

COMPARISON OF PROPOSALS RELATING TO THE DISCLOSURE
OF TAX INFORMATION FOR PURPOSES OF NONTAX CRIMINAL LAW ENFORCEMENT

H.R. 1502, introduced by Mr. Gibbons (similar to S. 732,
introduced by Senators Nunn, Chiles, et. al.) and
S. 1891, introduced by Senators Roth, Nunn, et. al.
(the Administration's proposal).

SCHEDULED FOR A HEARING BY THE WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT
ON DECEMBER 14, 1981

PREPARED BY THE STAFF OF THE JOINT COMMITTEE ON TAXATION
DECEMBER 10, 1981

JCX-39-81

I N T R O D U C T I O N

The Oversight Subcommittee of the Committee on Ways and Means has scheduled a public hearing on December 14, 1981, on the subject of disclosure of tax returns and return information in connection with nontax criminal law enforcement and other taxpayer privacy issues.

In announcing the hearing, the Subcommittee indicated that it intends to examine the following areas relating to disclosure of tax returns and return information (Subcommittee Press Release #12, dated December 3, 1981):

- "(a) The extent to which I.R.C. Section 6103 (i) has served to protect taxpayers from unwarranted governmental intrusion resulting from their compliance with the tax laws.
- (b) Whether I.R.C. Section 6103 (i) has provided an appropriate balance between taxpayers' rights to privacy and the law enforcement agencies' investigative needs.
- (c) The Administrations's efforts to coordinate and to operate fully and efficiently within the parameters of the law.
- (d) How various proposed changes to existing law would affect current disclosure practices, taxpayer compliance, and law enforcement efforts."

This document, prepared in connection with the Subcommittee hearing, provides a comparison of the provisions of present law and two proposals (H. R. 1502, Mr. Gibbons, and S. 1891, the Administration proposal) relating to disclosure of tax information for purposes of nontax criminal law enforcement.

Present Law

Categories of Tax Information

For purposes of disclosure, present law divides tax information into three broad categories: (1) returns, (2) return information, and (3) taxpayer return information.

A return is any tax or information return, declaration of estimated tax, or claim for refund which is required (or permitted) to be filed by, or on behalf of, or with respect to, any person. (A return also is any amendment, supplemental schedule, or attachment filed with the tax return, information return, etc.)

Return information is certain data relating to a particular taxpayer, including the following items: the taxpayer's identity and the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, and tax payments.

Taxpayer return information is return information that is filed with, or furnished to, the IRS by, or on behalf of, the taxpayer to whom the return relates. (This includes, for example, data supplied by a taxpayer's representative to the IRS in connection with an audit.)

H.R. 1502

Categories of Tax Information

For purposes of disclosure, the bill would divide tax information into two categories: (1) return information and (2) nonreturn information.

Return information would be a tax return, information return, declaration of estimated tax, or claim for refund, as well as any amendment or supplement thereto, that is filed by, on behalf of, or with respect to, any person (i.e., return information generally would mean the same as returns under present law). Return information also would be any information provided to the Secretary by, or on behalf of, an individual taxpayer to whom the information relates. For this purpose, an individual taxpayer would be any natural person or a corporation, partnership, association, union, or other entity consisting of no more than two owners, shareholders, partners, or members.

Nonreturn information generally would be any information (other than a return) that is provided to the Secretary by, or on behalf of, someone other than the taxpayer to whom the information relates (e.g., information with respect to an individual that is submitted by a third-party). In addition, nonreturn information would include any information (other than a return) that relates to any corporation, partnership, association, union, or other entity consisting of more than two owners, shareholders, partners, or members.

S. 1891

Categories of Tax Information

For purposes of disclosure, the bill would divide tax information into two categories: (1) investigative return information and (2) investigative nonreturn information.

Investigative return information generally would have the same meaning as return information under H.R. 1502 (i.e., it would include returns of all taxpayers and underlying records and information submitted by, or on behalf of, individual taxpayers). An individual taxpayer would be a natural person or a corporation, partnership, association, trust, estate, or other entity consisting of no more than two individual owners, shareholders, partners, members, or trustees.

Investigative nonreturn information generally would have the same meaning as nonreturn information under H.R. 1502 (i.e., primarily the underlying books and records submitted to the IRS by, or on behalf of, larger corporations and information received from third parties during IRS investigations).

Present Law

Disclosure Pursuant to Court Order

Returns and taxpayer return information may be disclosed by the IRS to other Federal agencies, for purposes of nontax criminal investigations, only upon the grant of an ex parte order by a Federal district court judge.

Individuals Permitted to Apply for Court Order

The head of a Federal agency or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may authorize an application to a Federal district court judge for the disclosure of returns or taxpayer return information.

Standards for Granting of Court Order

An ex parte order may be granted upon the determination of the judge that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (2) there is reason to believe that the return or return information is probative evidence of a matter in issue related to the commission of the criminal act; and (3) the information sought to be disclosed cannot reasonably be obtained from any other source, unless the information is the most probative evidence of a matter in issue relating to the commission of the criminal act.

H.R. 1502

Disclosure Pursuant to Court Order

Return information would be available from the IRS only pursuant to the order of a Federal district court judge or magistrate. Such order could provide for continuous disclosure.

Individuals Permitted to Apply for Court Order

The Attorney General, the Deputy Attorney General, an Assistant Attorney General, a United States Attorney, or the attorney in charge of a criminal division organized crime strike force could authorize the disclosure application.

Standards for Granting of Court Order

An ex parte order would be granted upon a showing that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been, or is being, committed; (2) the information is being sought exclusively for use in a Federal criminal investigation or proceeding concerning such criminal act; and (3) there is reasonable cause to believe that the information may be relevant to a matter relating to the commission of such criminal act.

S. 1891

Disclosure Pursuant to Court Order

Investigative return information would be available from the IRS only pursuant to the order of a United States district court judge or magistrate. Such order could provide for continuous disclosure.

Individuals Permitted to Apply for Court Order

Similar to H.R. 1502, except that the Associate Attorney General also could authorize the disclosure application.

Standards for Granting of Court Order

The standards for issuing an ex parte order are similar to those contained in H.R. 1502. In addition, an ex parte order also could be granted upon a determination that: (1) an arrest warrant has been issued for an individual who is a fugitive from justice; (2) the information is sought exclusively for use in locating such individual; and (3) there is reasonable cause to believe that the information may be relevant to determining the location of the individual.

Present Law

Disclosure Pursuant to Written Request

Return information, other than taxpayer return information, may be disclosed upon written request from the head of a Federal agency, the Attorney General, Deputy Attorney General, or an Assistant Attorney General. This written request must set forth: (1) the name and address of the taxpayer with respect to whom the information relates; (2) the taxable period or periods involved; (3) the statutory authority under which the proceeding or investigation (to which the information is relative) is being conducted; and (4) the specific reason or reasons why the disclosure is or may be material to the proceeding or investigation.

Disclosure of Tax Information Concerning Possible Criminal Activities

The IRS is authorized (but not required) to disclose return information, other than taxpayer return information, that may constitute evidence of a violation of Federal criminal laws to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing those laws.

H.R. 1502

Disclosure Pursuant to Written Request

Nonreturn information could be disclosed upon written request from the head of a Federal agency, an Inspector General, or the Attorney General or his designee. This written request would be required to set forth: (1) the name and address of the taxpayer with respect to whom the information relates; (2) the taxable period or periods involved; (3) the statutory authority under which the proceeding or investigation (to which the information is relative) is being conducted; and (4) allegations of criminal conduct giving rise to the proceeding or investigation.

Nonreturn information could be redisclosed to other Federal Government personnel or witnesses deemed necessary for assistance during the criminal investigation or in preparation for an administrative, judicial, or grand jury proceeding.

For purposes of this provision, the name, address, and social security number of the taxpayer, whether a taxpayer filed a return for a given year or years, and whether there is or has been a criminal investigation of a taxpayer would be treated as nonreturn information.

Disclosure of Tax Information Concerning Possible Criminal Activities

The bill would require the IRS to disclose, as soon as practicable, any nonreturn information that may constitute evidence of a violation of Federal criminal laws. Furthermore, if the IRS makes a recommendation to the Department of Justice for prosecution for a violation of the Internal Revenue Code, any return or nonreturn information reviewed, developed, or obtained during the tax investigation that may constitute evidence of a violation of Federal criminal laws would be

S. 1891

Disclosure Pursuant to Written Request

Investigative nonreturn information could be disclosed upon written request from the head of a Federal agency, an Inspector General, the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, the attorney in charge of a criminal division organized crime strike force, or a supervisory-level attorney for the Government designated by the Attorney General. The written request for disclosure would be required to set forth the same information specified in H.R. 1502.

Investigative nonreturn information could be redisclosed to other Federal Government personnel or potential witnesses.

Disclosure of Tax Information Concerning Possible Criminal Activities

Generally, similar to H.R. 1502. However, to the extent that a disclosure would be based upon information furnished by, or on behalf of, a corporation, partnership, association, trust, estate, or other legal entity, IRS-initiated disclosure would be permitted only if there was reasonable cause to believe such entity was formed, or is being operated or maintained, with a purpose

Present Law

Disclosure of Tax Information Concerning Possible Criminal Activities (cont'd.)

Disclosure of Tax Information Concerning Possible Criminal Activities (cont'd.)

Disclosure of Tax Information Concerning Possible Criminal Activities (cont'd.)

required to be furnished to the Department of Justice.

of facilitating or engaging in Federal criminal activity.

Use of Tax Information in Administrative or Judicial Proceedings

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Use of Tax Information in Administrative or Judicial Proceedings

In general, returns or return information disclosed by the IRS to a Federal agency may be entered into evidence in any administrative or judicial proceeding pertaining to enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or the agency is a party. However, a return or return information that was disclosed pursuant to a court order may be entered into evidence only if the court finds that it is probative of a matter in issue relevant in establishing the commission of a crime or the guilt of a party.

In general, tax information that is disclosed under the provisions of the bill could be entered into evidence in accordance with the Federal Rules of evidence, or other applicable law, in any administrative, judicial, or grand jury proceeding pertaining to enforcement of a specifically designated Federal criminal statute (not involving tax administration) or in any ancillary civil proceeding to which the United States or any Federal agency is a party.

Similar to H.R. 1502.

Disclosure of Tax Information in Emergency Circumstances

Disclosure of Tax Information in Emergency Circumstances

Disclosure of Tax Information in Emergency Circumstances

No provision.

Under emergency circumstances that involve an imminent danger of physical injury to any person, serious physical damage to property, or flight from prosecution, the IRS could disclose any information (return information and non-return information) to the extent necessary to apprise the appropriate Federal agency of the emergency. The IRS would be required to notify the Justice Department that such a disclosure had been made. The Justice Department then would notify the appropriate U.S. district court judge or magistrate that such a disclosure had been made.

Similar to H.R. 1502.

Present Law

Assistance of IRS in Joint Tax and Non-tax Investigation

No provision.

Redisclosure of Tax Information to State Authorities

No provision.

H.R. 1502

Assistance of IRS in Joint Tax and Non-tax Investigation

The bill would provide that the disclosure restrictions could not be interpreted to preclude or prevent the IRS from assisting the Justice Department or any other Federal agency in joint tax and nontax investigations of criminal matters that may involve income tax violations. Moreover, the disclosure restrictions could not be interpreted to preclude or prevent the IRS from investigating or gathering relevant information concerning persons engaged in criminal activities that may involve tax violations.

Redisclosure of Tax Information to State Authorities

Under the bill, any official who is authorized to apply for disclosure could apply to a Federal district court judge or magistrate for an ex parte order to disclose any return or nonreturn information in his possession, which is relevant to the violation of a State felony statute, to the appropriate State attorney general or district attorney. The disclosure application would set forth: (1) the name and address of the taxpayer, (2) the taxable period or periods to which the information relates, (3) a description of the information sought to be disclosed, and (4) the State felony violation involved.

Disclosure would be made to a State attorney general or district attorney if a Federal district court judge or magistrate determined that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific State felony violation has occurred or is occurring and (2) there

S. 1891

Assistance of IRS in Joint Tax and Nontax Investigation

Similar to H.R. 1502.

Redisclosure of Tax Information to State Authorities

Similar to H.R. 1502, except that before disclosure were made to a State attorney general or district attorney, it would also have to be determined that the information would be disclosed exclusively for use in a State criminal investigation or proceeding concerning the State felony violation.

Present Law

H.R. 1502

S. 1891

Rediscovery of Tax Information to
State Authorities (cont'd.)

is reasonable cause to believe that the information may be relevant to a matter relating to the commission of the violation.

Disclosure to Competent Authority Under
International Treaty or Convention

In general, a return or return information may be disclosed to a competent authority of a foreign government that has a treaty relating to the exchange of tax information with the United States. This information may be disclosed only to the extent provided in, and subject to the terms and conditions of, such treaty.

Disclosure to Competent Authority Under
International Treaty or Convention

The bill would permit disclosures of tax information to foreign governments, pursuant to mutual assistance treaties, for use in nontax criminal matters. This disclosure would be permitted through a court order upon a finding by a district court judge or magistrate that: (1) there is reasonable cause to believe that the information sought may be relevant to a matter relating to the commission of a specific criminal act that has been committed, or is being committed, against the laws of a foreign country and (2) the information is sought exclusively for use in the foreign country's criminal investigation or proceeding concerning such criminal act.

Disclosure to Competent Authority Under
International Treaty or Convention

Similar to H.R. 1502.

Foreign Intelligence Access

No provision.

Foreign Intelligence Access

No provision.

Foreign Intelligence Access

The bill would permit the disclosure of investigative return and nonreturn information to the Attorney General upon personal certification by the Attorney General that the information is sought exclusively for use in foreign intelligence collection or a foreign counterintelligence investigation and that there is reasonable cause to believe that the subject of the information is or may be (1) engaged in espionage, sabotage, clandestine intelligence activities, or international terrorism pursuant to the direction of a foreign power; (2) the actual target of an active effort

Present Law

H.R. 1502

S. 1891

Criminal Penalties for Unauthorized Disclosure of Tax Information

The maximum criminal penalty for the unauthorized, willful disclosure of tax information is \$5,000 and 5 years imprisonment.

Civil Damages for Unauthorized Disclosures of Tax Information

In general, present law provides that any person who willfully or negligently discloses returns or return information in violation of the law may be liable for damages sustained by the taxpayer.

Criminal Penalties for Unauthorized Disclosure of Tax Information

The bill would provide an affirmative defense to prosecution where the disclosure of tax information was made pursuant to a good faith but erroneous interpretation of the law.

Civil Damages for Unauthorized Disclosures of Tax Information

The bill provides that if a Federal employee knowingly or negligently discloses returns or nonreturn information with respect to a taxpayer in violation of the law, then the taxpayer who has been wronged may bring a civil action for damages exclusively against the appropriate Federal agency.

Effective Date

The provisions would be effective upon enactment.

Foreign Intelligence Access (cont'd.)

by a foreign intelligence service or international terrorist organization involving positive steps to accomplish recruitment; or (3) furnishing or about to furnish national defense information, sensitive economic or technological information or materials, or foreign policy information to a representative of a foreign power or foreign intelligence service.

Criminal Penalties for Unauthorized Disclosure of Tax Information

Similar to H.R. 1502.

Civil Damages for Unauthorized Disclosures of Tax Information

Similar to H.R. 1502.

Effective Date

The provisions would be effective upon enactment.