained within the jurisdiction of the Internal Revenue Service, and should be protected under existing federal confidentiality laws.

But the National Council strongly opposes any attempt by the U.S. Congress to restrict or prohibit U.S. Census Bureau access to pertinent, non-personal data that is critically needed for the Census of Agriculture. Specifically, the National Council opposes any restriction on the availability of names and addresses of bonafide farmers and farm operators, as held by the Internal Revenue Service, and needed by the Census Bureau for conducting the Census of Agriculture.

Files of IRS Form 1040–F provide the nation's best available directory of names and addresses of financially viable farmers and farm operators. To prohibit the use of these names and addresses by the Census Bureau would force at least a partial return to the arduous and extremely expensive task of sending enumerators down counrty roads to call personally on farmers. Even conservative estimates place a doubling of Census costs, from a current level of $28 million to a projected $55 million or more.

Yet, Sec. 6103 (a) (2) of S. 199 clearly stipulates that "No information contained in any such return shall be disclosed." Such an arbitrary prohibition would surely prevent the Internal Revenue Service from the current practice of providing names and addresses for Census Bureau cross-checking and mailing purposes.

It is imperative that a Census of Agriculture be conducted on a full and factual basis; that such a Census be free of undue bureaucratic restrictions other than those spelled out in Title 13 of the U.S. Code; and that all data be made available as soon as possible to U.S. agriculture and others of the nation's citizenry.

The National Council agrees wholeheartedly with President Ford in his Proclamation 4349 of February 6, 1975: "Prompt, complete and accurate responses to all official inquiries made by Census officials are of great importance to our country."

It is just as important that the U.S. Congress continue to allow the Census Bureau to continue its great responsibility in conducting a Census of Agriculture—as long as the privacy of citizens is not unduly violated. To this end, we oppose any restriction in S. 199 that would prohibit Census Bureau use of farmers' names and addresses.

THE RENEGOTIATION BOARD,
Washington, D.C., May 2, 1975.

HON. FLOYD K. HASKELL,
Chairman, Subcommittee on the Internal Revenue Code, Senate Finance Committee, Old Senate Office Building, U.S. Senate, Washington, D.C.

DEAR SENATOR HASKELL: The Renegotiation Board ("the Board") has been advised that your Subcommittee is presently considering the merits of S. 199. As was indicated in the testimony of Internal Revenue Service Commissioner Donald C. Alexander before your Subcommittee on April 21, 1975, the Renegotiation Board is one of the Federal agencies which relies upon the inspection of income tax returns to effectively perform its statutory function. Because the

Board would be adversely affected, should S. 199, as written, become permanent legislation, we are submitting our comments for your consideration.

The Board was created by the Renegotiation Act of 1951 ("the Act") 50 U.S.C. App., §§ 1211–1233. Its purpose and that of the predecessor Boards from 1943, has been the elimination and recapture of excessive profits from contracts and subcontracts ("contracts") awarded by Department of Defense, and subsequently, the National Aeronautics and Space Administration, General Services Administration, Federal Aviation Administration, Maritime Administration and certain Energy Resource Development Agency (formerly the Atomic Energy Commission) contracts.

A contractor or subcontractor ("contractor") subject to the Act must file with the Board a Standard Form of Contractor's Report (RB Form 1) on a fiscal year which coincides with the contractor's Federal income tax period, and contains financial data reported in its Federal income tax return. In determining the presence or absence of excessive profits, the Board has historically applied certain statutory factors to this financial data. Those factors which are based on the financial data furnished by the contractors include: efficiency of the contractor; reasonableness of costs and profits; return on net worth and capital employed; risk; contribution to the defense effort; character and complexity of business; and other such factors consideration of which the public interest and fair and equitable dealing may require. (Section 103(e) of the Act, 50 U.S.C. App., § 1213(e).)

The provisions of Section 1 and Section 3 of S. 199 would amend Section 6103(a)(1) and Section 7213 of the Internal Revenue Code ("IRC") of 1954 to change the Board's statutory relationship with the Internal Revenue Service ("IRS"). The proposed amendment to 6103(a)(1) would further restrict the the present authority of the Board to inspect tax returns to an extent which would encumber, if not totally impede, the statutory purposes of the Renegotiation Act of 1961, as amended (50 U.S.C. App., § 1211). Specifically, Section 6103(e)(5) of the proposed amendments to Section 6103 would require the Board, in each case, to request Federal tax information through the President of the United States. This limitation of the Board's present authority would preclude a verification of the accuracy of the contractor's Form RB–1 and would adversely affect the efficient implementation of the Board's statutory functions.

The Board's ability to annually review the financial statements of approximately 4,000 contractors who are subject to the Act rests initially on the completeness and accuracy of contractors' Federal income tax returns. Section 1213(f) of the Act which defines profits derived from contracts with named departments defines "profits" as: * * * the excess of the amount received or accrued under such contracts and subcontracts over costs paid or accrued with respect thereto and determined to be allocable thereto. *All items estimated to be allowed as deductions and exclusions under chapter 1 of the Internal Revenue Code* (excluding taxes measured by income) shall, to the extent allocable to such contracts and subcontracts, be allowed as items of cost, *except that no amount shall be allowed as an item of cost by reason of the application of a carry-over or carry-back.* (Emphasis supplied.)

The above provision, which was initially contained in the first Renegotiation Act of 1943, further illustrates the close relationship between the filings required for renegotiation and the Federal income tax reports of the contractors and subcontractors. An example of the Board's reliance on tax information is reflected by the reconciliation of book to tax required by line 7 of the Board's RB Form 1 (see attachment). The information set forth in line 7 is derived from Schedule M–1 of the Internal Revenue Service Form 1120. The Board's regulations (32 C.F.R. (RBR) 1458) further develop Section 103(f) of the Act and specifically refer to the recognition of the contractor's deductions for Federal income tax purposes (RBR 1459.1(b)) including salaries, wages and other compensation (RBR 1459.2); amortization and depreciation (RBR 1459.3); costs of conversion to renegotiable business (RBR 1459.4); losses (RBR 1459.5); and other financial reporting relating to their financial situation as reflected in their Federal tax return. See lines 7 through 12 and 14 of the attached RB Form 1.

The following are further comments on the need for the Board's continuing authority under Section 6103 of the IRC of 1954 and IRC Reg. 301.6103(a)–105:

1. In addition to the Federal tax returns, the Board, in many instances, requires the IRS audit reports to verify the profits reported for renegotiation. S. 199 would not only deny the Board access to the Federal tax returns, it would also deny our access to audit reports developed by the IRS.

2. When the renegotiation process was first enacted into law, it was envisioned that in the analysis of contractors' financial submissions, the Board would rely on the IRS inspection and audit to avoid duplicating the review of the contractor's financial reports, and would also provide the Board with an independent verification service. S. 199 would eliminate the Board's ability to utilize this essential data developed by the IRS and would require a substantial increase in the Board's staff to needlessly duplicate the present IRS audit activity.

3. Because of our present authority to obtain Federal tax returns, many contractors voluntarily furnish copies of their Federal tax returns with their renegotiation filings, thus facilitating our analysis. S. 199 would provide a basis for contractors to refuse to furnish Federal tax returns essential to the renegotiation process.

4. If we do not already have a copy of the contractor's Federal tax return, when a renegotiation filing is assigned to the field for further investigation, that document is requested as the first step in the financial and performance analysis which results in the Board's determination of the presence or absence of excessive profits. Contractors seldom refuse our requests for their Federal tax return because they know we have the legal authority and means to obtain the documents from the IRS. This present authority alone enables us to obtain the Federal tax returns voluntarily without making more than 12 to 24 formal requests a year to the IRS. S. 199 would limit the Board's ability to voluntarily obtain the Federal tax returns.

5. When a contractor refuses to file with the Board in accordance with the requirements of the statute, the Board's alternative is to request the contractor's Federal tax return and process the contractor on the information contained in that document. In those situations, S. 199 would necessitate a Presidential request to enable the Board to implement its authority to identify and recover excessive profits.

6. The filing requirements of contractors subject to renegotiation are controlled by the filing of their Federal income tax returns. The Board's statute (Section 1215(e)(1) of the Act) and the Board's regulations (RBR 1470.1–3) require the contractors to file on the first day of the fifth month following the close of their fiscal year. When they have been granted an extension of time to file their Federal income tax, they are required to make their report to the Board 15 days after the extended filing date. This extension of the due date is automatic provided the contractor furnishes the Board a copy of the extension approved by the IRS. There is current consideration being given to applying penalties for late renegotiation filings. S. 199 would substantially impair the Board's ability to verify the timeliness of filing.

7. Section 1481 of the Internal Revenue Code of 1954, as amended, provides that a Federal income tax credit, computed by IRS, shall be administratively applied against Board determinations of excessive profits. In order to eliminate the net amount of excessive profits due the Government, the Board must first obtain this Federal income tax credit from IRS, as required by Section 105(b)(8) of the Act. The language of S. 199 could be interpreted to preclude the Board from receiving this necessary information.

The Board has no comments regarding the proposed revision under Section 3 of S. 199 to Section 7213 of the Internal Revenue Code of 1954 increasing the criminal penalties from a misdmeanor to a felony.

Concerning the purpose of S. 199 to protect the confidential nature of Federal tax returns, the Board has issued regulations (RBR 1480) implementing the purposes of Section 6103(a) of the IRC of 1954, the regulations 301.6103(a)–105 and Executive Order 10907 dated January 17, 1961. The Board's regulations (RBR 1480.2) specifically refer to the confidential nature of the tax information and the criminal and civil penalties of unauthorized disclosure described in Section 1905, Title 18, United States Code, Section 7213(a)(1) of the Internal Revenue Code of 1954, and Executive Order 11652 dated March 8, 1972. The present provisions of the law with respect to unauthorized disclosure of information are known to the Board and its staff. To date there have been no known violations of the present law or the Board's regulations issued thereunder.

As you are aware the present Renegotiation Act lapses on December 31, 1975. During the interim period the staff of the Joint Committee on Internal Revenue Taxation is directed by Public Law 93–368, Section 11(a), to conduct ". . . a comprehensive study and investigation of the operation and effect of the Renegotiation Act of 1951, as amended, with a view to determining whether the Act should be extended . . . and . . . how the administration of such Act can be improved." Section 11(c) instructs the staff to submit the results of its study to the Bank-

ing, Currency and Housing Committee [sic] of the House of Representatives and the Committee on Finance of the Senate on or before September 30, 1975, together with such recommendations as it deems appropriate.

We appreciate the opportunity to comment on those provisions of S. 199 which would have an adverse effect on the efficient administration of the Renegotiation Act of 1951, as amended. Should you have any questions concerning our views, Mr. David M. F. Lambert, our General Counsel, should be contacted (254–5973).

The Office of Management and Budget has no objection to our submission of this report to your committee.

Sincerely yours,

REX M. MATTINGLY,
Acting Chairman.

Enclosure: As stated.

THE RENEGOTIATION BOARD Washington, D.C. 20446	STANDARD FORM OF CONTRACTOR'S REPORT FOR RENEGOTIATION	Form Approved O.M.B. No. 101-R0002
RB FORM 1	CONTRACTOR'S NAME	CPT NO
To be filed with the Board on or before 1st day of 5th calendar month following close of your fiscal year	NUMBER AND STREET	
	CITY AND STATE ZIP CODE	EMPLOYER IDENTIFICATION NO.
	FISCAL YEAR ENDED , 19	

Sec. I. Income Statement for Renegotiation

CLASSIFICATION	TOTAL (A)	RENEGOTIABLE: FIRM FIXED PRICE (B)	RENEGOTIABLE: CPFF (C)	RENEGOTIABLE: OTHER (Attach Schedule) (D)	NON-RENEGOTIABLE (E)
1. SALES (NET): a. Prime Contracts		$	$	$	
b. Subcontracts					
c. Commissions					
d. Royalties, Rentals, Mgmt. Fees, etc.					
e. Total Sales (NET)	$				$
2. COST OF GOODS SOLD: a. Material					
b. Direct Labor					
c. Indirect Mfg. Exp. (Attach Schedule)					
d.					
e. Total Cost of Goods Sold					
3. SELLING & ADVERTISING EXPENSE: a. Salaries					
b. Commissions					
c. Branch Office Expense					
d. Other Selling Expense (Attach Schedule)					
e. Total Selling Expense					
f. Advertising Expense					
g. Total Selling & Advertising Expense					
4. GENERAL & ADMINISTRATIVE EXPENSE: a. Officers' Salaries					
b. Other Office Salaries					
c. Other (Attach Schedule)					
d. Total Gen'l & Adm. Expense					
5.					
6.					
7. ADJ. FROM BOOK TO TAXABLE $ (Attached)					
8. TOTAL COSTS & EXPENSES					
9. OPERATING PROFIT OR (LOSS)					
10. OTHER INCOME & (DEDUCTIONS) NET, ALLOCABLE IN WHOLE OR PART TO RENEGOTIABLE BUSINESS (Attach Schedule)					
11. NET PROFIT FOR RENEGOTIATION BEFORE INCOME TAXES					
12. OTHER INCOME & (DEDUCTIONS) NET, ALLOCABLE WHOLLY TO NON-RENEGOTIABLE BUSINESS (Attach Schedule)					
13. NON-FEDERAL TAXES MEASURED BY INCOME					
14. NET INCOME					
15. SPECIAL ITEMS INCLUDED IN LINES 2-7: a. Research & Development Expense					
b. Officers' Compensation					
c. Subcontracting Costs in Line 2e					
d. Rentals, other than real estate (Attach Schedule)					

Sec. II. We attach a full description of the methods used in:

(a) Segregating sales between renegotiable and non-renegotiable including the method of determining the amount of each exemption taken.

(b) Allocating cost of goods sold and expenses between renegotiable and non-renegotiable business.

REVISED 7/72

Sec. III. We attach for this fiscal year:
- ☐ Published annual report
- ☐ Audit report by independent public accountants.
- ☐ Statement of income.
- ☐ Statement of surplus.
- ☐ Balance sheet.
- ☐ A statement of any renegotiable loss carryforward claimed in this fiscal year.

Sec. IV. Method of Accounting Employed:

	Cash	Accrual	Completed Contract
Federal income tax return	☐	☐	☐
This report	☐	☐	☐

Our taxable year is the same as the period covered by this report. Yes ☐ No ☐

Sec. V. We made voluntary refunds in amount of $ _____ and voluntary price reductions in amount of $ _____ applicable to renegotiable contracts or subcontracts in this fiscal year.
☐ We made no such voluntary refunds or voluntary price reductions.

Sec. VI. Exemption of Commercial Articles or Services:
(a) We have self-applied the exemption in the amount of $ _____ and have excluded such amount from renegotiable sales in Section I of this report. All such sales were made in conformity with the price limitation prescribed in section 106(e)(4)(B)(ii) of the Act. *(See Instructions, page 6, Section VI, paragraph (a)).*
(b) The Board has granted our application for exemption in the amount of $ _____ and we have excluded such amount from renegotiable sales in Section I of this report. We have not excluded any amounts for which exemption was denied.
(c) Except for any amounts shown in (a) or (b) above, the exemption is hereby waived ☐. (Check only if you desire to waive the exemption in whole or in part *(Instructions, VI(c)).*

Sec. VII. There were ☐ were no ☐ changes in the form or control of our organization during or after this fiscal year. *(If there were changes, give details.)*

Sec. VIII. There were ☐ were no ☐ persons under control of, or controlling, or under common control with us during this fiscal year. (If there were, attach statement showing name and address of each such person, with a brief description of the character of its business and the nature and extent of its relationship with your company, and indicating whether it had renegotiable business.) *(For definition of "person", see Instructions, page 1.)*

Sec. IX. Small Business Status:
(a) As of the last day of the fiscal year we were ☐ were not ☐ a small business concern as defined in sections 121.3-8 and/or 121.3-12 of the regulations of the Small Business Administration.
(b) Approximately ____ percent of our subcontracting during the fiscal year was to small business concerns as defined in section 121.3-12 of the regulations of the Small Business Administration.

Sec. X. Principal products sold or services rendered during this fiscal year	Estimated Amounts		State whether fabricating, assembling, distributing, etc.
	Renegotiable	Non-Renegotiable	
	$	$	

Certification

The undersigned certifies, under the criminal penalties provided in Sec. 105(e)(1) of the Renegotiation Act of 1951, and 18 U.S.C. 1001, that he is authorized to sign this report on behalf of the contractor and that the representations contained in this report are true and correct to the best of his knowledge and belief.

If a corporation:

State of incorporation _____ Date incorporated _____ Exact name of contractor _____

If a partnership or proprietorship:

Date business established _____ Signature of officer, partner or proprietor _____ Title _____

Date _____

GSA DC 72-2140

ROBERTS & HOLLAND,
New York, N.Y., April 24, 1975.

Re hearing on Federal tax return privacy.

COMMITTEE ON FINANCE,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.
Attention: Michael Stern, staff director.

DEAR MR. STERN: This letter and the enclosed memorandum constitute our written testimony in connection with the hearings on Federal tax return privacy. In particular, we would like to address ourselves to the issue of disclosure of "private letter rulings" and determination letters.

We enclose the memorandum for your use in preparing corrective legislation to prevent disclosure of names, addresses, identifying data and business information contained in private letter rulings and determination letters requested by individuals and closely-held businesses.

At a hearing conducted by the Internal Revenue Service on March 25, 1975, with regard to the regulations it proposed to deal with the publication of private letter rulings, we appeared and presented our views as to the effect these regulations will have upon requests for rulings and the rulings process. At that time we expressed our view that the case law interpreting the Freedom of Information Act amply supports our position that, absent unusual circumstances, names, addresses and other personal and business information of individuals and closely-held corporations who request rulings, not only may be but should be withheld when the rulings are made available to the public, in order to avoid a clearly unwarranted invasion of their right to personal privacy. To supplement these views, we submitted the enclosed memorandum to the Internal Revenue Service.

We favor the policy implicit in the regulations that these rulings and determination letters should be made public. However, we would like to urge upon you our view that publication of these rulings with identifying data will result in a substantial intrusion upon the right to privacy of certain taxpayers, which is neither justified nor authorized under the Freedom of Information Act.

We will be happy to provide any further information which you require regarding this issue.

Respectfully submitted.

ROBERTS & HOLLAND.

Enclosure.

ROBERTS & HOLLAND.
April 3, 1975.

MEMORANDUM

I. OVERVIEW

Our principal concern is on behalf of individual taxpayers and closely-held corporations. Disclosure of their names would convey no significant information to the public. These taxpayers have not sought public financing; their names are not household words. We are obligated to consider whether there is any public policy—any advantage to society—that requires further inroads on the already vast invasion of personal privacy that has become a part of our modern life.

We accept the policy of the Freedom of Information Act, as determined by the courts, in its application to private rulings. The issue is whether the policy of the Freedom of Information Act requires a further invasion of privacy in two respects: the disclosure of the name of the taxpayer obtaining a ruling and the disclosure of personal and business—commercial and financial—information.

It is helpful to isolate the substantive issue. The training of lawyers and accountants tends to dwell on the procedural issues, *i.e.*, how to accomplish a desired result. If we can agree that these taxpayers are entitled to retain their anonymity, the enormous talent available in the IRS and the tax bar can certainly fashion an appropriate procedure.

In our opinion, the substantive issue relates primarily to Exemption 6 of the Act. This exemption prohibits the disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Wine Hobby, USA, Inc.* v. *IRS*, 502 F.2d 133 (3rd Cir. 1974), the Third Circuit adopted the conclusion of the Circuit Court of the District of Columbia in *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971):

"Exemption (6) necessarily requires the court to balance a public interest purpose for disclosure of personal information against the potential invasion of individual privacy."

This need to balance competing public interests is also reflected in the Senate Report on the Act:

"The phrase 'clearly unwarranted invasion of personal privacy' enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the public's right to governmental information."

We respectfully submit that this significant issue has not been confronted by the Internal Revenue Service in the Proposed Regulations, nor, for that matter, by Tax Analysts and Advocates in their comments published in Tax Notes of January 20, 1975. Tax Analysts, in its function as a public interest law firm, owes a special obligation to these taxpayers because their "interests are . . . so varied and diffused that it is not practical to rely upon collective financing" to retain private counsel. Rev. Rul. 75–74, TIR–1348. Indeed, these taxpayers, today, are in

all likelihood not aware of the fact that tomorrow they may need to file a request for ruling.

We especially wish to call to your attention the decision of the Third Circuit in *Wine Hobby USA, Inc.* v. *IRS*. There the *only* issue was the disclosure of names and addresses; in the balancing of the interests involved in that case, disclosure was denied. Section II of this memorandum contains a discussion of this case and others which uphold the position that the Act requires a balancing of the public interest against a clearly unwarranted invasion of privacy vis-a-vis the public interest in disclosure.

If the requirement of a balancing of public interests is sound, then we submit that the Internal Revenue Service, Tax Analysts and Advocates and others should address themselves to the following questions:

1. What public interest reflected in the Freedom of Information Act outweighs the competing public interest in the right of private (nonpublic) persons to personal and business privacy? In other words, why is the name of the taxpayer, unrecognizable to the public, significant to the purposes of the Act?

2. The same questions should be asked with respect to commercial or financial information. The real item of interest should be the substance of the ruling. There may be some curiosity about whether a taxpayer is making a substantial contribution to a charity, has medical expenses or divorce or alimony problems, or is selling property to a particular person who could be approached with a better deal. However, we should forego that information in order to preserve the right of private persons to personal and business privacy. The Freedom of Information Act should not result in what the SEC Chairman called a "busybody's paradise".

The policy of publication under the Act and under the proposed regulations can be maintained, consistent with the taxpayer's privacy, and without imposing a substantial administrative burden on the Service, by permitting the taxpayer to file a duplicate request from which all identifying data and other confidential information are deleted. Alternatively, the taxpayer could include identifying data in a covering letter, which would enclose a request for ruling from which all identifying data would be omitted by the use of letter symbols to identify the persons involved. The Service's ruling could refer to the persons in the letter symbols used in the request and could be made available to the public in that form. In this manner, the taxpayer's right of privacy would be preserved, because identifying data and other confidential information would not be disclosed, but the public would have available the Service's view of the substantive issues involved in the ruling.

If the final Regulations do not adequately deal with this problem, a vital public interest will be overridden, a consequence that is unnecessary to achieve the purposes of the Act. This group of taxpayers, *i.e.*, individuals and closely-held corporations, will be denied access to ruling practice, a significant discrimination favorable to public corporations. The Service will be denied information about transactions in which this group is interested. And those taxpayers who will be forced to apply for rulings will be denied, unnecessarily, their right to privacy.

Because the Proposed Regulations entirely disregard this issue, a new version of Proposed Regulations should be issued which would seek to achieve the delicate balance between disclosure and the right of privacy, to insure that both the public interest in disclosure of private rulings and the public interest in retaining privacy will be well served.

II. DETAILED DISCUSSION

A. Exemption 6

Despite Tax Analysts & Advocates' contrary assertion,[1] mere names and addresses are the kind of personal information which can be exempt from disclosure under the Freedom of Information Act ("FOIA"), specifically 5 U.S.C. § 552(b)(6) ("Exemption 6"). Information which is exempt from disclosure under Exemption 6 is not limited to that which is "intimate" or of a "highly personal" nature.

In a recent tax case, the Third Circuit adopted the rationale of the *Rose* and *Getman* cases, discussed below. *Wine Hobby, USA, Inc.* v. *IRS*, 502 F.2d 133 (3rd Cir. 1974). The plaintiff, engaged in the sale of wine-making kits, sought

[1] See Special Report, *TA/A Tax Notes* Vol. III, No. 3 (Jan. 20, 1975), 12, 17 ("Special Report").

to compel the IRS to disclose the names and addresses of all persons filing Form 1541 relating to the production of wine for family consumption. It intended to use this information as a mailing list to solicit orders for its products. The Third Circuit reversed the District Court's holding that the FOIA automatically required disclosure. Finding an inherent invasion of privacy, it held that the plaintiff's reasons for requesting disclosure were crucial and must be balanced against the rights of privacy of the persons filing the form. More than the opportunity for private economic benefit is needed to negate the "clearly unwarranted" provision of Exemption 6, even where only a list of "mere names and addresses" is requested.

Significantly, in addressing the phrase "personnel and medical or similar files", the Third Circuit did not consider the word "similar" to narrow the exemption from disclosure and did not permit the release of files which would otherwise be exempt "because of the resultant invasion of privacy". *Wine Hobby, supra.*

In *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971), another leading case involving Exemption 6, the disclosure of names and addresses was found to be an invasion of privacy (albeit a minor intrusion), which was in that particular case not "clearly unwarranted". The implication of *Getman* is clear that in a proper case names and addresses contained in an otherwise disclosable government-held document may be excised to preserve the privacy of the persons involved.

In *Getman*, a group of professors, distinguished in the field of labor law, requested a list of names and addresses of the employees of a corporation involved in an NLRB-supervised election. These professors were studying the voting procedures of the NLRB with a view toward making recommendations for revision. Noting that the request, if granted, would constitute an invasion of privacy, although a minor one, the Court ordered disclosure, citing the public need for this kind of study and the impeccable credentials of those requesting the invasion. Although the Court did require disclosure, it clearly held that the disclosure of names and addresses is itself an invasion of personal privacy, a taint which can be overcome only by an affirmative showing on the part of the plaintiff of the public benefit to be derived from the disclosure. *Getman* thus stands for the proposition that there must be a balancing of interests between a person's right to privacy and the public's need to know.

The Court also noted that the invasion was limited to names and addresses, since any further revealing of personal information was clearly voluntary with each individual. Thus, by allowing disclosure of names and addresses, the Court in *Getman* did not reveal any other personal information. In the case of disclosure of private letter rulings, however, other personal information would be revealed, and the reasoning of the *Getman* Court might lead it to forbid disclosure.

Although names and addresses are capable of being disclosed under the FOIA, their disclosure is nevertheless dependent upon the plaintiff's motives and reputation. In this approach, the D.C. Circuit in *Getman* has been followed by two other Courts of Appeals, the Third Circuit in the *Wine Hobby* case and the Second Circuit in the *Rose* case. In *Rose* v. *Dep't of Air Force*, 495 F.2d 261 (2d Cir. 1974), a law students and Academy graduate requested the disclosure of the case summaries of adjudications under the Honor and Ethics Code of the U.S. Air Force Academy, but with the names and other identifying data expunged. The law student was planning to incorporate the material in a law review article on the subject. The Court held, however, that even with such identifying material expunged the disclosure of the summaries might "job the memories" of some academy graduates, enabling them to connect the summary with the individual even without the benefit of identifying data. The Second Circuit then remanded the case for an *in camera* inspection of the case summaries, with directions to the district court judge to refuse disclosure if he found that publication might "jog memories".

Significantly, the Court of Appeals found that a "balancing" of interests was required under Exemption 6 and that the need to balance public and private interests may require the expunging of more than just identifying data in an appropriate case, even where the intentions of the plaintiff are beneficial to the public and beyond reproach. *Rose* appears to require a higher degree of justification to authorize disclosure under Exemption 6 where the invasion is more than minimal.

In light of these three cases, it is difficult to understand how Tax Analysts and Advocates can conclude that Exemption 6 protects only " 'intimate' or 'highly personal' material in the files of such agencies as welfare departments and the Bureau of Prisons". On the contrary, these cases compel the conclusion that

"mere names and addresses" are protected under Exemption 6. *Getman* and *Wine Hobby* specifically hold to that effect.

The Second, Third and District of Columbia Circuits all agree that a balancing of interests is required in the application of Exemption 6. Only the Fourth Circuit in *Robles* v. *EPA*, 484 F.2d 843 (4th Cir. 1973) holds to the contrary. Although the Court in that case rejected the balancing of interests doctrine, it noted that, apparently, names and addresses had been disclosed before without objection either from the person involved or from the EPA. The information requested was the names and addresses of persons owning homes built on uranium tailings. Apparently the EPA resisted disclosure in order to avoid the possibility of panic. In any case, the public need for disclosure was certainly present and, indeed, the Circuit Courts in *Wine Hobby*, *Getman* and *Rose* probably would have required disclosure under the balancing of interests doctrine.

The analogous authority cited in support of disclosure of identifying data by Tax Analysts and Advocates in its Special Report does not compel a different result. In *Irons* v. *Gottschalk*, 369 F. Supp. 403 (D.D.C. 1974), the propriety of excising names and addresses was never at issue. And in *Fisher* v. *Renegotiation Board*, 355 F. Supp. 1171 (D.D.C. 1973), Exemption 4 relating to confidential financial information was at issue, not Exemption 6. Even in that case certain identifying data was held to be exempt from disclosure. Unlike *Tennessean Newspapers* v. *FHA*, 464 F.2d 657 (6th Cir. 1972), in which a poor old blind man was bilked out of an FHA loan due to a shoddy appraisal, private letter rulings do not involve a situation where disclosure of identifying information will promote governmental honesty. The public benefit which was derived from disclosure of the appraiser's name in the *Tennessean Newspapers* case is obvious. In the case of private rulings issued to taxpayers whose names are not familiar to the public, only the substantive wisdom of IRS decisions is at issue. The disclosure of this decision-making process cannot be enhanced by requiring disclosure of the names and addresses of this class of persons.

Tax Analysts and Advocates may argue that the protection available to individuals vis-a-vis their right to privacy is not applicable where incorporated enterprises are involved, since in the constitutional sense they enjoy no right of privacy. It could be argued, however, that the privacy mentioned in Exemption 6 means something different. It can hardly be assumed that Congress intended individuals and corporations to be treated differently in this regard. Professor Davis points out that this unfortunate wording was probably due to Congressional oversight and was not an intended discrimination against corporate enterprises. See Davis, *The Information Act: A Preliminary Analysis*, 34 U. Chi. L.Rev. 761, 780–81 (1967).

In many cases, a request for ruling on behalf of a closely-held corporation will also disclose the names of the individual shareholders; in any event, these individuals' rights of privacy would be invaded by disclosure. The same invasion will occur where, among those in a particular area or industry, the name of a closely-held corporation is readily identifiable with the names of its individual shareholders.

In any case, requiring disclosure of names and addresses will have an adverse effect upon the rulings process. A taxpayer will be forced to choose between his privilege as a taxpayer to request and receive technical help in the calculation of his tax liability and his right to privacy. In many cases he will elect to preserve the latter and suffer uncertainty in his tax matters. Forcing this choice, thus, undercuts the purpose for which the rulings process exists. Moreover, the taxpayer, whether corporate or individual, will have to exercise more restraint when requesting rulings involving other taxpayers. Extreme care will have to be exercised in order to avoid an unwarranted disclosure of personal information of the other taxpayers involved in the transaction.

B. Exemption 4.

Regardless of a corporate right of privacy, the FOIA may nevertheless exempt from disclosure names and other identifying data of corporations under Exemption 4, relating primarily to the disclosure of confidential financial information. The leading case in this area is *Fisher*, *supra*, in which names and addresses were sought in connection with opinions and other data issued by the Renegotiation Board. Although it is true that names and addresses were compelled to be disclosed in that case, it is also true that this disclosure was ordered only in connection with a portion of the documents. Certain forms that contained

financial information filed under a pledge of confidentiality with the Board in connection with its proceedings were held exempt from disclosure under Exemption 4. The Court noted that, in most cases, only names and addresses of those submitting this kind of information would be required to be withheld under Exemption 4.

In *Fisher,* however, the paucity of such forms filed and the notoriety of those filing them would have made it easy to match the filer with the form, even where the names and addresses were withheld. Thus, to prevent this identification entire documents were ordered withheld. However, in the case of documents that were disclosed with names and addresses, *e.g.,* unilateral orders and renegotiation agreements, the Court ordered disclosure since all of the information contained therein was obtained from within the agency. It was stated that this requirement was necessary to prevent inter-agency shuffling of papers to invoke confidentiality. However, this argument appears to be frivolous, since a "stark pledge" of confidentiality is not enough to protect information from public view. See Note, *The Freedom of Information Act: A Seven-Year Assessment,* 74 Col. L. Rev. 895, 952–53 (1974). Under this reasoning, disclosure of identifying data even in agency-generated information may be improper.

Although no "balancing" of interests is required under Exemption 4 and a mere assertion of confidentiality is insufficient to retard disclosure, nevertheless names and addresses may be withheld in order to protect confidential financial information in appropriate cases. Commercial or financial information is confidential if its disclosure would either "impair the Government's ability to obtain necessary information in the future" or "cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Ass'n* v. *Morton,* 498 F. 2d 765, 770 (D.C. Cir. 1974). In most cases, letter rulings deal with proposed transactions, the facts of which are not generally publicized outside of the rulings process. Publication of letter rulings with identifying data could result in severe damage to competitive position by disclosing transactions prior to closing. The essence of commercial dealings between two parties (e.g., buyer-seller, stockholder-corporation, lessor-lessee) is founded on confidentiality and a small, though often temporary, monopoly of information about one's needs and resources. How can parties bargain at arm's length if one, by obtaining a letter ruling, must lay all his cards on the table prior to closing the deal?

More importantly, it is likely that disclosure of this kind of identifying information, antithetical as it is to the basic confidentiality underlying normal commercial activity, will severely impair the rulings process. Those requesting rulings under the complete disclosure system advocated by Tax Analysts and Advocates will tend to be less generous with the facts they include in their requests than they have been in the past. Insufficient information will impair the requesting person's ability to rely on the ruling issued with respect to a particular transaction, and thereby destroy its only inherent value. Furthermore, it is likely that fewer rulings will be requested. With fewer rulings, there will be less certainty as to the tax effects of particular transactions and the likelihood of more expensive and time-consuming litigation. Moreover, taxpayers will be forced to forego certain types of transactions to preserve their confidentiality, *e.g.,* in § 367 transactions. The net result would be the impairment of the ability of the IRS to obtain, in advance, information which it needs to rule effectively on and thereby properly administer the tax laws.

III. CONCLUSION

The Internal Revenue Service regulations which delineate the procedures to be followed in the disclosure of private letter rulings must provide for the balancing of competing public interests, in order to permit the conclusion that, in some cases, anonymity is required in order to prevent unwarranted invasions of personal privacy and to preserve the confidentiality of commercial and financial matters. The taxpayer's right to this protection is compelled by the weight of authority dealing with the issue of disclosure of identifying data. Publication of this information will serve no public purpose, nor will it enhance the rulings process. Moreover, failure to protect this kind of information from disclosure will severely undermine the effectiveness of the rulings process and thereby frustrate the effective administration of the United States tax laws.

Consistent wtih its responsibility to promulgate regulations interpreting the law, the Internal Revenue Service is clearly obligated to follow this course. Failure to do so will surely result in further litigation of this issue by taxpayers seeking to protect their rights under existing case authority.

STATE OF COLORADO,
DEPARTMENT OF REVENUE,
Denver, Colo., April 29, 1975.

Hon. FLOYD K. HASKELL,
U.S. Senator,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR HASKELL: I understand that your Senate Finance subcommittee is now holding hearings on S. 199 which is concerned with the confidentiality of tax returns. Certain provisions in this bill would directly affect the tax information exchange program between the Internal Revenue Service and the Colorado Department of Revenue.

We have no objections to the substitution of the head of the state tax agency for the Governor of the State as the requesting authority; and I do not believe that the elimination of the authorization to transmit federal income tax information to a political subdivision of the State will create any real problems for Colorado. I am very much concerned, however, wtih the requirement that the Commissioner of Internal Revenue report quarterly to the joint committee on Internal Revenue Taxation listing the returns furnished for inspection and the name and the position of the tax officials making the request. This would create a particularly onerous burden with regard to the information which we now receive on reels of magnetic tape, each of which contain the abstracts of several thousand returns.

We have already experienced some difficulty with the present recently adopted requirement of the IRS that one of our agents pick up and sign for each Revenue Agent Report which is furnished under our present Agreement. Until this program was initiated, we automatically received by mail copies of Revenue Agent Reports involving Colorado residents. The present program has resulted in costs to the State and the Federal Government in terms of loss of personnel time. If the IRS were also required to account for each abstract contained on a reel of tape, I am fearful that this might result in the elimination or curtailment of our present exchange program. Colorado relies very heavily on information received from the IRS in preparing both Office and Field income tax audits. Reduction of the amount and types of information presently received could have a considerable negative revenue impact on this State.

I would appreciate it if the committee would give every consideration to the states' needs to maintain the effectiveness of the present exchange programs with the Internal Revenue Service.

Sincerely,

JOSEPH F. DOLAN,
Executive Director.

STATEMENT OF HARRY STROMER REGARDING STAGGERING OF FILING DATES FOR INDIVIDUAL INCOME TAX RETURNS

The annual gathering of material by approximately 100,000,000 Americans in preparation for filing their individual income tax returns each year is becoming more difficult. Most individuals are prone to putting off any disagreeable task as long as possible. Thus, as mid-April approaches, the awesome task can no longer be avoided. In great haste we call on the I.R.S., or the tax professionals, or even the "Tax Mills" to assist us. Long lines of people with the same idea are before us. Upward to 100,000,000 of them.

The staggering of filing dates for individual income tax returns can resolve this mass annual hysteria. Instead of 100,000,000 people attempting to file by April 15th, only 16.66% need file each of the six months beginning with the April 15th filing.

A plan was presented to the Committee on Ways and Means, House of Representatives, in Washington to relieve the pressure on the taxpaying individuals, more than 100 million of them, which would spread the load over a period of six months.

The taxpaying population can be segregated alphabetically by computer into six segments. The first segment to file not later than April 15th. The second by May 15th. The third by June 15th, and so on through September 15th for the final segment. Each segment would comprise 16.66⅔ of the whole instead of 100% on April 15th.

This reduction of the influx would give the I.R.S. the necessary opportunity to check almost on a current basis, once the Service got caught up, instead of the deluge as now descends every April upon the I.R.S. Centers around the country.

This staggering of filing time would not change any aspect of the employer filing of the form W-2 in January or the filing of form 1099 declaring the amount of interest, dividends, etc. paid to those who receive such other income. Every one would retain the tax year he has previously used, be that calendar or fiscal.

The United States Treasury Department has the necessary sophisticated computer system to alphabetize the taxpaying public into relatively even segments for the six filing dates. In order to make it possible for each State to conform to the system, the Federal government could provide such service to the states lacking the sophisticated equipment to do the job. Minor adjustments would have to be made by each state to confirm the individual taxpayers who have to pay Federal tax, but are not subject to their state tax.

If such legislation could be passed by the end of the third quarter of 1974, for example, it would be possible for the Federal and State governments to give notice to the population of the proposed change in filing dates for different segments by use of the news media. A one or two minute spots on television several times a day for a few months would make most taxpayers aware of the change, and the individual's place in the different segments. An occasional radio spot announcement could reach even more and then after January 1st, 1975 concentrate coverage on all media. By that time everyone should be aware of the circumstances governing their own filing.

A very high percentage of taxpayers receive their advance copies of tax forms in the mail early in the year. It should be possible to add the filing date assigned the individual taxpayer to the preprinted data included on the forms' mailing label.

Spreading the work load would make it possible for those who require help in the preparation of their tax returns to obtain the necessary help from either the I.R.S. or the tax professionals. The present system of filing creates congestion in every aspect of income tax filing.

Congestion would no longer exist in the tax filing apparatus.

Collection of information and preparation of the returns would be more orderly. The current high percentage of errors in the preparation of returns would be vastly reduced. Instead of 100 million individuals seeking information of one type or another from the I.R.S. and the tax professionals in a relatively short period of time, the staggering of the filing would reduce the workload to perhaps 16 or 17 million returns per month. This would also help to solve the problem caused by the "unregulated return preparers" as described by Raymond F. Harless in the National Public Accountant, issue of February 1973 who let themselves out for hire but lack the qualifications of the professional tax preparers who are licensed either as an attorney, public accountant or enrolled agent.

The answer, it is hoped, is not the elimination of non professionals would be unfair to competent persons who now prepare tax returns if the services were limited to lawyers, accountants and enrolled agents. This raises an interesting question. How are we going to determine the competence of any individual without some knowledge of the individual's academic background. By trial and error?

I am not fully acquainted with the government computer system capabilities. Is it not possible to eliminate the incompetent? That could be done, but without some identifying number system could the computer catalogue the unfamiliar scrawl of a signature of the preparer. And, then there would always be new preparer solicitations.

The staggering of filing time for returns could in no way affect the basic information necessary to a proper filing, such as births, deaths, marriage, divorce etc. All individuals who file must indicate in the upper right corner of their federal returns (or in an appropriate place on the various State returns) their Social Security account number. Changing names through marriage or divorce usually is identified by a partial use of the original name. Even if not so identified, there is always reference to the Social Security account number or, if you prefer, identification number through which the computer can readily identify prior filings. Changes from one segment to another would be automatic.

Most taxpayers either through the withholding by employers or paying an estimated tax quarterly for such income as is not derived through formal employment owe a relatively small amount at year end or conversely have a relatively small refund due to them. What ever real or imaginary inequities may result from a change to the staggering system placement of their position in an alphabetical segment may be disadvantageous one year could very well be to their advantage the next year.

An observation was made that some individuals who might owe a great deal of tax at year end and find themselves in one of the later segments would have an unfair advantage. It is an interesting question. However, if the unpaid balance is relative, it would indicate that the individual has already paid in a great deal and the advantage of being in a later segment could be academic.

The simplification of the tax form. It is unnecessary to elaborate on the failures of past efforts to simplify the form 1040 and schedules. Except for the form, 1040A the effort has made the form more complicated.

A great deal of research has gone into this plan as to its feasibility. It was not just thrown into the wind to see what would happen. It can happen. It will happen some day for the simple reason that a solution must be devised to the archaic system in effect at this time. It is going to get worse. It will not go away.

In making a fundamental change in any operating plan, there are always inequities and exceptions to the norm. These can be adjusted so as to make operative a master plan which would be beneficial to the great majority. It is a new approach to the problem which now exists and is with us every April.

Biographical Note

Harry Stromer is enrolled to practice before the Internal Revenue Service. He is a licensed public accountant in California.

Mr. Stromer has been in public practice as a tax consultant and public accountant since 1942. He has served as a Controller for several corporations engaged in land development and the entertainment field. He has also done a substantial amount of work connected with tax exempt organizations.

Summary of Statement

I propose adoption of a system of staggered filing dates for individual income tax returns. This would remove the heavy pressure on the taxpaying public and the Internal Revenue Service due to heavy filing during the first three and one half months of a new calendar year. In addition, this proposal would help to eliminate the "tax mill" operators who now dominate the tax return preparation field. Revenue matters could be handled in a more professional and orderly way. There would be fewer errors and omissions.

My statement outlines a method by which staggered filing of tax returns can be accomplished. In substance, I suggest that taxpayers be separated alphabetically into six approximately equal groups. The first group would file not later than April 15th, the second by May 15th, and so on through September 15th for the final segment.

The objections that have been raised in the past to staggered filing of individual income tax returns can now be largely overcome. The increasing computerization of Internal Revenue Service operations makes it possible to keep track of returns to prevent noncompliance or late filing. Other, less weighty objections to this proposal can also be overcome.

Address and Telephone Data

For further information regarding the views in this statement can be obtained by writing to Harry Stromer, 123 North Beachwood Boulevard, Los Angeles, California 90004. Alternatively, he can be reached by telephone during business hours at (213) 465-1121 and on evenings and Sundays at (213) 765-4711.

TAX SECTION,
NEW YORK STATE BAR ASSOCIATION,
May 1, 1975.

Attention: MICHAEL STERN, Staff Director.
Re Hearings on Federal tax return privacy.
COMMITTEE ON FINANCE,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: In a release dated April 24, 1975, the Subcommittee on Administration of the Internal Revenue Code announced that those who desired to present their views to the Subcommittee are urged to prepare a written statement for submission and inclusion in the printed record of the current hearings, submission to be made not later than May 9, 1975. In its release dated April 9, 1975, the Subcommittee announced that it will explore the related issue of publication by the Internal Revenue Service of so-called "private letter rulings."

On March 25, 1975 the Internal Revenue Service held hearings on its proposed procedural rules for public inspection of rulings and determination letters. The Tax Section of the New York State Bar Association, prior to March 25, submitted to the Service a written report directed to this subject, and on behalf of the Tax Section the undersigned testified at the Service's hearing. In light of that which transpired at the hearing on March 25, the Tax Section concluded that a supplemental report should be prepared and filed with the Internal Revenue Service, directed to the impact of the Privacy Act of 1974 upon the proposed procedural rules. This supplemental report was filed with the Service on April 12, 1975.

Pursuant to the Subcommittee's invitation, on behalf of the Tax Section of the New York State Bar Association it is my privilege to submit herewith a copy of each of the two referenced reports. We request that the reports be included in the printed record of the hearings now being conducted by the Subcommittee on Administration of the Internal Revenue Code.

Very truly yours,

MARTIN D. GINSBURG,
Chairman, Tax Section.

Enclosures.

NEW YORK STATE BAR ASSOCIATION TAX SECTION

(Comment on Proposed Procedural Rule § 601.703 and Proposed Amendments to Procedural Rules Sections 601.201 and 601.702, Relating to Public Inspection of Rulings and Determination Letters by Committee on Practice and Procedure)

The decision of the Court of Appeals for the District of Columbia in the case of *Tax Analysts and Advocates, Thomas F. Field, et al. v. Internal Revenue Service, et al.*, F.2d (D.C. Cir., 1974) 74-2 USTC ¶9635, held the past private rulings procedures of the Internal Revenue Service inconsistent with the requirements of the Freedom of Information Act (FOIA), 5 USC § 552. The proposed amendments to Procedural Rules §§ 601.201 and .702 and the proposed new procedural rule Section 601.703 are designed to respond to *Tax Analysts* and to make certain other incidental changes in the private rulings procedures. While recognizing the necessity of conforming these regulations to *Tax Analysts* and the FOIA, we believe the proposed rules overreact to the judicial decision in some respects and would unnecessarily discourage taxpayers from seeking private rulings where they are unable or unwilling to make a blanket waiver of confidentiality and rights of privacy. Such a broad invasion of privacy rights seems quite unintended either by the Court of Appeals or Congress. See S. Rep. No. 93-854, 93d Cong., 2nd Sess., p. 32.

In offering the following specific comments and recommendations, we have tried to bear in mind that the balance struck by Congress and the Courts between the public's right to know and individual taxpayers' right to confidentiality must be

articulated in rules capable of efficient administration. We recognize that the administrator's task is necessarily complicated, however, by these competing interests and that some additional burden and delay in issuance of rulings is probably unavoidable in the case of several of our suggestions. We have felt, however, that such burdens are a lesser evil than the exaction of unjustifiably broad waivers of confidentiality as the price of obtaining a letter ruling.

Waiver of Confidential Treatment. Proposed Rule § 601.201(e) (16)(i) and (17)(i) would require a request for a ruling or determination letter to contain a blanket waiver of confidential treatment with respect to all information "contained in the ruling, determination letter or acknowledgement of withdrawal issued" and *"all other materials included in the file connected with the request."* [2] An exception is provided only to the extent information is furnished in a separate document with respect to which the taxpayer claims confidential treatment on the grounds that the information constitutes a trade secret or is to be kept secret as a matter of national defense or foreign policy under criteria to be established under appropriate executive order. No such waiver seems required either by the FOIA or the decision in *Tax Analysts*.

Requiring it of ruling applicants would seem to aggravate unnecessarily the problems foreseen by the Government in its brief to the Court of Appeals in *Tax Analysts*: (1) hesitancy of taxpayers to seek guidance; (2) burdensome administrative procedures for sorting accessible from privileged material and its storage, and (3) decline in the willingness of the Service to rule on points which have *not* been subjected to timely (and expensive) review. See Government's Court of Appeals Brief in *Tax Analysts* at pp. 43–45. See also the summary of benefits of the private rulings program by Harold Swartz, former Assistant Commissioner (Technical) in his letter of August 15, 1971 to Senator Ribicoff, quoted in Reid, "Public Access to Internal Revenue Service Rulings," 41 George Washington Law Review 23, 33–34 (1972), where Commissioner Swartz emphasized the desiderata of permitting taxpayers to rely upon the tax consequences of proposed transactions, promoting of compliance and reduction of litigation as well as benefitting the Service by increasing the voluntary flow of information regarding private tax planning which facilitates the Service's planning its own audit procedures are recommending appropriate changes in the laws or regulations.

Because of the chilling effect of a waiver of privacy on the private rulings program, we recommend elimination of the waiver requirement and its replacement by a formal acknowledgement that any information contained in the application (or attachments or exhibits thereto) *incorporated* in the requested rulings, determination letter or acknowledgement of the withdrawal of the request therefor is subject to disclosure under the provisions of the FOIA, except as to those facts which the applicant specifically claims to be exempt. Even as to these, the applicant can only request the Service to attempt to insulate them from disclosure and alert the applicant of attempts to discover them, but this would be a substantial improvement.

The language of the proposed rule, requiring the waiver of "any right to confidential treatment" is simply too broad. There seems no good reason why the Internal Revenue Service should extend access to its files beyond the rights of access already conferred by the FOIA itself. The waiver would obviously remake any defense or objection the Service or the applicant might otherwise interpose to a contested claim to access. We recognize the Service's legitimate concern that it not be placed in the position of resolving conflicting claims by a ruling applicant and a party seeking access to information in the ruling. A simple acknowledgement should both accomplish this and alert the applicant and the Service to any area of claimed privilege without the undesirable consequences of the blanket waiver.

Whether an acknowledgement or a waiver is required, however, the Regulation should describe the permitted exceptions thereto by a simple reference to *all* of the exemption provisions in the FOIA. The proposed blanket waiver seems to recognize only the "trade secrets" and "national defense or foreign policy" exemptions of FOIA Section 552(b)(1) and (4). It does not take note of the exemptions for privileged or confidential commercial or financial information in Section 552(b)(4); personnel, medical or similar files, the disclosure of which would

[2] Extending the waiver beyond rulings, determination letters and acknowledgements of withdrawals of ruling requests seems to ignore Proposed Reg. § 601.703(b)(1), which restricts public inspection to the texts of these documents—a restriction consistent with FOIA § 522(a)(2). See pp. 5–6, *infra*.

constitute a clearly unwarranted invasion of personal privacy in (b)(6); the exemption for matters specifically exempted from disclosure by other statutes in (b)(3); regulatory agency condition reports and similar documents exempted in (b)(8); geological data concerning wells in (b)(9), or other matters which from time to time may fall within one or more of the other exemptions in Section 552(b). Under a simple acknowledgement, the burden would still be upon the applicant to specify those materials or data which he claimed fell within one of the exemptions, and the process for resolving disagreements between the rulings division and the applicant in this regard could proceed under the balance of the proposed rule as is already anticipated in connection with the blanket waiver.

The Court of Appeals decision in *Tax Analysts* noted the availability of the commercial information and trade secrets exceptions to the FOIA disclosure requirements as necessary guarantys against unwarranted and damaging invasions of a taxpayer's privacy. The best interests of both applicants and the Service is clearly served by interpreting these exceptions liberally in establishing regulatory guidelines for disclosure. If we are correct in our belief that the private rulings program is in the public interest, it should not be unduly crippled by requiring a waiver of confidentiality exceeding that necessitated by the FOIA.

Requirement of such a broad waiver as a condition to a ruling seems particularly questionable in the case of so-called "mandatory" ruling requests, such as those under §§ 367, 442 and 446(e) which are covered explicitly by the Proposed Regulations. In these areas, the Service's private ruling function can not be regarded as a gratuitous, discretionary consideration to taxpayers to which the Service may attach unilateral conditions not required by statute. Just as taxpayers are compelled to apply for such rulings before legislatively intended tax consequences flow from transactions, so the Service has an affirmative duty under these sections to rule. Requiring an unnecessarily broad waiver of confidentiality in such cases would do much more than simply deny taxpayers needed guidance; it would force them to the choice of unintended tax penalties or a public exposure of information which may be even more damaging or embarrassing.

Discoverability of the Ruling Request and File. Proposed Reg. § 601.703(b)(1) provides generally for disclosure of the full text of all rulings, determination letters, acknowledgements of withdrawals of requests therefor and an appropriate index thereto. No mention is made of public inspection or copying of the ruling request or file papers. Disclosure of ruling applications does not seem required by FOIA § 522(a)(2), since they do not constitute Service "opinions, . . . statements of policy and interpretations" or "identifying information . . . as to any matter issued." A more difficult question is whether they constitute "records" independently discoverable under FOIA § 522(a)(3). The comments on these Proposed Regulations submitted by *Tax Analysts* and Advocates ("TAA") January 10, 1975, at p. 7, argue that they constitute "identifiable records," a phrase which was removed from the FOIA by P.L. 93-502 on November 21, 1974, effective February 19, 1975. The legislative history of this change, however, makes it clear that the amendment was intended to liberalize disclosure. See S. Rep. No. 93-854, 93d Cong., 2d Sess., pp. 9-10 and H. Rep. No. 93-576, 93d Cong., 2d Sess., pp. 5-6.

The foundation for TAA's claim for support for this argument in the district court opinion in *Tax Analysts* is doubtful. The district court did treat letter rulings themselves as "records" but did not similarly characterize applications therefor, nor even deal specifically with the issue. Disclosure of ruling requests as § 522(a)(3) "records," (which, unlike the § 522(a)(2) rulings, are not required to be indexed by the FOIA) is not compelled by the language of the Act, and would seem feasible only if no preliminary questions of privilege or privacy had been raised by the applicant. We therefore support the Proposed Regulation; we recognize, however, that the TAA's position may ultimately prevail. Accordingly, we suggest within immediately following paragraphs that a rulings applicant be accorded the option of submitting a parallel ruling request with identifying data removed.

Anonymity. The proposed rule does not provide a vehicle for excluding names, addresses and other identifying data from public inspection. While this may be relatively unimportant in the case of publicly held companies, it can be extremely detrimental to individuals. Section 552(a)(2) of the FOIA provides for the deletion of "identifying details" to prevent a clearly unwarranted invasion of personal privacy. Standards for what constitutes a "clearly unwarranted invasion" have been slow to develop.

The SEC, whose jurisdiction runs primarily to publicly held taxpayers, has routinely disclosed all interpretative requests with the parties identified and permitted delay in disclosure only for a maximum of 120 days. See SEC Reg. § 200.81. Individual anonymity, however, would certainly seem to be warranted if public ridicule, economic loss or embarrassment seemed a likely consequence of publication. There seems no reason to expose to public inspection the details of a named individual's divorce, medical history, philanthropic activities or casualty losses for example. Of particular concern to many individual ruling applicants is disclosure of their social security number, with the access to other information which this affords.

The possible range of subject matter for a ruling request is so broad and unpredictable that we recommend that a procedure be made generally available whereby a rulings applicant may request anonymity. We suggest that if this is done, the taxpayer be required to submit in a separate document his reasons for requesting anonymity together with a rulings request and supporting documents from which identifying data have been removed. If the request is honored, the ruling must obviously be based upon the request from which such data has been deleted. This procedure does not depart substantially from the procedure presently followed, and thus should interpose no cumbersome administrative task. Further, it would seem to be fully in accordance with the purpose of the FOIA and the requirements of the *Tax Analysts* opinion, which focus upon full disclosure of the *precedential* aspects of rulings and applications.

Affirmation of Applicant. Proposed Section 601.201(e)(16)(iv) and (18) require that each request for a ruling or determination letter and any subsequent submission contain a verification by the applicant as to the truth and accuracy of the representations under penalties of perjury and, where the application is prepared by an attorney or other authorized representative, the representative is also required to verify the accuracy of the application and accompanying exhibits. This procedure is presently required in some areas such as Section 367 rulings. It is a cumbersome requirement and has no discernible value. We would recommend its removal from the final regulation.

Withdrawal of Request For Ruling. Proposed Section 601.201(j) provides that when a taxpayer's request for a ruling or determination letter is withdrawn on grounds other than a disagreement over availability of certain material for public inspection, the application and exhibits will be retained by the Service and available for public inspection. We do not take issue with the expressed reservation by the Service of the right to discuss the issues raised and indicate the proposed response with regard to withdrawn requests for ruling or to the communication of those views to the District Director whose office has audit jurisdiction of the taxpayer's return. A taxpayer who chooses to go forward with a proposed transaction after receiving a negative preliminary response should be prepared to accept the consequences of an informed audit of his return. We do recommend, however, that the indicated retention by the Service of all correspondence and exhibits be restricted to situations in which such a final formulation of a view is made and communicated to the District Director and that otherwise, since the application has not resulted in a Service formulation of opinion having precedential effect, the application and exhibits be returned to the taxpayer.

Notification to Taxpayer of Challenge to Claimed Exemption From FOIA. Proposed Section 601.703(b)(4) correctly points out the inability of the Service to guarantee that its decision to withhold material from public access may not be overturned judicially or otherwise. We suggest it would be appropriate in cases where the Service has accepted the applicant's request for confidentiality to set forth a procedure whereby the Service would furnish notice to a taxpayer of any challenge to his request for confidentiality and provide an opportunity for an intervention by the rulings applicant in any proceeding instituted to gain access to the material under the FOIA, if permitted by the forum having jurisdiction. Since the taxpayer's name and address will be on file with the rulings application, such a notice procedure would seem to create no significant administrative burden. Such a procedure might also serve to encourage submission of requests and supporting material which might be withheld. On the Service's side, issues as to the scope of claimed exemptions might well be of less significance if it could be left to the taxpayer on subsequent challenge to substantiate his claim to exemption.

Delay of Public Inspection. Proposed Section 601.201(e)(16)(vi), (19) and .703(b)(1)(ii) would permit a rulings applicant to request delay in public inspection not to exceed thirteen weeks from issuance of the ruling where earlier

public inspection would threaten serious harm or violation of law. We submit that further administrative flexibility as to the period of the delayed access may be highly desirable in rare cases. On a proper showing, we believe that it may be necessary to delay public inspection for longer periods of time—perhaps until the transaction has been completed or even until the time for filing the return for the year in which the proposed transaction is consummated. We recognize, of course, that delay should be avoided or minimized in the absence of an appropriate showing, since rulings may be issued during the intervening period on the basis of the first ruling, but the thirteen-week period seems an undue limitation on administrative discretion.

Request for Opportunity to Appear—In the event a public hearing is held on these proposed rules, we request the opportunity to appear.

Respectfully submitted,

COMMITTEE ON PRACTICE & PROCEDURE,
M. CARR FERGUSON, *Chairman.*

NEW YORK STATE BAR ASSOCIATION, TAX SECTION

SUPPLEMENTAL COMMENT

(Proposed Procedural Rule § 601.703 and Proposed Amendments to Procedural Rules Sections 601.201 and 601.702, Relating to Public Inspection of Rulings and Determination Letters by Committee on Practice and Procedure)

The new and amended procedural rules above referenced, relating to public inspection of letter rulings and determination letters, are intended to meet the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Prior to March 25, 1975 the Tax Section submitted written comment in some respects supportive, and in others critical of the proposed procedural rules. On March 25 a public hearing was held at the Internal Revenue Service in Washington. Interested individuals and representatives of various groups, including the Tax Section of the New York State Bar Association, testified at the hearing.

In its prior written comment and in the testimony given by its representative at the March 25 hearing, the Tax Section focused upon the individual's right of personal privacy. It was and remains the position of the Tax Section that the proposed procedural rules are improper in requiring that a taxpayer must expressly waive in advance his or her right of privacy in order to obtain a letter ruling or determination letter.

Only one other person who testified at the March 25 hearing focused primarily on the right of personal privacy and the concern expressed by him, directed to an anticipated disclosure of individual taxpayer names in the generality of cases, concentrated upon an aspect of the matter distinguishable from that which principally troubles the Tax Section. While no one who spoke at the hearing denigrated the importance of the right of privacy, some appeared to believe that issues involving personal privacy rarely if ever arise in the ruling process. Thus, one speaker expressed a personal view that if the right of privacy is not a Red Herring, certainly it is a "Pink Herring."

The Internal Revenue Service officials who conducted the March 25 hearing, Commissioner Alexander, Assistant Commissioner Gibbs, Chief Counsel Whitaker and Assistant Director Bley, in their questioning of certain of those who testified indicated concern with aspects of the privacy issue. Reference was made to 18 U.S.C. § 1905, a statute of historic vintage, and to the recently enacted Privacy Act of 1974, 5 U.S.C. § 552a, pertinent portions of which will become effective September 27, 1975. However, nothing occurring at the March 25 hearing suggested the Service as yet has concluded that its original proposal, requiring an individual taxpayer expressly to waive in advance his or her right of personal privacy as a condition of obtaining a ruling or determination letter, should be discarded.

The Tax Section is submitting this additional comment, in support of the written comment it earlier submitted and of the testimony given by its representative on March 25, to encourage the Service to reverse its proposed position with regard to the individual's right of personal privacy. Specifically, and for the reasons set forth below, the Tax Section believes that the proposed procedural rules, in forcing an individual expressly to waive in advance his or her right of personal privacy, is contrary to the intention of and improper under the Privacy Act of 1974, 5 U.S.C. § 552a.

The Tax Section accordingly renews its recommendation, contained in the written comment earlier submitted, that the procedures adopted by the Internal

Revenue Service respect the individual's right of personal privacy and have as their objective the publication of all precedential material after the deletion, as appropriate in the specific case, of either the privacy invading information or the individual's name and identifying data.[3]

1. Privacy Issues Arise in the Ruling Process

At the March 25 hearing the suggestion was made that, in the context of the ruling process, concern for the right of privacy is, at best, a "Pink Herring."

The Tax Section strongly disagrees with this view. The many thousands of letter ruling requests annually filed span the breadth of human experience. It is not merely likely, but inevitable that information of a personal and private nature will be included in this mass of data.

Responding specifically to the "Pink Herring" appellation, at the hearing the Tax Section's representative gave the following illustrative case and commentary:

"Assume the taxpayer is sole owner of a corporation that has just completed or shortly will complete construction of a major property. During the past two years the taxpayer received and rejected a number of offers to purchase his stock at a substantial gain. Last month, in the course of a routine annual medical examination, the taxpayer was informed that he is suffering from a hitherto undiagnosed dread disease that may well prove life shortening. The taxpayer is approached by a new potential purchaser of his stock and decides to accept the offer and retire.

"Counsel advises that a ruling be sought from the Internal Revenue Service confirming that the corporation is not collapsible. The ruling request will advance two bases for a favorable determination, either of which is sufficient. First, that there exists no "unpermitted view" and hence the corporation is not collapsible within the meaning of the section 341(b)(1) definition. Second, that section 341(e)(1) applies to avoid collapsible status. Under the first approach the medical history clearly is vital. Under the second approach the medical history is, or at the last counsel reasonably may deem it to be, of substantial significance.

"Now, whether the taxpayer is suffering from leprosy, tertiary syphilis, cancer of the liver or advanced renal failure is his business. More pointedly, the fact that he is suffering from anything is his business. It is appropriate that he disclose and document illness to the Internal Revenue Service in order to obtain a letter ruling. But if the taxpayer—who may not have told his wife, children or friends—does not wish the fact that he is ill to become a matter of public record, it is hard to believe anyone would seriously argue that public disclosure constitutes other than a clearly unwarranted invasion of his personal privacy."

Letter ruling information of a personal and private nature by no means is limited to medical data. In particular circumstances, other cases might include information concerning marital disharmony or dissolution, past or present political affiliation, charitable donations or the absence thereof, racial or religious origins or affiliation, and the amount and specifics of intra-family gifts and bequests. For some individuals, public disclosure of their home address might pose a threat not only to their privacy but to their safety or peace of mind.

It is not an adequate response to suggest that some of this information may be contained in state court records, e.g. divorce hearings and probate files, or may at an earlier time have been known to persons other than the ruling applicant, e.g. 25 years ago the applicant was accused of a subversive political affiliation. For one thing, the suggestion may be factually incorrect; if a state court record does exist, it may not contain pertinent private information or, if it does, it may be a sealed record. More importantly, personal data does not lose its character as private simply because that data may be discoverable from another source or may once have been known. The Court of Appeals for the Second Circuit, interpreting the privacy exemption of 5 U.S.C. § 552(b)(6), has so held: A person's privacy may be as effectively infringed by reviving dormant memories as by imparting new information.

Rose v. *Department of Air Force*, 495 F.2d 261, 267 (2d Cir. 1974).

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[3] In its prior written submission commenting on the proposed procedural rules, at page 7, the Tax Section urged that public disclosure of social security numbers be avoided. In support of that recommendation, we note that § 7 of P.L. 93-579 (a part of the Privacy Act not codified in Title 5), effective December 31, 1974, demonstrates serious Congressional concern with "the need for constraints on the use of the [social security] number and on its dissemination." S. Rep. No. 93-1183, 93d Cong. 2d Sess. [accompanying S. 3418], reprinted in the January 30, 1975 (No. 14) U.S. Code Congressional and Administrative News 8038, 8065-8068 (1974)

2. Scope of the Privacy Exemption in FOIA

5 U.S.C. § 552(b)(6) exempts—the "(b)(6)" exemption—from mandatory public disclosure matters that are "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." § 552(a)(2) similarly provides that "to the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes" materials required to be disclosed under that provision, provided "the justification for the deletion shall be explained fully in writing." Additionally, § 552(b)(7)(C) establishes an exemption from disclosure for investigatory records compiled for law enforcement purposes if production would "constitute an unwarranted invasion of personal privacy."

The (b)(6) disclosure exemption has paramount importance since, where applicable and invoked, it renders the FOIA inapplicable to the exempt portion of an otherwise disclosable record.

The (b)(6) disclosure exemption to date has been the subject of five significant Court of Appeals decisions. In chronological order they are *Getman* v. *NLRB*, 450 F.2d 670 (D.C. Cir. 1971); *Robles* v. *Environmental Protection Agency*, 484 F.2d 843 (4th Cir. 1973); *Rose* v. *Department of Air Force*, 495 F.2d 261 (2d Cir. 1974), *cert. granted; Rural Housing Alliance* v. *U.S. Department of Agriculture*, 498 F.2d 73 (D.C. Cir. 1974); and *Wine Hobby USA, Inc.* v. *Internal Revenue Service*, 502 F.2d 133 (3d Cir. 1974). One of these decisions, *Robles*, announced a restrictive interpretation of the exemption, limiting it to "intimate details of a highly personal nature." 484 F.2d at 845. The other appellate tribunals awarded a more expansive scope to the (b)(6) exemption. Thus, the Second Circuit in *Rose*, quoting in part from the decision of the D.C. Circuit in *Getman*, stated (495 F.2d at 269–70):

"[T]he language of the [(b)(6)] exemption requires a court to exercise a large measure of discretion. * * * Any discretionary balancing of the competing interests will necessarily be inconsistent with purposes of the [FOIA] to give agencies, and courts as well, definitive guidelines in setting information policies. . . . But Exemption (6), by its explicit language, calls for such balancing and must therefore be viewed as an exception to the general thrust of the Act. S. Rep., at 9, explains:

" 'The phrase "clearly unwarranted invasion of personal privacy" enunciates a policy that will involve a balancing of interests between the protection of an individual's private affairs from unnecessary public scrutiny, and the preservation of the public's right to governmental information. * * *'

"We note in passing that no other exemption specifically requires balancing. In view of the Act's basic purpose to limit discretion and encourage disclosure, we believe that Exemption (6) should be treated as unique. . . ."

The Privacy Act of 1974, enacted after the cited Court of Appeals decisions were rendered, fully supports the majority judicial view. Only part of the Act, P.L. 93–579, is codified in 5 U.S.C. § 552a. The part that is uncodified law, as well as the part included in Title 5, bears on the issue.

Section 2(a)(4) of the Privacy Act flatly states the congressional finding that "the right to privacy is a personal and fundamental right protected by the Constitution of the United States." Section 2(b) states that the "purpose of this Act is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to . . . (4) collect, maintain, use, or *disseminate* any record of *identifiable personal information* in a manner that assures that such action is for a *necessary* and lawful *purpose* . . . [and] (5) permit exemptions from the requirements with respect to records provided in this Act *only in those cases where there is an important public policy needed [to disclose]* as has been determined by specific statutory authority." [Emphasis supplied]. Clearly, the provision of the Privacy Act last quoted contemplates a balancing in each case of the individual's right to privacy—a right Congress has declared to be fundamental and of Constitutional dimension—against a showing of important public policy need to disclose. Clearly, also, the reference in Privacy Act § 2(b)(4) to "identifiable personal information" is expansive in scope.

Section 3 of the Privacy Act adds § 552a to Title 5. § 552a(e)(10), in imposing upon federal agencies the duty to maintain records in confidence, is similarly expansive in its scope. The agency is obliged, among other things, to establish administrative safeguards to protect against unauthorized invasion or dissemination of records "which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained."

Embarrassment, inconvenience and unfairness are words that connote something far different from "intimate details of a highly personal nature," the term used by the *Robles* court. Finally, the provision for civil remedies, § 552a(g)(1)(D), refers to an agency's failure of compliance "in such a way as to have an adverse effect on an individual," and does not quantify that adversity in "substantial" or other limiting terminology.

The legislative history of the Privacy Act directly supports the analysis earlier quoted from the opinion in *Rose*. Specifically, the report of the House Committee on Government Operations on H.R. 16373 (one of the two bills that gave rise to the Privacy Act), H.R. No. 93-1416, 93d Cong. 2d Sess. 4 (1974), states:

"H.R. 16373 attempts to strike that delicate balance between two fundamental and conflicting needs—on the one hand, that of the individual American for a maximum degree of privacy over personal information he furnishes his government, and on the other hand, that of the government for information about the individual which it finds necessary to carry out its legitimate functions."

And on page 10 of the House report:

"While there can be no right of *absolute* privacy in our complex civilization, there is an urgent need today to assert the fundamental right of privacy for all Americans to the maximum extent consistent with the overall welfare of our Nation."

And on page 14 of the House report:

"The Committee intends that restrictions on the transfer of individually-identifiable data be as strong as they can be without impairing the ability of government agencies to perform their duties."

In sum, notwithstanding the narrow view taken in the Fourth Circuit's 1973 decision in the *Robles* case, we believe it should today be clear that the concept of a "clearly unwarranted invasion of personal privacy" is not limited to an unjustified publication of intimate details of a highly personal nature. Rather, in each case the information must be analyzed to determine whether, on balance, the interest of the public in knowing the workings of government outweighs the individual's fundamental right to privacy.

3. Administrative Convenience is Not a Factor in the Balancing Equation

At the hearing of March 25, Internal Revenue Service representatives expressed understandable concern that the processing of any significant number of disclosure exemption requests would impose an excessive burden upon the Service and interfere unduly with the letter ruling process.

Whatever validity these concerns may have for other exemptions from required public disclosure that are set forth in FOIA § 552(b) as regards the (b)(6) privacy exemption they are irrelevant.

As the next section of this report confirms, on and after the effective date of § 552a, the pertinent portion of the Privacy Act, the (b)(6) exemption no longer will be applicable in the discretion of the agency, but will instead be a mandatory exemption from public disclosure in any case to which the stricture of the Privacy Act applies.

The Privacy Act requires a balancing of interests. But the interests to be balanced do not include administrative convenience. The legislative history of the Privacy Act is specific:

"We start with the premise that exemptions from the provisions of this bill [H.R. 16373] and of any bill designed to protect individual rights of privacy are justified only in the face of overwhelming societal interests. Never should economy or efficiency or administrative convenience be used to justify the exemption from or modification of any of the safeguard requirements set forth in this bill. Moreover, when exemptions must be made, they must be defined in very specific terms.

Additional views of Representative Abzug, concurred in by 9 other members of the House Committee on Government Operations, H.R. Rep. No. 93-1416, 93d Cong. 2d Sess. 37 (1974).

4. Relationship of FOIA and the Privacy Act

Considered without reference to the Privacy Act of 1974, § 552(b)(6) of FOIA permits—but does not require—the agency, the Internal Revenue Service or any other, to exempt from disclosure "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." If the Privacy Act merely exempted this class of data from data from disclosure, without more, its impact upon the agency's discretion would be unclear since FOIA § 552(b)(3) permits—but does not require—the

agency to exempt from disclosure matters that are "specifically exempted from disclosure by statute."

But the Privacy Act does much more, as the legislative history of that statute makes clear.

§ 552a(b) specifies:

"No agency shall disclose any record [defined to mean information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions and medical history, and that contains his name, identifying number or the like] which is contained in a system of records [a group of any records under the control of the agency, from which information is retrieved by the name, identifying number or other identifying particular of or assigned to the individual] by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure of the record would be—(2) required under section 552 of this title [5 U.S.C. § 552, the FOIA]."

Putting aside for the time "prior written consent," the Privacy Act forbids public disclosure of letter rulings (which undoubtedly qualify as records contained in a system of records) unless that disclosure is *required* under FOIA. Under that statute the Service is required to disclose letter ruling information that does not constitute matters exempted from disclosure by § 552(b), but it is *not* required—it is merely permitted—to disclose exempt portions of the records.

With respect to information, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," a report of the Association of the Bar of the City of New York has summed up with precision:

"The agency would not be *required* to disclose the data, in terms of the Freedom of Information Act, because it would be a matter "specifically exempted from disclosure by statute" (5 U.S.C. § 552(b)(3)). It would not be *permitted* to disclose, by force of the new legislation [5 U.S.C. § 552a(b)]."

See report entitled "Government Databanks and Privacy of Individuals (H.R. 16373 and S. 3418)," by The Committee on Federal Legislation of The Association of the Bar of the City of New York, reprinted in 30 Record of the Association 55, 105 n. 132 (January/February 1975) (emphasis in the original).

The legislative history of the Privacy Act of 1974 renders this conclusion abundantly clear. The Privacy Act was enacted December 31, 1974 as P.L. 93-579. The bills that became this law were H.R. 16373 and S. 3418, each of which contributed to the final legislation.

In developing the respective bills, both houses of Congress perceived the potential conflict between the contemplated Privacy Act and the FOIA. The Senate bill, § 202(c) of S. 3418, proposed to resolve the issue in favor of broad disclosure and subordination of the right of privacy by providing that the disclosure restrictions "shall not apply when disclosure would be required *or permitted*" pursuant to FOIA [emphasis supplied].

The House bill, H.R. 16373, did not contain any provision similar to 5 U.S.C. § 552a(b)(2) designed to resolve explicitly the potential conflict between the Privacy Act and FOIA. However, the report on H.R. 16373 of the Committee on Government Operations, H.R. Rep. No. 93-1416, 93d Cong. 2d Sess. 13 (1974), made clear the intention of the House bill: The agency should not make disclosures that would constitute "clearly unwarranted invasions of personal privacy.":

"This legislation [the Privacy Act] would have an effect upon subsection (b)(6) of the Freedom of Information Act (5 U.S.C. section 552), which states that the provisions regarding disclosure of information to the public shall not apply to material "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." H.R. 16373 would make all individually-identifiable information in Government files exempt from public disclosure.

"Such information could be made available to the public only pursuant to rules published by agencies in the Federal Register permitting the transfer of particular data to persons other than the individuals to whom they pertain.

"The Committee does not desire that agencies cease making individually-identifiable records open to the public, including the press, for inspection and copying. On the contrary, it believes that the public interest requires the disclosure of some personal informaion. Examples of such information are certain data about government licensees, and the names, titles, salaries, and duty stations of most Federal employees. The Committee merely intends that agencies consider the disclosure of this type of information on a category-by-category basis and allow by published rule only those disclosures which would not

violate the spirit of the Freedom of Information Act by constituting 'clearly unwarranted invasions of personal privacy'."

Both the Senate and House bills were the subject of published criticism. See, e.g. the above referenced report of the Association of the Bar of the City of New York which was issued prior to the Conference Committee deliberation The Senate bill was criticized because, in employing the term "required or permitted," it "rendered the protections provided in other provisions [of the proposed Privacy Act] almost totally ineffective." Report of the Association of the Bar, at 87–88. The House bill was criticized for failing to state explicitly in the proposed Privacy Act that which the House Committee articulated in its report.

As enacted, the Privacy Act responds to both criticisms. The Senate bill terminology, "required or permitted," does not appear and, instead, the House Committee Report concept—agencies are not to make disclosures that "constitute a clearly unwarranted invasion of personal privacy"—is mandated by § 552a(b)(2). Unconsented disclosure *of* private information is not permitted unless *required* by the Freedom of Informaiton Act.

Individual circumstances vary as greatly as the tax issues which may become the subject of a ruling request. Guidelines as to what disclosures constitute "clearly unwarranted" invasions of personal privacy will doubtless emerge slowly, case by case. In the meantime, the proposed procedural rules should be sufficiently flexible to protect both the taxpayer's rights of privacy and the Service from unintended violation of those rights.

5. A Forced Waiver is Not Proper "Prior Written Consent"

The Internal Revenue Service's proposed procedural rules require that a request for a ruling or determination letter, filed after the date the rules are published as a final document, "must also contain . . . a waiver of confidential treatment in the manner described in subparagraph (17)(i). . . ." Proposed procedural rule § 601.201(e)(16). Proposed subparagraph (17)(i) reads as follows:

"The waiver of confidential treatment referred to in subparagraph (16)(i) of this paragraph shall be made by written statement in the request signed by or for the person making the request and all other persons whom the Internal Revenue Service shall determine may have a direct interest in maintaining the confidentiality of information in the request. The waiver shall state that each such person 'expressly waives' any right to confidential treatment with respect to the request, oral information and correspondence in connection with the request, oral information contained in the ruling, determination included in the file connected with the request, the ruling, the determination letter or acknowledgement of withdrawal."

The quoted provision then goes on to specify that a waiver of confidential treatment is not required with respect, and only with respect, to trade secrets or to national defense or foreign policy information (if specifically authorized under criteria established by an Executive order to be kept secret).

It is thus the position of the Internal Revenue Service, enunciated in its proposed procedural rules, that the taxpayer and all other interested persons must "expressly waive" the right—explicitly granted by Congress and confirmed by Congress to be a fundamental Constitutional right—to prevent a public disclosure that constitutes "a clearly unwarranted invasion of personal privacy." Under the proposed procedural rules, the taxpayer may be entitled to a ruling or to the right of privacy, but never to both.

The Privacy Act, § 552a(b), forbids any such public disclosure, by the Internal Revenue Service or any other federal agency, unless the disclosure is made "pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." Obviously, the contemplated "forced waiver" is not a taxpayer's "request" that his privacy be violated. The issue, and the only possible basis for concluding that the proposed procedural rules do not violate the Privacy Act, is whether the "forced waiver" appropriately qualifies as the "prior written consent" that is contemplated by the Privacy Act.

The term "consent" is synonymous with the words "permit" and "approve." All of them bear the strongest connotation of voluntary action or agreement. We think it evident that Congress employed the term "consent" in the light of its accepted meaning. We find it inconceivable that Congress would have enacted the detailed restrictions of the Privacy Act and simultaneously provided for the frustration of that statute by permitting a federal agency to force

the citizens with which it deals to abandon the rights confirmed to them under the statute and by the Constitution.

The argument that the Service could eliminate its rulings program altogether and thus should be able to require waiver of privacy rights as a condition to granting a ruling runs afoul of the doctrine of unconstitutional conditions. The power to *regulate* availability of rulings does not carry with it power to condition availability upon waiver of constitutional rights. Cf. *Frost & Frost Trucking Co.* v. *Railroad Commissioner*, 271 U.S. 583, 593–4 (1926); *Hannegan* v. *Esquire, Inc.*, 327 U.S. 146, 155–56 (1946), and note, 73 H.L. Rev. 1505 (1960).

In searching the legislative history of the Privacy Act of 1974, we have found nothing in any report, testimony or written submission that in any way suggests a "forced waiver" of the right to personal privacy will constitute the "prior written consent" required by the statute. It seems clear that no one who sponsored, developed, analyzed or testified with respect to this legislation contemplated so peculiar and internally inconsistent an interpretation.

The "consent requirement" was, however, focused during the course of the legislative process, and the nature of that focus is inhospitable to the idea of a "forced waiver." Thus, the report of the House Committee on Government Operations, *supra* at page 12, states:

"Section 552a(b) provides that no Federal agency shall disclose any record containing personal information about an individual without his approval to any person not employed by that agency or to another agency except under certain special conditions.

"The consent requirement may well be one of the most important, if not the most important, provisions of the bill. No such transfer could be made unless it was pursuant to a written request by the individual or by his prior written consent."

It is impossible to believe that the Committee, in so conjoining (as does the statute itself) the alternate procedures of "a written request by the individual" and "his prior written consent," envisioned anything other than parallel routes to the same voluntary end. The Committee perceived the "consent requirement" to be supremely important in that it placed in the hands of the individual citizen the choice of allowing or forbidding an otherwise improper invasion of his privacy. It would be strange indeed to suppose the Committee thought the "consent requirement" supremely important as constituting a means whereby the agency could force the individual citizen to suffer without recourse a clearly unwarranted invasion of his personal privacy.

All other segments of the legislative history that we have found to bear in any way upon the issue support the sensible notion that consent must be voluntarily given. Thus, the cited Committee report, at page 14, announces, "The Committee intends that restrictions on the transfer of individually-identifiable data be as strong as they can be without impairing the ability of government agencies to perform their duties." And, at page 37, the earlier quoted additional views of Representative Abzug, concurred in by 9 others, commence:

"We start with the premise that exemptions from the provisions of this bill and of any bill designed to protect individual rights of privacy are justified only in the face of overwhelming societal interests. Never should economy or efficiency or administrative convenience be used to justify the exemptions from or modification of any of the safeguard requirements set forth in this bill."

The provisions for "required consent," we think it clear, is intended as a "safeguard requirement." It is not an invitation to a federal agency, concerned with administrative inconvenience, to frustrate the purpose of the statute.

One final reference to legislative history appears warranted. The immediate predecessor bills to the Privacy Act of 1974 were S. 3418 and H.R. 16373, but a privacy protecting statute had been a matter of Congressional concern—in significant part engendered by Representative Edward I. Koch of New York—for a a number of years. On January 2, 1974 Mr. Koch had introduced two bills, H.R. 12206 and H.R. 12207, proposing the enactment of different versions of a new § 522a as an amendment to Title 5. These bills, together with four others, were the subject of a series of hearings during the period February 19 through May 16, 1974, before a Subcommittee of the House Committee on Government Operations. The 338 page record of those Hearings provided the testimonial background for the statute that was enacted December 31, 1974.

H.R. 12206 did not provide that the written request or prior written consent of the concerned individual was a condition precedent to agency disclosure. Instead, it provided for notification of the person concerned that disclosure was

being made. The notification proposal attracted adverse testimony the thrust of which supported the concept of voluntary consent or, at the least, a citizen's right to object to unwarranted disclosure and to prosecute his objection in the courts. Other bills considered in the hearings—and ultimately the statute as enacted—discarded the notification procedure and embraced "prior written consent." See Hearings entitled "Access to Records," before a Subcommittee of the Committee on Government Operations, House of Representatives, 93d Cong. 2d Sess. on H.R. 12206 and Related Bills (February 19, 20, April 30, and May 1, 1974) at *inter alia*, 111 (Representative Abzug: "[I]t really makes very little sense to us to talk about notifying individuals . . . without requiring their consent.

Informed consent, I believe, constitutes the backbone of any disclosure statute"), 193 (Representative Goldwater, Jr.: "There should be a clearly prescribed procedure for an individual to prevent personal information collected for one purpose from being used for another purpose without his consent . . ."), 198 (précis of proposed Koch-Goldwater bill, H.R. 14163, "[P]ersonal information must not be given to third parties without the individual's consent."), 201 (Representative Goldwater responding to a question from Representative Abzug regarding a requirement of the individual's consent: "Any Federal agency maintaining personal information shall request permission of a data subject to disseminate part or all of this information to another organization or system not having regular access or authority."), 205 (Representative Goldwater responding to a question from Representative McCloskey concerning medical and other personal information: "[W]hen something is of a personal nature, it is up to that individual whether he wants to release that to the public or not.")

For all of the reasons state, the Tax Section is strongly of the belief that the "forced waiver" procedure of the proposed procedural rules will not satisfy the § 552a(b) requirement of prior written consent and, accordingly, that public disclosure of letter ruling information that constitutes a clearly unwarranted invasion of personal privacy, contrary to the desire of the concerned individual, will violate the Privacy Act of 1974.

6. The Proposed Procedural Rules are Inconsistent with the Treasury's Position Before Congress

On April 20, 1974 Edward C. Schmults, General Counsel of the Treasury Department, appeared before the House Foreign Operations and Government Information Subcommittee of the Committee on Government Operations, submitting a prepared written statement and testifying orally on behalf of the Treasury Department with respect to the then proposed privacy bills. Mr. Schmults demonstrated his understanding of the importance of balancing competing interests and a keen awareness of the significance of the right of privacy (page references below are to the above referenced Hearings):

"The Treasury has sought a perspective for addressing the situation and believes that some of the broader elements that should be balanced are the right of an individual to personal privacy, the needs of the Government to obtain and use information about individuals and other legal entities in executing the laws, the right of the public to know what its Government is doing and how the Government is carrying out its responsibilities under the law and, the right of individuals to be secure in their persons and property [page 209].

"Concomitantly, we have a high obligation to perform our governmental duties as effectively as possible for the public good. This often requires the collection and use of personal data. Thus, a careful balancing of the Government's need to know with the individual's right of privacy is continually in process [page 210].

"Continuing, affirmative efforts should be made toward an optimum balance between an individual's right of privacy and the Government's need for information [page 210].

"[W]e are vigorous participants in the executive branch's actions to control and direct information processing so that the individual can retain his right of privacy while legitimate information needs are achieved [page 216].

"The Treasury Department shares the keen interest in the right of privacy which so many in Congress have exhibited [page 216].

"We are reviewing operational aspects of the privacy situation, including . . . who should have access to the information [page 216].

"The Department and certain of its constituent agencies have adopted regulations governing the disclosure of information in their custody, and they also have internal instructions limiting access to information in their repositories. Our studies will examine all of these regulations and instructions to see if they

sufficiently protect the individual's right of privacy. Where disclosures are allowed, even on a limited basis, we are reexamining the propriety of disclosures even though legitimate under Federal law; and if warranted and authorized by law, we will make further restrictions on dissemination of personal records maintained by the Treasury Department and its component agencies [page 217].

"Certainly, every agency which collects personal information has an obligation to collect only what is necessary for the proper and effective performance of its duties and to safeguard the information from abuse [page 217].

"Well, we are not cavalier. We are concerned about the privacy of citizens, and we have set up within the Treasury Department a Committee on Privacy made up of representatives of our various components. We are addressing these problems. We are going to review our own regulations; and where they can be improved we are going to improve them; and we will take the necessary steps. . . . At no time in my knowledge has the Treasury Department displayed a cavalier attitude in regard to the privacy of individuals. We are concerned about the same problem that this committee is addressing, and we think the right to privacy is important . . . [page 227].

"I do not believe the Treasury Department should be the judge of its own actions and we do want to work with the Congress. We do want to work with others who are concerned about privacy because we are concerned about privacy [page 228]."

It is difficult to believe that the Congress to which these statements were made could have any anticipation that the Internal Revenue Service, a constituent agency of the Treasury Department, would manifest its concern with the right of privacy by forcing every rulings applicant to waive it.

7. Procedure Involving OMB

(s) of the Privacy Act (not codified in Title 5), a portion of the Act that currently is in effect, provides as follows:

"The Office of Management and Budget shall—

"(1) develop guidelines and regulations for the use of agencies in implementing the provisions of section 552a of title 5, United States Code, as added by section 3 of this Act, and

"(2) provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies."

We believe that the Internal Revenue Service, before it promulgates in final form the procedural rules under consideration, should obtain and attend to the view of OMB with regard to any rule provision that would or might impact adversely on the individual right of privacy.

8. Conclusion

The proposed procedural rules were released December 6, 1974 and published in 39 Federal Register 4087–4089 on December 10, 1974. They thus were conceived prior to the enactment of the Privacy Act on December 31, 1974. Obviously, the Service cannot be taken to task for having proposed rules that do not accord with the subsequently enacted federal statute.

But the proposed rules, we believe, are contrary to the mandate of the Privacy Act, and, while the substantive provisions of that Act will not come into force until September 27, 1975, it would be unwise and inappropriate for the Service to adopt the proposed rules now only to change them on that date. The protection of personal privacy that will be mandatory on and after September 27 is permissible under 5 U.S.C. § 552(b)(6) today. The Service ought to adopt procedures viable for the future. Recognizing the tension between the policies of the Freedom of Information Act and of the Privacy Act, the objective of these procedures should be publication of all precedential material after the deletion, as appropriate in the specific case, of either the privacy invading information or the individual's name and identifying data.

A "forced waiver" of the right of privacy will not withstand scrutiny under the Privacy Act. A government agency which, less than a year ago, before Congress forcefully proclaimed its concern with the individual's right of personal privacy should not now conclude that the best way to deal with that right is to disregard it. The position is untenable and the prospect for embarrassment of the Service is overwhelming.

Respectfully submitted,

M. Carr Ferguson,
Chairman, Committee on Practice and Procedure.
Martin D. Ginsburg,
Chairman of the Tax Section.

WEBSTER, SHEFFIELD, FLEISCHMANN, HITCHCOCK & BROOKFIELD,
New York, N.Y., May 13, 1975.

Attention: Mr. Michael Stern, Staff Director
HON. FLOYD K. HASKELL,
Chairman, Subcommittee on Administration of Internal Revenue Code, Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: In response to your invitation to submit written statements for inclusion in the printed record of the hearings of your committee with regard to Federal Tax Return privacy, I submit the following for consideration by your committee and inclusion in the record.

As a Tax Practitioner, I have become aware of an Internal Revenue Service practice to make available to the Securities and Exchange Commission, in connection with Security and Exchange Commission investigations, confidential tax information received by the Internal Revenue Service either from returns filed, or from examinations by Internal Revenue Service Agents. This practice is clearly inconsistent with the confidentiality of tax return information, and with the privilege of taxpayers which is protected by the Fifth Amendment. Immediate steps should be taken to put an end to these practices.

In any case where it appears that a disclosure of information may be appropriate between one government agency and another, I suggest that the Code clearly require that the taxpayer be advised that such disclosure is going to be made, with an opportunity to the taxpayer to object if he believes such disclosure is improper or illegal.

Very truly yours,

JOHN D. SMYERS.

THE STANDARD OIL CO.,
Cleveland, Ohio, July 11, 1975.

MR. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

PUBLIC INSPECTION OF INTERNAL REVENUE SERVICE PRIVATE LETTER RULINGS

DEAR MR. STERN: A June 13 press release issued by the Senate Committee on Finance invited comments on the matter of public inspection of Internal Revenue Service private letter rulings. The release indicated that written comments should be submitted on or before July 7; and even though these comments will reach you after that date, I nevertheless would like to submit them for your consideration.

My comments reflect my experience as a member of the Internal Revenue Service for several years and my present responsibilities as Assistant Controller for tax administration and corporate accounting for the Standard Oil Company of Ohio.

I will divide my comments into two sections—first, some general comments; and then, my answers to the questions set out in the press release. If you should want to discuss any of these matters, you can write me at the above address or call me on 216/575-4608.

GENERAL COMMENTS

The private rulings program is reportedly unique to our self assessment tax system and has been an important part of the Internal Revenue Service's efforts to obtain a high degree of compliance with its administrative determinations under the Internal Revenue Code.

Administratively, the procedure of issuing rulings which bind the Service on a confidential, individual request basis has inherent in it the probability that from time to time there will be instances of lack of total consistency and uniformity in the positions taken. It is recognized, therefore, that it is a proper objective of the proposed regulations to encourage consistency in the rulings function and to create a general feeling of fairness in taxpayers that there is an orderly and even administration of the tax laws. We, therefore, support the overall objective of the proposed regulations.

We are concerned, however, that the proposed requirements of full disclosure of the entire supporting file will be counterproductive to the important role that the private rulings activity has placed in permitting taxpayers to plan and implement their business decisions with a reasonable degree of assurance that they interpret intricate provisions of the Code consistent with the views of the IRS.

For this reason, we support the making available to the public of all rulings issued—whether they be favorable or unfavorable—but urge that the public file be *limited to full disclosure of only those basic facts* in the proposed transaction which are necessary to a clear understanding of the issues involved, the relevant authority relied upon by both the taxpayer and the Service, and the specific items ruled upon.

The identity of the taxpayer should not be divulged as this is not relevant to the legitimate interest non-involved parties have in the matter. In those instances in which either the request for ruling is withdrawn by the taxpaper or the Service has indicated it proposes to rule adversely, no public record should be made available.

We think that there are at least two methods by which the identity of the taxpayer and the details relating to taxpayer strategy and other areas of privacy can be kept confidential: (1) by requiring taxpayers who meet given criteria for confidential treatment to submit both a complete and an edited ruling request; or (2) by having the Service redraft both the ruling request and the ruling issued in language and form similar to that now used in the published rulings issued in the weekly Internal Revenue Bulletin.

ANSWERS TO THE SPECIFIC QUESTIONS POSED TO WITNESSES APPEARING BEFORE THE SUBCOMMITTEE

1. Should private letter rulings be made available for public inspection?

We think they should be made available for public inspection, but the public file should be limited to only those basic facts, relevant authority, and specific items ruled down. The full file upon which the ruling was based should be kept confidential in those instances where the taxpayer so requests and the Service agrees based upon demonstrated adverse impact to the taxpayer which would result from such public disclosure.

The public file, therefore, would include all information necessary to adequately explain the result reached in the ruling but strive to protect the identity of the taxpayer and validly confidential information from public disclosure.

2. What procedures should be established concerning information to be made available for public inspection?

We believe that taxpayers suggestions as to information to be deleted should be advisory only, with responsibility for content in the publication of proposed rulings resting with the IRS. The taxpayer should, however, have a right of prior review and a right for a limited judicial proceeding to resolve controversies. That could be a quasi-judicial proceeding held by a specially created unit within either the IRS or the Treasury Department.

We support the right of the IRS to index and maintain ruling files. These indexes and files should be kept available for public inspection for so long as the underlying statutory provisions remain.

3. Should technical advice memoranda be made available for public inspection?

We are totally opposed to the making public of technical advise memoranda. Since requests for technical advice are a prerogative of the taxpayer and occur only during audit of a return which has been filed, they are an inherent part of the confidentiality attached to the return itself. Accordingly, such requests and the Service's response are outside a reasonable interpretation of the Freedom of Information Act.

4. What interim rules should be adopted for the processing and disclosure of rulings issued prior to the effective date of any publication procedure which may be finally adopted?

No comment.

5. Once it is decided that private rulings should be open to public inspection, what kind of precedent should such rulings be accorded for the purposes of other ruling requests?

Although such rulings should be of value to taxpayers engaged in similar transactions, there should be no commitment imposed upon the Service to apply it to any other taxpayer before a determination is made that all the relevant facts and circumstances are the same.

The IRS presently has the right to rescind or modify rulings subsequently determined to be misleading, inaccurate, or incorrect and this right should be continued.

6. What changes would be appropriate concerning the publication of revenue rulings of private letter rulings are held to be open for public inspection? Should there be greater reliance on guideline type revenue procedures?

No comment.

7. Should third parties be granted a right to question the results reached in specific rulings? Should this right be exercised through a hearing procedure within the IRS or through a judicial proceeding? What parameters should be placed on persons authorized to so intervene?

The right of third parties to question the results reached in specific rulings should be limited to those instances in which it can be reasonably demonstrated that there is apparent gross mis-application of relevant authority. This limited right should be exercised through a hearing procedure within the IRS. Any person should be authorized to intervene if they can meet this criteria.

8. What would be your assessment of the impact of public disclosure of private letter rulings under the procedures mentioned above on the existing IRS ruling system?

We have previously stated our views that public disclosure of private letter rulings without carefully designed limitations on disclosure of the identity of the taxpayer and confidential data submitted would be adverse to our system of uniform self-assessment. To include in the final regulations all of the procedures suggested would assuredly diminish the use of this vital administrative procedure which provides a means of assuring proper interpretation of specified provisions of the tax laws on a before-the-fact basis. We, therefore, encourage procedures which make available to the public those private letter rulings which have been acted upon by the Service, together with all the facts and the authority relied upon. We believe, however, that this can be done in a manner which promotes uniformity of administration and makes available to all taxpayers favorable or unfavorable interpretations made without denying to the requestor the legitimate rights of privacy granted under the tax laws.

Very truly yours,

DONALD C. HALEY.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
Richmond, May 5, 1975.

Hon. HARRY F. BYRD,
U.S. Senate,
Washington, D.C.

DEAR HARRY: I have been advised that S. 199 is pending before the Senate Subcommittee on Administration of the Internal Revenue Code.

I believe you are a member of this committee and I ask your consideration of the following proposals which have been brought to my attention.

I am told that one proposal would give authority to State Tax Commissioners rather than Governors to request certain tax information from federal authorities. Although approximately two-thirds of the state Governors appoint their tax officials, this move, in my opinion, would further erode the authority of Governors.

It has also been brought to my attention that another proposal would no longer allow political subdivisions of a state to have access to certain tax information, and I believe this should be allowed at the discretion of Governors.

With warm personal regards, I am

Sincerely,

MILLS E. GODWIN, Jr.

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