[COMMITTEE PRINT]

CONFIDENTIALITY OF TAX RETURNS

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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IN GENERAL

Present Law

Under present law, all income tax returns are described as "public records." However, tax returns generally are open to inspection only under regulations approved by the President, or under Presidential order.[1]

This applies to returns concerning income tax, estate tax, gift tax, manufacturers excise taxes, communications tax and transportation tax. The statute does not cover returns concerning a number of other types of taxes. These returns may be open to inspection at the discretion of the Commissioner, and include returns with respect to excise taxes on private foundations, and Federal Insurance Contribution Act (FICA) taxes. A more complete list is set out in the margin.[2]

Additionally, the statute provides a number of specific situations in which tax returns can be disclosed. State and local government officials may inspect tax returns for the purpose of administering State and local tax laws. (Sec. 6103 (b).) Shareholders owning at least 1 percent of the outstanding stock of a corporation may examine the returns of the corporation and its subsidiaries. (Sec. 6103(c).)

The Committee on Ways and Means, the Senate Finance Committee and the Joint Committee on Internal Revenue Taxation may inspect returns in executive session. The same is true with respect to a select committee of the House or the Senate which has been specially authorized by the appropriate body to obtain tax information. The ability to obtain tax information extends, under the statute, to the designated agents of these committees. Additionally, any relevant or useful information obtained by these committees may be submitted to the House or Senate, as appropriate. (Sec. 6103(d).)

Whether a person has filed a tax return is information available to the public. (Sec. 6103(f).)

Returns are available to the Department of Labor and the Pension Benefit Guaranty Corporation as needed to administer the 1974 pension reform act. (Sec. 6103(g).)

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[1] Under the statute, income tax returns are open to inspection upon order of the President and under Treasury rules and regulations approved by the President (sec. 6103(a)(1)) and also are "open to public examination and inspection" to the extent authorized in rules and regulations established by the President. (Sec. 6103(a)(2).)

Estate and gift tax returns and miscellaneous excise tax returns also are open to inspection under rules and regulations established by the President.

[2] Classes of returns open to inspection at the Commissioner's discretion include: (a) Rules Applicable to Recovery of Excessive Profits on Government Contracts. (Chapter 4); (b) Federal Insurance Contributions Act (Chapter 21); (c) Railroad Retirement (Chapter 22); (d) Collection of Income Tax at Source on Wages (Chapter 24); (e) Special Fuels (Subchapter E of Chapter 31); (f) Taxes on Wagering (Chapter 35); (g) Certain Other Excise Taxes (Chapter 36)—(1) Occupational Tax on Coin-Operated Devices (Subchapter B), (2) Tax on Use of Certain Vehicles (Subchapter D), (3) Tax on Use of Civil Aircraft (Subchapter E); (h) Sugar (Subchapter A of Chapter 37); (i) Regulatory Taxes (Chapter 39); (j) Private Foundations (Chapter 42); (k) Taxes on Distilled Spirits, Wines, and Beer (Chapter 51); (l) Taxes on Tobacco, Cigars, Cigarettes and Cigarette Papers and Tubes (Chapter 52); (m) Taxes on Machine Guns and Certain Other Firearms (Chapter 53). IRM 1272, Disclosure of Official Information Handbook 320.

Generally, unlawful disclosure of tax information by a Federal or State employee is punishable by a $1,000 fine or a year in jail or both. A Federal employee also is to be dismissed from office or discharged from employment for unlawful disclosure. (Sec. 7213(a)(1).)

These statutory rules have been supplemented by a number of regulations and executive orders. The regulations are of two general types, those allowing inspection on a case-by-case basis, and those allowing general inspection of tax returns. On a case-by-case basis, every Federal agency may have access to tax returns on the written request of the head of the agency and in most cases in the discretion of the Secretary of the Treasury or the Commissioner. A request under this regulation is to specify the name and address of the taxpayer involved, the kind of tax reported on the return, the taxable period involved, the reason for inspection, and the name and position of the person who is to see the tax information. (Regs. § 301.6103(a)–1(f).)

Under these "case-by-case" regulations, returns have been made available to a number of agencies. Disclosure of tax returns has been made under this provision, *e.g.*, to the Civil Service Commission, the Department of Defense, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Power Commission, the Federal Trade Commission, the Department of the Interior, the Interstate Commerce Commission, the National Labor Relations Board, the Post Office, the Small Business Administration, the Tennessee Valley Authority, the Department of Transportation, and the Veterans Administration. (In many of these situations, only a few returns were involved. Generally, the returns were used for investigative purposes in connection with matters within the jurisdiction of the agency.)

Also, returns are available on a case-by-case basis to a U.S. attorney or Assistant Attorney General "where necessary in the performance of his official duties." (Reg. § 301.6103(a)–1(g).)

The regulations allowing general inspection of tax returns apply to a few specific agencies and provide that the agency in question may obtain tax returns for given purposes. Under these regulations, the agency in question does not have to specify the reason for inspection, the person who will inspect, etc. The amount of information disclosed under these regulations varies with the agency. In one case, the staff is informed that disclosure has never occurred. In other cases, disclosure may occur with respect to several thousand returns a year and in other cases (involving use for statistical purposes), disclosure of limited amounts of information regarding millions of taxpayers may occur each year.

Under the general inspection regulations, tax information may be obtained by the Department of Health, Education and Welfare to administer title II (old age, etc. benefits) of the Social Security Act (Regs. § 301.6103(a)–100); by the Securities and Exchange Commission for statistical purposes (Regs. § 301.6103(a)–102); by the Advisory Commission on Intergovernmental Relations for studying the coordination and simplification of the tax laws (Regs. § 301.6103(a)–103);[3] by the Department of Commerce and the Renegotiation Board "in the interest of the internal management of the government" (Regs.

[3] The staff is informed that this authority has never been used.

§ 301.6103(a)–104, 105); and by the Federal Trade Commission to aid in carrying out the Federal Trade Commission Act (Regs. § 301.6103 (a)–106). Also, the regulations provide that standing committees of Congress may obtain tax information as authorized by executive order and resolution of the committee (Regs. § 301.6103(a)–101).

Tax information also is available to the Federal Reserve Board in connection with the interest equalization tax, (Regs. § 301.6103(a)–107) and to the Treasury Department, for economic stabilization purposes (Regs. § 301.6103(a)–109).

In addition to the provisions of the Internal Revenue Code and the Treasury regulations, the Privacy Act of 1974 (Public Law 93–579) and the Freedom of Information Act (5 U.S.C. 552) affect the disclosure of tax information. The Privacy Act generally prohibits an agency from disclosing any of its records concerning an individual to another agency, without that individual's consent. However, under this Act, records may be disclosed to other agencies without such prior consent for a "routine use," for civil and criminal law enforcement activities, to the Bureau of the Census for census purposes, and in certain other cases.[4]

Under the Freedom of Information Act, the courts have held that private rulings must be made public; the courts have also required the disclosure of the names of the individuals to whom the letter rulings were issued. (The issue of private rulings is the subject of a separate pamphlet.)

Problems

As stated by Commissioner Alexander in hearings before the House Appropriations Subcommittee this year, the IRS has "a gold mine of information in our tax system. We have more information about more people than any other agency in this country." Consequently, as Chief Counsel Whitaker has written "Almost every other agency that has a need for information about U.S. citizens, therefore, logically seeks it from the IRS." (Taxpayer Privacy, *The Tax Adviser*, April, 1975, p. 199.) However, in many cases the Congress has not specifically considered whether the agencies which have access to tax information should have that accesss.

The statutory rules governing the disclosure of tax information have not been reviewed by the Congress for 40 years. Since that time, a number of rules allowing disclosure of tax information to other government agencies have been established by executive order and regulation.[5]

Additionally, questions recently have been raised with respect to disclosure of tax information to the White House. The Senate Select

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[4] It is not yet clear what constitutes a routine use of tax information. However, from the legislative history of the Privacy Act it seems that routine use would include disclosure to the Department of Justice in tax cases, disclosure to State and local tax agencies to administer their tax laws, and disclosure to tax committees of the Congress and to their staffs. It also appears that the IRS may, under the Privacy Act guidelines prepared by OMB, treat as a routine use, disclosure of tax information currently allowed pursuant to statute and regulations. See IRS Notic e403 (8–75) and 40 Fed. Reg. 38024 (Aug. 26, 1975).

[5] However, a number of regulations allowing disclosure were established before 1934, which was the last time the Congress dealt specifically with disclosure. These regulations include allowing other government agencies to inspect corporate and individual returns on a case-by-case basis, allowing the Department of Commerce to inspect returns for statistical purposes, allowing inspection by persons with a material interest in the return, and permitting a special Senate committee to examine returns. Therefore, it may be argued that, by implication, the Congress approved these regulations in 1934.

Committee on Campaign Activities (the "Watergate Committee") received testimony that tax information was transmitted to the White House on a number of well known individuals. Also, tax returns have been provided White House employees in previous administrations.

Among the Federal agencies, one of the biggest users of tax information on an individual case basis (as against a "mass" basis for statistical use) is the Department of Justice. Often this information is used in the investigation of nontax cases, including all types of criminal cases, civil cases involving tort liability of the Government, anti-trust cases, etc. Also, this information is used by strike forces, with IRS agents and agents of other agencies combining their efforts in criminal investigations.

Information on tax returns is provided to other agencies for statistical use. In many cases, this information contains limited items and is used largely as the basis for developing a sample of persons to be polled by the agency. (This information also is used to provide a distribution of revenue sharing funds under the statutory formula.) On the other hand, recently an executive order allowing the Department of Agriculture access to tax information to assist in developing farm statistics was withdrawn after much public and congressional criticism.

Substantial tax information also is provided to State and local governments. In this respect, it has been suggested that there may be inadequate safeguards for preventing unauthorized disclosure of tax information by some State and local governments.

In a more general sense, questions have been raised with respect to whether tax returns and tax information should be used for any purposes other than tax administration, and whether other uses impair the effectiveness of voluntary assessment that is the mainstay of the Federal tax system.

Recent Congressional action with respect to privacy in general has had an impact on the disclosure of tax information. (Privacy Act of 1974, Public Law 93–579.) However, the Congress did not specifically focus on the unique aspects of tax returns in the Privacy Act. (Additionally, the policy of tax return privacy may conflict with the policy of the Freedom of Information Act under which private letter rulings have been made public. The private rulings issue is discussed in another pamphlet.)

Alternative Proposals

Mr. Ullman.—Tax returns and other tax information are to be confidential except as specifically authorized by the Internal Revenue Code.

Mr. Pickle.—He would provide new provisions for the confidentiality of income tax returns, particularly guarding against giving income tax returns to any and all local and State officials, regardless of the tax system of the local jurisdiction.

H.R. 9599 (Mr. Vanik).[6]—Substantially the same as Mr. Ullman's proposal.

Mr. Schneebeli (by request).—The proposal would provide statutory rules to govern the confidentiality and disclosure of tax return

[6] Companion bill S. 2342 (Senator Magnuson). Mr. Vanik's bill is cosponsored by Mr. Gibbons, Mr. Rangel, Mr. Stark, and Mr. Vander Veen.

and return information to restrict disclosure of such information with respect to all tax returns only to those persons, and for those purposes, specifically authorized by the code.

Mr. Archer.—He wants the committee to consider restricting the authority for inspection of tax returns and the disclosure of information in the returns. The inspection would be limited to defined officials and a limitation placed on disclosure of certain information would be specified. Violation of this provision would subject an individual to a $10,000 fine or imprisonment for not more than 5 years, or both, together with the costs of prosecution. (His bill is H.R. 9735.)

H.R. 9735 (Mr. Litton).[7]—Substantially the same as Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Substantially the same as Mr. Ullman's proposal.

S. 1511 (Senator Montoya).—Substantially the same as Mr. Ullman's proposal.

S. 2324 (Senator Dole).—Substantially the same as Mr. Ullman's proposal.

Administration[8]
the same as Mr. Ullman's proposal.

WHITE HOUSE

Present Law

For a number of years, it has been the position of legal advisers to the Commissioner of Internal Revenue that the President (and the White House) has unrestricted access to tax returns and tax information.

The Internal Revenue Code does not provide specifically for disclosure to the President. However, the Code generally provides that disclosure can be made as authorized in rules and regulations established by the President. (Sec. 6103(a).) Under this provision the President could issue a "rule or regulation" providing for his access, and that of White House employees, to tax information. Additionally, in a previous administration the then-Chief Counsel of the IRS informed the Commissioner in a legal opinion that, as a constitutional matter, there are no restrictions on the Commissioner disclosing tax information to the President. This interpretation was based on that part of the Constitution which vests executive power in the President and, on this basis it was contended that he was entitled to all information relative to his control of the Executive Branch.

President Ford, by executive order, has established rules that govern the disclosure of tax information to the White House. (Executive Order 11805, September 20, 1974.) Under this order, tax returns are available for inspection by the President. Requests for inspection are to be in writing and signed by the President personally. Requests are to state the name and address of the taxpayer in question, the kind of returns which are to be inspected, and the taxable periods covered by the returns.

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[7] Companion bill S. 2380 (Senator Weicker).

[8] The administration's proposal had not been introduced as of the time this pamphlet went to the printer. However, the staff is informed by the Treasury that the administration has completed its proposal; this pamphlet reflects the substance of the new administration proposal.

Under this executive order other White House employees also may obtain tax information. The order provides that the President may designate, by name, employees of the White House who may receive tax information. This is limited to employees with an annual rate of basic pay at least equal to that prescribed by 5 U.S.C. § 5316 ($37,800 per year, as of October 1, 1975). No further disclosure (except to the President) may be made by such employees without the written direction of the President.

Commissioner Alexander also has instructed the employees of the Internal Revenue Service with respect to procedures that are to be followed concerning requests for tax information from the White House. Any IRS employee who receives a request for tax information from the White House is to promptly communicate that fact to the Commissioner, through channels. The Commissioner will evaluate the request, and only the Commissioner (or in his absence his deputy) is to make the tax information available to the White House. This procedure also applies to "tax checks" on potential Presidential appointees. (IRS Information Notice 74–23, August 9, 1974.)

Problem

Disclosure of tax returns.—Generally there have been three types of tax information provided to the White House. In some cases, tax returns, parts of tax returns, or analyses of tax information with respect to specific individuals have been provided the White House. For example, John J. Caulfield testified that, while employed at the White House, he received tax information concerning Billy Graham, John Wayne, a number of individuals in the entertainment industry who were "politically active," and an individual working in the re-election campaign of former President Nixon. (Testimony of John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, March 23, 1974.)

Additionally, Clark Mollenhoff, while a White House employee, received tax information relating to the 1968 Presidential Campaign of Governor George Wallace and to income received by his brother, Gerald Wallace. (Affidavit of Clark R. Mollenhoff before the House Committee on the Judiciary, dated June 4, 1974.) [9] Also, Carmine Bellino, formerly special consultant to President Kennedy, received tax returns in 1961 while conducting investigations for the White House (and simultaneously the Justice Department and the Senate Permanent Subcommittee on Investigations of the Government Operations Committee). (*Congrsesional Record*, April 16, 1970.)

Sensitive case reporting procedures.—Formerly the IRS had a "sensitive case" reporting procedure to inform the National Office about cases that were likely to be of "considerable public interest" resulting in "inquiries or criticism" to the IRS. (This procedure was suspended by Commissioner Alexander on November 13, 1974.) Cases generally were considered sensitive because of the identity of the taxpayer

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[9] In 1970 Commissioner Randolph Thrower established a formal procedure which was to be followed in order for Mr. Mollenhoff to obtain tax information. Under this procedure, Mr. Mollenhoff made written request for tax information on identified persons. (In the Kennedy administration, apparently there was no established procedure for a written request.) Under the procedure established with Mr. Mollenhoff it was assumed in every case that the request "is either at the direction of or in the interest of, the President." (*Cong. Record*, Apr. 16, 1970.)

involved (e.g., a Member of Congress) or because of the issue involved, where a proposed examination would affect a great number of people in similar occupations. Other cases might involve, *e.g.*, political contributions where prosecution was recommended.

The sensitive case report included information on why the case was sensitive, the type and amount of tax in question, the issues involved in the case, a description of related cases, and a description of current activity in the case. This procedure was begun in the 1950's, apparently after the Bernard Goldfine case occurred.

These reports initially were prepared in the district and sent up through channels; after they were screened at the regional level, some were sent forward to the National Office. These reports were again screened and some were brought to the attention of the Commissioner. Additionally, some reports would be brought to the Secretary of the Treasury. In a few cases these reports would be provided to the White House.

"*Tax checks*" *on potential Government appointees.*—The White House also receives information on "tax checks" of Presidential appointees. The staff understands that, under the current procedure, a tax check on a potential Presidential appointee is initiated by the White House Counsel's Office as part of a "security and conflicts review" to which the potential appointee consents. As part of this review, the FBI conducts a "full field investigation" which includes checks with various governmental agencies, including the Internal Revenue Service. Therefore, the inquiry to the IRS with respect to a potential Presidential appointee comes directly from the FBI rather than from the White House.

Under the procedure established by Commissioner Alexander, only the Commissioner (or in his absence, the Deputy Commissioner) may authorize disclosure of information under a tax check made for the White House. Additionally, under the Commissioner's procedures the information provided is limited to whether an individual has filed income tax returns for the immediately preceding three years; owes any unpaid taxes and, if so, for what years; has been under any criminal tax investigation and the result of such investigation; or has been assessed a penalty for fraud or negligence. (IR Manual, MT 1272–6 (8–22–74).)

This information is reported to the FBI which in turn reports it to the White House Counsel's Office. The staff is informed that the White House Counsel's Office transmits a report to the President that the security and conflicts review of the potential appointee has either been approved or disapproved. The tax information received by the White House Counsel's Office is, under present practice, not transmitted to any other office in the White House.

The staff also is informed that the White House security and conflicts review is used for Presidential appointees, White House staff, some of the Executive Office staff and others who receive a "White House pass" giving them access to the White House and to the President. Tax checks are also made on persons nominated for Department of Commerce "E" Awards (established by Executive Order 10978).

In addition to tax checks at the request of the White House, some tax checks are made at the request of other Federal agencies. These checks

may be made at the request of the head of the other agency, and apparently also may be made at the request of other agency officers or employees. Also, it appears that occasionally tax checks are made on potential employees of congressional staffs, at the request of the Members of Congress concerned.

The reports of the IRS to the Joint Committee for calendar year 1974 show the following tax checks requested by Federal agencies:

Agency:	Number
White House	1,045
Department of Justice	835
Department of Treasury	[1] 775
Department of State	148
Department of Commerce	106
Export-Import Bank	15
United States Information Agency	9
Total	2,933

[1] In the case of nominees to some "high level" Treasury positions, preappointment tax audits are made. (IR Manual, MT 1272–6, Aug. 22, 1974.)

Alternative Proposals

Constitutional questions.—Significant questions may be raised with respect to whether the Congress can substantially limit Presidential access to tax returns. The case for the President's right to access is based on several provisions of Article II of the Constitution. Article II, Section 1 says "the executive Power shall be vested in a President of the United States of America." Article II, Section 2 says the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, on any Subject relating to the Duties of their respective Offices * * *." Also, Article II, Section 3 says that the President "shall take Care that the Laws be faithfully executed * * *." Under these provisions, it has been argued that the executive power rests wholly with the President and to execute the laws he must have full information including tax information. Additionally, it is argued that the President may require the Commissioner to disclose, in writing, any matter coming to the Commissioner's attention in the performance of his official duties. (On the other hand, a former Commissioner of Internal Revenue has stated in testimony before the Congress that "we do not know why anybody in the White House would ever want a tax return." Testimony of Mortimer M. Caplin, "Federal Tax Return Policy," Subcommittee on Administration of the Internal Revenue Code, Senate Committee on Finance, April 28, 1975, p. 240.)

Even if there are constitutional limitations on the Congress' ability to significantly limit Presidential access to tax information, it would seem that the Congress could establish procedures to ensure that White House employees who are allowed access to tax information obtain this information on official White House business and with appropriate authorization.

Disclosure to White House, in General

Mr. Ullman.—The President could have access to tax information on his personal written request specifying the reasons therefore and specifying the taxpayer, the returns involved and the taxable years involved. Any such request (and the reasons therefore) would be re-

ported to Congress. The President could designate by name and in writing (signed by him personally) other White House staff members who could have access to tax information. (Qualified staff members would have to earn not less than the rate specified for employees at level V of the Executive Schedule ($37,800 after October 1, 1975). (See 5 U.S.C. § 5316.) Designated staff members could not in turn disclose this information (to anyone but the President) without the personal written direction of the President. Also, disclosure is to be made only at the time and in the manner prescribed by Treasury regulations.

H.R. 9599 (Mr. Vanik).—The President may personally obtain tax returns on his personal signature and solely for use in connection with the administration or enforcement of the tax laws.

H.R. 9735 (Mr. Litton).—His bill is similar to Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Disclosure may be made to the President only on written request personally signed by the President and designating in writing the employee of the White House who is authorized to make the inspection, and the reasons for the request.

S. 1511 (Senator Montoya).—This bill would allow disclosure to the White House only with the consent of the taxpayer involved (except for tax checks, described below).

S. 2324 (Senator Dole).—No disclosure of tax information could be made to the President or White House personnel, except with respect to tax checks, as described below.

Administration.—The President must personally sign each request for a tax return or return information. Each request must give the name and address of the taxpayer, the type of return, and the years involved. The information will be given to the President or the level V White House employee designated in the President's request; this employee may not, in turn, disclose the information to others. No accounting to the Congress is required, and no reason for the request need be given. The proposal substantially incorporates Executive Order 11805.

Procedures for disclosure by the IRS.—Testimony given to the Senate Select Committee on Presidential Campaign Activities, described above, indicates that tax information may have been provided by employees of the Internal Revenue Service to the White House on an informal ("backdoor") basis, without the knowledge or approval of the Commissioner of Internal Revenue. The committee may wish to provide, as does Mr. Ullman's proposal, that tax information is to be transmitted to the White House from the IRS only under procedures established by regulation. The committee also may wish to provide some guidance with respect to this procedure such as requiring (as has Commissioner Alexander) that requests by the White House be reported immediately to the Commissioner, and that the transmittal of tax information to the White House be only with the prior written approval of the Commissioner.

Tax Checks

As described above, the staff is informed that under present practice a potential appointee consents in writing to a White House background check. (However, there may not be specific reference to tax information in the consent.) If the consent were to specifically cover

tax information, and if the committee were to adopt a provision allowing a taxpayer to permit others to see his tax returns with his consent, no special rule would be needed with respect to White House tax checks on people who are aware they are being considered for appointment.

It has been argued, however, that in some cases it is more appropriate for tax checks to be made without the knowledge of the potential appointee. This might allow the President to fully check out a number of potential appointees without public announcement, to avoid embarrassment to the persons who ultimately are not chosen (and to avoid embarrassment to the Administration which ultimately did not appoint them). On the other hand, it has been alleged that the tax check procedure has been used to obtain information on White House "enemies."

Mr. Ullman.—His proposal does not make special provision for tax checks. Under this proposal, information now obtained in tax checks could be obtained on the consent of the taxpayer or on the personal written request of the President.

H.R. 9599 (*Mr. Vanik*).—Tax checks (without the taxpayer's consent) are allowed at the request of the President or an appropriate congressional committee. Information would be limited to whether the individual has failed to file a return for any of his 3 preceding taxable years, has been assessed a deficiency during that period, or has been convicted or is under investigation for a criminal tax law violation.

H.R. 9735 (*Mr. Litton*).—Substantially the same as Mr. Ullman's proposal.

S. 442 (*Senator Bentsen*).—Substantially the same as Mr. Ullman's proposal.

S. 1511 (*Senator Montoya*).—Tax checks are allowed on written request personally by the President setting forth the name of the individual and the office for which he is being considered. Tax check information could be given to the President or any employee of the Executive Office of the President. A tax check would disclose whether the individual had filed an income tax return for the immediately preceding three years, whether he incurred any penalty or was the subject of a deficiency proceeding within the preceding three years, and whether he has been the subject of an investigation for failure to comply with any provision of the Internal Revenue laws during his preceeding three years.

S. 2324 (*Senator Dole*).—Tax checks would be available for prospective employees of the Executive or Judicial Branch of the Federal Government on the written request of the President or the head of a Federal agency. A tax check would disclose whether the individual has filed income tax returns for the last three years, has failed in the current or preceding three years to pay any tax within 10 days after notice and demand or has been assessed a negligence penalty within this time period, has been under any criminal tax investigation and the results of such investigation, or has been assessed a civil penalty for fraud or negligence.

Administration.—Tax check information can be provided an authorized representative of the Executive Office of the President and to the head of any department, agency or establishment within the Federal Government (or to the FBI on his behalf) with respect to any person

who is designated as being under consideration for executive or judicial appointment. The information which would be provided in the tax check procedure is generally the same as that provided for in S. 2324 (Senator Dole).

DISCLOSURE TO CONGRESS

Present Law

Congressional committees fall into three categories for disclosure purposes. The tax committees may inspect tax information, in executive session. (Sec. 6103(d).) Select committees of the House and Senate may inspect tax information, in executive session, if specifically authorized to do so by a resolution of the appropriate body. (Sec. 6103(d).) Standing and select committees may inspect tax information under an executive order issued by the President for the committee in question,[10] and on the adoption of a resolution (by the full committee) authorizing inspection. (Reg. § 301.6103(a)–101.) The resolution must set out the names and addresses of the taxpayers in question and the periods covered by the returns to be inspected. Subcommittees may inspect tax information under an executive order and resolution of the full committee. The designated agents of any authorized committee also may inspect tax information. (Sec. 6103(d), Reg. § 301.6103 (a)–101.)

The tax committees and select committees authorized to inspect tax information may submit "any relevant or useful" information obtained to the House or Senate. (Sec. 6103(d)(1)(C).)

Facts

The Joint Committee on Internal Revenue Taxation has used tax information most recently in its investigation of the use of the IRS for political purposes (both in the investigation concerning the "friends" and "enemies" lists and the investigation concerning the former Special Service Staff). While the Ways and Means Committee and the Senate Finance Committee have access to tax information, traditionally these two committees, to the maximum extent possible, consistent with their responsibilities, have used tax data that is not associated with individual taxpayers. Instead the staff has compiled data from individual tax returns and the data has been used by the Ways and Means and Finance Committees.

In 1972, the Joint Committee staff made a survey of the other committees that had requested tax data in recent years. Generally, the survey showed that these other committees used tax information sparingly. For the most part, tax information was used in investigations of alleged misconduct with respect to government operations, in corroborating financial records otherwise obtained, and in developing investigative leads.

In the 91st Congress there were 17 requests involving 169 taxpayers. Most of the requests were made by two committees. Twelve requests for a total of 112 taxpayers were made by the Senate Committee on Government Operations. Two requests for a total of 43 taxpayers were made by the House Committee on Internal Security.

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[10] A new executive order must be issued every two years for a committee that wants to continue to obtain tax information, because an executive order is good only for the Congress in which it is issued.

In the 92d Congress, there were 17 requests involving 360 taxpayers. Most of these requests were made by 3 committees. Ten requests were made by the Senate Government Operations Committee involving 152 taxpayers. Three requests were made by the Senate Commerce Committee, involving 139 taxpayers. Two requests were made by the House Select Committee on Crime, involving 60 taxpayers.

In the 93d Congress, all requests were made by two committees. The Senate Committee on Government Operations made 2 requests for a total of 8 taxpayers. The Senate Select Committee on Presidential Campaign Activities made 3 requests for a total of 62 taxpayers.

In the present Congress, one executive order has been issued, to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee. (Ex. Order 11859, May 7, 1975.) Also, the Senate, by resolution, has specifically authorized the Senate Select Committee on Intelligence to have limited access to tax information. (S. Res. 167, *Cong. Rec.*, May 22, 1975, S. 9092.)

Pursuant to the provision that allows "relevant or pertinent" material to be submitted to the appropriate House of Congress, the Joint Committee on Internal Revenue Taxation submitted the report on the "Examination of President Nixon's Tax Returns for 1969 through 1972" to the Congress. (H. Rept. No. 93–966, 93d Cong. 2d Sess. (1974).) In another use of this provision, a report of the House Committee on Internal Security contains information taken from the tax returns of the Students for a Democratic Society ("SDS"). ("Anatomy of a Revolutionary Movement: Students for a Democratic Society," H. Rept. No. 91–1565, 91st Cong., 2d Sess. (1969).)

Alternative Proposals

Mr. Ullman.—On written request from the committee chairman, the Committee on Ways and Means, the Senate Finance Committee, and the Joint Committee on Internal Revenue Taxation may obtain tax information in a session closed to the public. The Joint Committee could provide tax information to the Ways and Means Committee and the Senate Finance Committee and the House and the Senate (as under present law).

Any other committee of the Senate or House specifically authorized by resolution of the appropriate body (or joint committee authorized by concurrent resolution) may obtain tax information on the written request of the chairman, in a session closed to the public.

Any of these committees could designate agents to inspect tax information.

Any of these committees could submit tax information to the Senate or House.

H.R. 9599 (Mr. Vanik).— Substantially the same as Mr. Ullman's proposal. However, tax information could be submitted to the House or Senate only if they were sitting in secret session.

H.R. 9735 (Mr. Litton).—The only Congressional committee authorized to inspect tax information would be the Joint Committee on Internal Revenue Taxation (and its staff). Tax information could be obtained by the Joint Committee only on majority record vote of at least a quorum of the Members. The Joint Committee could submit to the Senate, House, or any Congressional committee relevant or useful information obtained from tax returns; however, such information could not disclose the identity of any such taxpayer.

S. 442 (*Senator Bentsen*).—Substantially the same as Mr. Ullman. Also includes a provision specifically allowing the chief of staff of the Joint Committee on Internal Revenue Taxation access to tax information.

S. 1511 (*Senator Montoya*).—Generally, disclosure could be made to congressional committees and their agents, as under present law, as long as the taxpayer gave his written consent to the disclosure. However, the consent of the taxpayer would not be required for disclosure to the Way and Means Committee, the Senate Finance Committee, the Joint Committee on Internal Revenue Taxation or select committees authorized to obtain tax information.

S. 2324 (*Senator Dole*).—Substantially the same as Mr. Ullman's proposal. In addition, any request for information by a tax committee must specify the purposes for which returns are required and must be authorized by a record vote of a majority of the members of the committee. Also, with respect to other committees, the resolution authorizing the committee to obtain tax information is to specify the purpose for inspection and specify that no inspection is to be made unless there is no alternative source of information contained in the tax returns which is reasonably available to the committee.

Administration—Substantially the same as Mr. Ullman's proposal. In addition, the bill includes a provision specifically allowing the Chief of Staff of the Joint Committee access to tax information.

Other considerations—disclosure between committees.—

Recently, a number of congressional committees have been engaged in investigations of the IRS. To some extent these investigations have dealt with the same subject, although usually with a different perspective. (For example, the former Special Service Staff of the IRS was investigated both by the Constitutional Rights Subcommittee of the Senate Judiciary Committee and by the Joint Committee on Internal Revenue Taxation.)

Where the committees concerned all have access to tax information, the committee may wish to consider whether they may disclose tax information among themselves. This might tend to increase the efficiency of congressional investigations, and decrease the burden on witnesses.

Other considerations—General Accounting Office.—The General Accounting Office presently examines the IRS at the direction of, and as agents of, the Joint Committee on Internal Revenue Taxation. In these audits, the GAO has full access to tax information needed for the audit in question. Presently, the GAO has approximately 50 full-time employees auditing the IRS on assignment from the Joint Committee.

Current GAO studies of the IRS include examination of: the selection and audit of individual tax returns, IRS regulation of tax-exempt organizations, the extent to which individual taxpayers are subject to repeated annual audit, the procedures followed by the IRS in making jeopardy assessments and in the seizure and disposal of property; and an audit of monies used by the IRS to pay for confidential and other information from informers and other sources.

Additionally, the GAO has the authority to audit, without acting as agent of the Joint Committee, administrative matters of the IRS. In this regard, Commissioner Alexander has testified that "the GAO on a continued and regular basis make reviews of IRS activities in the

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nontax administration field. * * * A very recent example, Mr. Chairman, is GAO's checking what the IRS does with its travel funds and how the IRS goes about handling travel." (Executive Order 11697 and 11709, Hearings before a Subcommittee of the House Committee on Government Operations, 93d Cong., 1st Sess., May 9 and Aug. 3, 1973, p. 103.)

H.R. 9599 (Mr. Vanik) provides that on written request, the Comptroller General may inspect any tax return in order to conduct certain types of audits. (Any request for returns must specify the reason for the inspection.) The GAO may obtain returns under a program providing for the continuing audit and investigation of the efficiency, uniformity and equity of the administration of the revenue laws. Additionally, returns may be obtained by the GAO in conducting any special audit or investigation of the administration of the revenue laws requested by any committee of Congress or any Member of Congress, in the conduct of a continuing review of tax law administration, or in the conduct of any other audit or investigation of the administration of the revenue laws which the Comptroller General considers appropriate.

The committee also may wish to consider whether the GAO should be able to audit the IRS (and have access to tax information) only on the direction or request of a committee that has access to tax information, or whether the GAO should be able to act on behalf of other committees or on behalf of individual Members of Congress. (Individual Members do not now, and would not under any of the above proposals, have access to tax information.) Additionally, the committee may wish to consider the use the GAO may make of tax information available to it in its audits. The committee may wish to consider whether the GAO should be able to provide tax information to (or be able to use tax information in conducting studies for) individual Members of Congress or committees of Congress that do not otherwise have access to tax information.

Other considerations—safeguarding tax information, etc.—The committee may wish to consider whether rules should be established that apply to every committee with respect to the safeguarding of tax information.

The committee also may wish to consider whether Congressional committees that use tax information in the course of non-tax activities should be subject to the same rules with respect to this information as are Federal non-tax agencies. For example, whether committees that use tax information for investigative purposes should be treated similarly to, *e.g.*, the Justice Department in the type of tax information they can receive.

DEPARTMENT OF JUSTICE—TAX CASES

Present Law in Tax Cases

Tax returns and other tax information may be furnished without written application to U.S. Attorneys and Justice Department attorneys in civil or criminal tax cases referred by the IRS to the Justice Department for prosecution or defense. (Reg. § 301.6103(a)–1(h).) Where the Justice Department is investigating a possible violation of the civil or criminal tax laws and the matter has not been referred

by the IRS, a Justice Department attorney or U.S. Attorney may obtain tax information upon written application where it is "necessary in the performance of his official duties." (Reg. § 301.6103(a)–1(g).) The written application must state the name and address of the taxpayer, the kind of tax, the tax period, and the reason inspection is desired. It must be signed by the Attorney General, Deputy Attorney General, an Assistant Attorney General or by a U.S. Attorney.

The Justice Department can obtain the returns of potential witnesses and third parties. Also, in a tax case (or any other case), the IRS will answer an inquiry from the Justice Department as to whether a prospective juror has been investigated by the IRS. (Reg. § 301.6103(a)–1(h).) However, other tax information is not available for examining prospective jurors.

Tax information obtained by the Justice Department may be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United States is a party. (Reg. § 301.6103(a)–1(f).)

Facts in Tax Cases

The Justice Department is responsible for almost all civil and criminal tax matters litigated before the Federal courts (except for the Tax Court).[11] Most Civil tax cases handled by the Justice Department are tried by attorneys of the Tax division of the Justice Department. The Tax Division is routinely furnished the entire IRS file on a particular taxpayer with respect to any matter in controversy in a tax case concerning that taxpayer. Additionally, most civil tax litigation involves refund suits by taxpayers where the taxpayer's liability is directly in issue; in refund cases, it is common for the taxpayer to place his tax return in evidence.

Most criminal tax cases are conducted by U.S. attorneys (subject to the Tax Division's supervision). These cases generally are based on referrals from the IRS recommending prosecution. In these cases, also, the Justice Department is routinely furnished the entire IRS file on the taxpayer.

Tax returns obtained by the Justice Department generally pertain to the taxpayer whose civil or criminal tax liability is directly involved in the case. However, the Justice Department also may obtain directly from the IRS district offices tax returns of potential witnesses for the taxpayer or Government, and third parties with whom the taxpayer has had some transactional or other relationship.[12]

The returns of witnesses generally are obtained for purposes of cross examination and impeachment. Usually, the information obtained from the witness' tax return is used to cast doubt upon his credibility as a witness, as opposed to establishing the tax liability in issue.

Additionally, in the course of a tax case, the Justice Department may obtain the return of a third party who will not be a witness in the case but who has had a transactional relationship with the taxpayer

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[11] In the U.S. Tax Court, the Commissioner is represented by the Chief Counsel for the IRS.

[12] A request to the IRS National Office for tax information need only be made in the event the IRS district office rejects the Justice Department request. Rejection is to occur in those instances where the district office finds that the party for whom the tax information is requested is neither a potential witness nor has had any transactional relationship with the taxpayer.

involved in the case.[13] In a criminal tax case, third-party returns may be used to develop leads to evidence establishing the guilt of a defendant. In civil tax cases, third-party returns may be used to develop evidence pertaining either directly to the tax liability of a taxpayer, or to impeach the testimony of the party whose tax liability is at issue (or to impeach the testimony of witnesses testifying on his behalf).

The Government also obtains the tax returns of its own witnesses to determine the veracity of their proposed testimony and their credibility in general.

Alternative Proposals in Tax Cases

Mr. Ullman.—Returns and return information of a taxpayer would be disclosed to the Justice Department if any issue as to the civil or criminal tax liability of the taxpayer was under consideration by the Justice Department, a court, or a Federal grand jury.

Also, return or return information concerning a third party could be disclosed to the Justice Department (court or grand jury) where the third party was involved in a transaction with a taxpayer whose civil or criminal tax liability is at issue, and the treatment of this transaction in the third party's return (or his return information) is relevant to the resolution of an issue in the taxpayer's case. Returns and return information also could be used to impeach a witness in a tax case with respect to testimony by the witness as to a transaction with the taxpayer.

The IRS, as under present law, could disclose whether a potential juror had been investigated by the IRS.

A written request by the Department of Justice, setting forth the reasons for the disclosure, etc., would be required except when the matter was referred to it by the IRS.

H.R. 9599 (Mr. Vanik).—Returns and return information would be disclosed to the Justice Department in civil and criminal tax cases. (The bill does not deal separately with third-party returns.)

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Returns and return information would be disclosed to the Department of Justice solely for purposes of tax administration and enforcement. (The bill does not deal separately with third party returns.)

S. 1511 (Senator Montoya).—Similar to H.R. 9599 (Mr. Vanik).

S. 2324 (Senator Dole).—Returns and return information of a taxpayer would be disclosed to the Justice Department if any issue as to the civil or criminal tax liability of the taxpayer was under consideration by the Justice Department or a Federal Grand Jury.

Also, the return or return information of a witness or other third party would be disclosed to the Justice Department where the party consents, or his return or return information has, or may have, a bearing on the outcome of a tax case because (1) treatment of an item on his return, or his return information may be relevant to the treatment of an item of the party whose civil or criminal tax liability is or may be in issue, or (2) the civil or criminal tax liability of a party to the

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[13] Also, the staff has been informed that third-party returns sometimes are obtained where the third party has a transactional relationship with a witness in a forthcoming trial and not with the taxpayer in the trial.

proceeding is or may be determined by reference to such return or return information.

Third party returns and return information could be disclosed in a tax proceeding to impeach the testimony of a witness regarding a transaction with such third party.

Administration.—The Department of Justice would have access (without a written request) to returns and return information in tax investigations if the taxpayer is a party or potential party to the eventual proceedings, if the taxpayer consents, or if the return will have a bearing on the outcome of the proceeding because an item at issue is shown on the return, the return relates to an issue in the case, or the return will affect or determine the liability of the party.

Similar showings will justify disclosure of the return or return information during the resulting court proceeding. However, at that point the Justice Department must show that the return of the nonparty has a *direct* bearing on the outcome of the case because there is an interrelationship between the tax treatment of an item by a party and by the taxpayer, the return relates to an issue in the proceeding, or a party's liability may be determined or affected by an item on the return. The IRS may refuse to permit such a courtroom disclosure if the Commissioner determines that the disclosure will "seriously impair" the administration of Federal tax laws. Returns will be made available for purposes of impeaching witnesses, subject to these limitations. The IRS will advise the Justice Department whether a prospective juror has been investigated by the IRS.

JUSTICE DEPARTMENT NONTAX CRIMINAL CASES

Present Law in Nontax Criminal Cases

Under the regulations, a U.S. Attorney or an attorney of the Department of justice may obtain tax information in any case "where necessary in the performance of his official duties." This may be obtained on written application, giving the name of the taxpayer, the kind of tax involved, the taxable period involved, and the reason inspection is desired. The application is to be signed by the U.S. Attorney involved or by the Attorney General, Deputy Attorney General, or an Assistant Attorney General. (Reg. § 301.6103(a)–1(g).)

Tax information obtained by the Justice Department may be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United States is a party. (Reg. § 301.6103(a)–1(f).)

The IRS will answer an inquiry from the Justice Department as to whether a prospective juror has been investigated by the IRS. (Reg. § 301.6103(a)–1(h).) However, other tax information is not available for examining prospective jurors.

There is a question whether there is a constitutional privilege (under the Fifth Amendment) to prevent the use, in a nontax criminal case, of incriminating information supplied by a taxpayer on his return. In a recent case dealing with this issue, the Court of Appeals for the Ninth Circuit held that the proper time for invoking the privilege against self-incrimination with respect to a filed income tax return which revealed Federal gambling violations was at

the time the return was filed and not at a subsequent time when the individual was being prosecuted criminally for those gambling violations. *U.S.* v. *Garner*, 75–1 USTC ¶ 9388 (9 Cir., 1974). Five judges dissented in that case, concluding that the individual faced a substantial hazard of self-incrimination as a result of the introduction into evidence of his tax returns. On February 27, 1975, the U.S. Supreme Court granted *certiorari* in the *Garner* case, which is scheduled to be heard in its Fall Term, 1975. If the Supreme Court were to affirm the lower court, this would leave unchanged present law on the disclosure of tax returns to the Justice Department.[14] If the court should adopt the minority opinion of the lower court, that would probably preclude the continued use of tax returns by the Justice Department in criminal investigations and prosecutions.

Facts in Nontax Criminal Cases

Strike Force.—The Organized Crime and Racketeering Section of the Department of Justice coordinates, through Federal Strike Forces, an integrated investigation and prosecution program against organized crime and racketeering activities. These investigations involve the participation of various Federal agencies, including the IRS.

In investigating organized crime, a strike force may focus on a single person, identified by various intelligence agency sources as a leader, member, or associate of a criminal organization, and investigate the transactions in which he is involved. Also, a strike force may focus on a racketeering situation, and from there determine the persons who should be investigated in connection with that situation.

A strike force generally "targets" a suspect and investigates all his activities to determine what criminal laws he may have violated. In this process, it often may obtain tax information from the IRS to determine whether there has been a violation of the criminal statutes, both nontax and tax. Examples of nontax crimes which a strike force may investigate are counterfeiting and forgery, loan sharking, mail fraud, interstate transportation of stolen property, illegal payments and loans to labor unions and employees, etc.

Tax information may be used to provide strike force investigators leads relating to such criminal activity. Moreover, tax information is used to gather leads or make connections between various individuals and entities. The staff has been informed that the tax information which may be most useful by strike force personnel in its nontax criminal investigation work is that which IRS investigators acquire from parties other than the taxpayer.

Tax information obtained in strike force investigations is used in prosecuting criminal offenses. Thus, requests are made for tax information pertaining to the defendant, and to defense witnesses in the course of the investigation, at the pretrial level, and sometimes during the trial. The returns of defense witnesses in nontax criminal trials are often requested to obtain information for cross-examination and impeachment of witnesses.

The tax returns of Government witnesses are also obtained in order to evaluate the veracity of their proposed testimony, as well as to evaluate their credibility in general.

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[14] However, if the privilege against self-incrimination were to be raised at the time of filing. this may impair tax administration, perhaps encouraging people not to file complete returns and claiming the privilege.

Tax information also is obtained with respect to third parties who have had some transactional or other relationship with the defendant in order to seek investigative leads.

The staff has been informed that during the calendar year 1974 there were 141 requests for tax information by strike forces (and an additional 27 by the Criminal Division) of the Justice Department. A rough estimate is that the 141 strike force requests concerned approximately 3,800 tax returns of approximately 1,200 taxpayers.

U.S. Attorneys.—As the chief law enforcement representatives of the Attorney General within their respective judicial districts, U.S. Attorneys are responsible for investigating and prosecuting persons who violate the Federal criminal laws.

U.S. Attorneys use tax information in investigating and prosecuting criminal activities. In calendar year 1974, U.S. Attorneys made 1,594 disclosure requests for tax information. These requests pertained to 18,062 tax returns of 4,448 taxpayers,[15] It appears that a significant proportion of the requests made by U.S. Attorneys are for investigative purposes,[16] and this may be due to the increased investigative activity of U.S. Attorneys. For example, in some localities, special team investigations, sometimes referred to as "task forces", (which are analogous to the national level strike forces) have been conducted under the leadership of a U.S. Attorney.

According to the Justice Department, most U.S. Attorney tax data requests for investigative purposes pertain to potential "white collar" crimes involving some form of corruption (e.g., bribery, illegal kickbacks) or "major fraud" (e.g., bank, investment, and mail frauds). Ordinarily, requests for tax returns are not made with respect to crimes of violence or for routine misdemeanor cases.

Alternative Proposals in Nontax Criminal Cases

Mr. Ullman.—Tax returns and other tax information obtained by the IRS directly from the taxpayer could be disclosed to the Justice Department in nontax criminal cases only on order of a U.S. District Court. Such an order could not be issued unless there was a showing by the Justice Department of probable cause to believe that information contained in the return is necessary to the investigation or prosecution of a violation of Federal criminal law and that no alternative source of information is reasonably available. Only those parts of the return determined by the Court to be necessary to the investigation or prosecution would be disclosed.

Information obtained by the IRS which did not come directly from the taxpayer could be disclosed to the Justice Department in nontax criminal cases on written request. Such a request would have to give the name of the taxpayer, the kind of tax involved, the taxable period involved, and the reason inspection is desired. (The request would spell out in detail the reason why the information was desired.)

Tax information concerning a witness called by the Justice Department in a criminal prosecution could be disclosed to the defendant to the extent required by court order pursuant to the Jenks Act (18 U.S.C. § 3500).

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[15] The number of U.S. Attorney requests for tax returns have been increasing. For example, the requests in 1972 pertained to 7,372 returns, as contrasted to 18,062 tax returns for 1974.

[16] For example, the staff is informed that of the 105 requests made by U.S. Attorneys during January 1974, 84 were for investigative purposes.

Also, the IRS could disclose to the Justice Department evidence of the possible violation of Federal criminal law indicated by information obtained by the IRS which did not come directly from the taxpayer.

H.R. 9599 (Mr. Vanik).—Substantially the same as Mr. Ullman's proposal with respect to the requirement of a court order. (However, this bill does not include similar provisions with respect to information obtained other than directly from the taxpayer, the Jenks Act, and notification to the Justice Department of the possible violation of a Federal crime on the basis of information not obtained directly from the taxpayer.)

H.R. 9735 (Mr. Litton).—The IRS would not be allowed to provide tax returns or tax return information to the Justice Department in nontax cases.

S. 442 (Senator Bentsen).—Substantially the same as Mr. Ullman's proposal with respect to the requirement of a court order for the Justice Department to obtain access to tax information. (This bill does not include similar provisions with respect to information not obtained directly from the taxpayer, or with respect to the Jenks Act.) The IRS is to disclose to the Justice Department evidence of the possible violation of a Federal criminal law indicated by information contained in a tax return, etc.

S. 1511 (Senator Montoya).—Substantially the same as H.R. 9599 (Mr. Vanik).

S. 2324 (Senator Dole).—Of similar effect as H.R. 9599 (Mr. Vanik.)

Administration.—Returns and return information may be obtained in the investigation or preparation for the trial of a nontax criminal case if the taxpayer is or may be a party to the proceedings or if the taxpayer consents. (This proposal also deals with third party returns, as discussed below.)

Returns of witnesses and third parties

Mr. Ullman.—Information obtained by the IRS which did not come directly from the taxpayer could be disclosed to the Justice Department with respect to third parties and witnesses. Tax returns with respect to third parties could be disclosed to the Justice Department under a court order similar to that described in Mr. Ullman's proposal, above.

H.R. 9599 (Mr. Vanik).—No tax information concerning third parties could be disclosed in nontax criminal cases.

H.R. 9735 (Mr. Litton).—No tax information could be disclosed to the Justice Department in nontax criminal cases.

S. 442 (Senator Bentsen).—Does not distinguish between defendants and third parties.

S. 1511 (Senator Montoya).—Does not distinguish between defendants and third parties.

S. 2324 (Senator Dole.)—No tax information concerning third parties could be disclosed in nontax criminal cases.

Administration.—In non-tax law enforcement litigation and investigations, the Justice Department (and other agencies) may see returns of parties and potential parties to the proceedings, the returns of taxpayers who consent thereto, and returns that may have a "direct" bearing on the outcome of the proceeding because of a transactional

relationship between the taxpayer and a party to the investigation or litigation, a party is a successor in interest to the taxpayer, or the return or information will confirm or contradict already available evidence. Disclosure would not be made if the Commissioner determines that the disclosure would "seriously impair" the administration of the federal tax laws or that the information can "reasonably be obtained" from another source. Requests for disclosure must be in writing signed by the head of the agency (or the Deputy or Assistant Attorney General or Director of the FBI).

Courtroom disclosure of a non-party's return or return information would require an even more immediate showing of relevance, unless the taxpayer consents. There would have to be a transactional relationship between the party and the taxpayer, or the party would have to be a successor in interest to the taxpayer. Still, the Commissioner could refuse to permit public, courtroom disclosure of the information if he determined that the information could "reasonably be obtained" from another source or that the disclosure would "seriously impair" the administration of the Federal tax laws. Returns would be disclosed for purposes of impeaching witnesses, and the IRS would tell the Justice Department whether a potential juror had been investigated by the IRS. Jencks Act disclosures ordered by the court would be authorized.

An IRS agent would be entitled to give to a strike force, of which he is a member, return information so long as that information was not supplied to the IRS by the taxpayer.

JUSTICE DEPARTMENT NONTAX CIVIL CASES

Present Law in Nontax Civil Cases

Under the regulations, a U.S. Attorney or an attorney of the Justice Department may obtain tax information in nontax civil cases in the same manner and to the same extent as in nontax criminal cases.

Facts in Nontax Civil Cases

During calendar year 1974 there were 148 requests for tax information by divisions of the Justice Department involved with civil nontax matters.

The Justice Department has used tax returns in suits brought against the Government seeking money damages for injury or wrongful death. The Justice Department has informed the staff that tax information is used in these cases to verify the claims of loss of income, and also to determine, through claimed medical expense deductions, whether the plaintiff had suffered other injuries before or after the accident in question.

Tax information is also used in suits concerning the renegotiation of Government contracts, where the Renegotiation Board has determined that excess profits were earned on a Government contract. Here tax information is used to verify the income earned on the contracts in question.

Nontax civil cases also involve affirmative money claims, including civil fraud claims, by the Government against various private parties. In these cases, tax information may be used to determine whether the defendant is financially able to pay the demand contemplated by the Government.

Tax returns are also requested after the Government has obtained a judgment against a party in order to verify statements made by the judgment debtor as to his financial ability to make payment of his debt.[17]

Much of the nontax civil litigation falling under the responsibility of the Civil Division of the Justice Department is handled by U.S. Attorneys, who request tax returns for the purposes described above. However, the available statistics do not indicate what portion of the 1,594 disclosure requests by U.S. Attorneys in calendar year 1974 pertained to nontax civil matters.

As noted above in connection with tax and nontax criminal cases, disclosure requests also are made with respect to the tax returns of defense witnesses, Government witnesses, and third parties having a transactional relationship with the defendant or a defense witness.

Alternative Proposals in Nontax Civil Cases

Except for the Administration's proposal, none of the proposals provide for disclosure of returns or return information to the Justice Department in nontax civil cases. The Administration proposal would allow disclosure in nontax civil cases in the same manner and on the same grounds as provided with respect to nontax criminal cases.

STATISTICAL USE

Present Law

Several agencies obtain information from tax returns for statistical purposes. Under regulations allowing general inspection of tax information, the Department of Commerce (Census Bureau and Bureau of Economic Analysis) is authorized to use information from tax returns for statistical purposes, (Reg. § 301.6103(a)–104). The Federal Trade Commission (Reg. § 301.6103(a)–106) and the Securities and Exchange Commission (Reg. § 301.6103(a)–102) also are authorized to use information for statistical purposes.

Other agencies which do not have Executive Orders allowing general inspection of returns probably could obtain tax returns for statistical purposes under the regulations allowing disclosure on a case-by-case basis. (Regs. § 301.6103(a)–1(f).)

For a short period, the Agriculture Department was authorized to obtain tax information on a general inspection basis for statistical purposes. This authority was established in 1973 and revoked in 1974.

Facts and Problem

Census Bureau.—The most extensive user of tax information for statistical purposes is the Census Bureau, within the Department of Commerce. In calendar year 1974, the following income tax return records were transferred to the Census Bureau for the 1973 Economic Census:

1. 4,349,316 Business Master File Entity Change Records showing Employer identification number (EIN), name, address, and zip code.

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[17] The Civil Division is the chief Justice Division using tax information for nontax civil purposes. Other divisions involved with nontax civil matters request and use tax returns on a minimal level. These include the Anti-Trust Division, the Land and Natural Resources Division, and the Civil Rights Division.

2. 15,089,124 Forms 941 showing EIN, total compensation, FICA wages, taxable tips, master file account, tax period and address change.

In 1974, the following information was transferred to the Census Bureau for the 1973 Census of Agriculture:

1. 12,600,000 Business Master File Entity File Tape Records containing name, address, zip code, and EIN.

2. 5,320,000 Business Master File Entity Change Records containing name, address, zip code and EIN.

3. 12,600,000 Principal Industry Activity Extracts from BMF, showing EIN, name control and principal industrial activity (PIA) code.

4. 460,604 Forms 943 containing EIN, name, address, zip code, tax period, PIA code and master file code and taxable cash wages code.

5. 165,000 Partnership Tax Return records Forms 1040, Schedules C and F, showing name, address, zip code, Social Security number (SSN). EIN, gross receipts code, PIA code, and county code.

6. 95,000 Forms 1065, containing the same information as No. 4, without the wages code but with a gross receipts size code.

7. 7,500 Forms 1120 S, containing the same information as in No. 4, without the wages code, but with an asset code.

8. 4,439 Forms 990C, containing EIN, name, address, and zip code.

The Census Bureau also obtained return records as follows, in 1974, to update the Population Migration Study and the Revenue Sharing estimates:

1, 79,700,000 Forms 1040 showing Social Security Number, address, zip code, county code, marital status code, and exemption codes.

The census Bureau obtained the following information in 1974 for the Summary of Minority-owned Businesses Report:

1. 14,000 IMF Entity File Tape Records, showing names, address, zip code, and Social Security number.

In these cases the Census Bureau did not obtain the full tax returns. In most cases the information consisted of name, address, industrial activity, and some coded financial information (i.e., whether the taxpayer has gross receipts within a given range, on a scale of 10 ranges). In the case of the Economic Census, information also was provided concerning wages paid.

In general, information from tax returns is used by the Census Bureau to prepare lists of persons to be surveyed by Census. Census uses information from tax returns to assist in preparing the Economic Indicators, the Survey of Minority-owned Business Enterprises, and the Survey of County Business Patterns.

The Economic Census (occurring every five years) is used for the Index of Industrial Production (of the Federal Reserve Board), the Index of Wholesale Prices (of the Bureau of Labor Statistics), and the GNP accounts. The Current Economic Indicators include information on retail sales, manufacturers' shipments, orders and inventories, investment, and are used for the Index of Industrial Production (Federal Reserve Board).

All of these statistics are used as a basis for national economic policy, for distributing funds by agencies, by State and local governments in determining their programs, and by private business in forecasting, marketing, investment, etc.

Generally, these statistics are not based on data from tax returns. The Census Bureau has stated that information from tax returns is largely used to prepare lists for census and survey, to tabulate statistical links between data reported by the IRS and Census, to excuse smaller firms from filing reports (by using data from tax returns instead), and to weed out firms that do not need to report.

Census has made an analysis of the effect of not allowing it to use tax data. Generally, Census has stated that the effect of entirely prohibiting it from having access to information from tax returns would be to significantly increase the costs of collecting data and to significantly decrease the quality of the statistics developed.

In the alternative, Census has evaluated the impact of having limited data from tax returns, such as name, address, size, and kind of business. With regard to the Economic Census (next scheduled for 1977), Census states that, with access to such limited data, it could "assemble a satisfactory mailing list with a cost, time, and workload frame similar to the 1972 Economic Census." However, if actual tax record values for annual sales and annual payroll were not available, Census states that "it would be necessary" to collect this information from small as well as large businesses (apparently affecting about 3 million small firms).

The 1974 Agricultural Census used the limited tax identification information of name, address, identification number and size class. Additionally, this type information is essentially what Census now obtains for the Economic Indicators program.

Census also currently uses "relatively small samples of individual tax records," on a case-by-case basis, to compare income reported in tax returns with income reported in the census. Similar evaluation studies are used by Census in connection with surveys such as the Current Population Survey.

Information from tax returns is also used by Census in determining amounts to be allocated under revenue sharing; this use was specifically contemplated by the Congress in establishing the revenue sharing program (see General Explanation of the State and Local Fiscal Assistance Act, H.R. 14370, 92nd Congress, Public Law 92–512, page 39 (Feb. 12, 1973).)

Bureau of Economic Analysis.—The Bureau of Economic Analysis (BEA) prepares the National Income Accounts, including the National Income and Product Accounts focusing on GNP, and the Balance of Payments Accounts.

BEA has stated that a major input into GNP is the IRS published Statistics of Income series. However, BEA has also stated that it needs access to a sample of individual large corporations' tax returns to prepare "industry extrapolators," and to be able to distinguish changes in the IRS Statistics of Income series that occur on account of shifts in economic development and on account of shifts in tax reporting.

The staff is informed that BEA does not obtain tax information from individual returns, but only from returns of large corporations. Generally, BEA employees examine IRS transcript cards that sum-

marize information from 500 to 1,000 returns of the largest corporations. (In calendar year 1974, BEA obtained 300 "transcript-edit sheets" of corporate returns.) BEA employees copy data from these cards and also inspect 20 to 100 tax returns over the course of a year.

Federal Trade Commission.—In calendar year 1974, the Federal Trade Commission obtained the following information for use in the Industrial and Financial Reports Program and the Quarterly Financial Report series:

1. 58,729 specially prepared abstract sheets for corporation returns.

2. 43,000 Forms 1120, etc., including name, address, EIN, date incorporated, gross receipts, taxable income, total assets, industry code, accounting period, and name, address, and EIN of consolidated subsidiaries.

3. 31,000 abstracts of corporate tax returns showing name, address, zip code, EIN, date incorporated, gross receipts, taxable income, total assets, industry code, accounting period, and name, address and EIN of consolidated subsidiaries.

The staff has been informed by the FTC that, for the most part, it does not need detailed financial information from the IRS, and in any case does not use information about individuals. The FTC has stated that it uses the information it receives to develop a sample of corporations which the FTC then surveys. To develop this sample, the FTC needs the following information: name, address, EIN, industry code, sample code, and gross assets indicator. (The "industry code" tells what the principal industrial activity of the corporation is, the "sample code" tells the sampling process used by the IRS with respect to its Statistics of Income (not with respect to audit, etc.), and does not appear to be tax information. A gross assets indicator would tell, e.g., whether the corporation had gross assets of over $10 million, $5–$10 million, $3–$5 million, $1–$3 million, and below $1 million.)

The FTC has also stated that other information as the accounting period and consolidated return indicator are helpful in developing more accurate statistics, but are not basic to its statistical process. The same is true with respect to net receipts and net income.

Agriculture Department.—On January 17, 1973, Executive Order 11697 was issued allowing the Agriculture Department general inspection of tax returns to obtain data about farming operations to be used "for statistical purposes only." The regulations issued under this Executive Order allowed the Agriculture Department to obtain the name, address, and EIN of taxpayers and "any other data" on the tax returns.

On March 27, 1973, a second Executive Order (E.O. 11709) was issued, along with regulations. These regulations limited the information which could be obtained by the Agriculture Department to name, address, EIN, type of farm activity, and one or more measures of size of farm operations, as gross income from farming or gross sales of farm products.

On March 21, 1974, these two Executive Orders were revoked by E.O. 11773. Revocation occurred after significant criticism was directed at inspection of tax returns by the Agriculture Department. (See "Executive Orders 11697 and 11709", Hearings before a subcommittee of the House Committee on Government Operations, 93rd Congress, 1st Sess., May 9 and August 3, 1973.)

The data to be obtained by the Department of Agriculture was similar to that obtained by Census for its agricultural census. However, testimony before the committee has suggested that the two cases are different because the Census Bureau is "the statistical handmaiden of the entire Federal Government," but the Agriculture Department statistical division "has a responsibility to gather statistical data for the policy-making of the Department of which it is a part." Consequently, "the fear existed that the material obtained by the Agriculture Department would, or at least could, be used by Agriculture in making decisions with respect to the programs which it directs."

Securities and Exchange Commission.—The staff is informed that the SEC has not obtained tax information for statistical purposes for several years, since the functions for which the SEC required this information were moved to the Federal Trade Commission.

Alternative Proposals

Mr. Ullman.—The Census Bureau, the Federal Trade Commission and the Bureau of Economic Analysis could obtain limited tax information for statistical use only. No statistical study could be published that would identify a particular taxpayer.

The only information Census could obtain would be identifying information (e.g., name, address, identifying number), coded financial information (e.g., gross receipts, income, etc., by broad ranges), and industrial activity code. Census could also obtain the limited information (name, address, SSN, zip code, county code, marital status, exemption codes) used in the revenue sharing program.

The FTC could only obtain name, address, EIN, industry code, sample code, and gross assets indicator (by broad category).

The Bureau of Economic Analysis could only obtain limited numbers of IRS summaries of returns of the largest corporations.

As with all agencies (see "Safeguards" below), no tax information would be provided these agencies unless they kept the information properly safeguarded. Employees of these agencies would be subject to penalties on unauthorized disclosure. (See the section on Enforcement, below.)

H.R. 9599 (*Mr. Vanik*).—Tax information is to be available to the Census Bureau solely for the purpose of obtaining information which is to be published in statistical form without disclosing directly or indirectly the name or address of any taxpayer.

H.R. 9735 (*Mr. Litton*).—This bill does not permit disclosure to Census, etc. for statistical purposes. However, the IRS can publish or disclose statistics derived from tax information as long as disclosure does not reveal the identity of any taxpayer or person.

S. 442 (*Senator Bentsen*).—Does not permit disclosure to Census, etc. for statistical purposes.

S. 1511 (*Senator Montoya*).—This bill does not permit disclosure to Census, etc. without the consent of the taxpayer. The IRS is authorized to furnish statistical information derived from returns to any Federal agency on request. Any information so furnished is to be compiled by employees of the IRS. A reasonable fee is to be charged for compiling and furnishing the information.

S. 2324 (*Senator Dole*).—On the written request of the Secretary of Commerce, the Social and Economic Statistics Administration of

the Department of Commerce is to be furnished information derived from tax returns solely for the purpose of research and statistical studies and compilations authorized by law. The Department of Commerce is not to disclose any tax information, except in statistical form which cannot be associated with or identify a particular taxpayer.

Administration.—Tax information can be furnished to the Bureau of Census and Bureau of Economic Analysis in the Commerce Department and the Federal Trade Commission for research and statistical studies. No statistical study could be made public if it identifies a particular taxpayer or could be used for such identification.

In the case of other agencies, the IRS would be authorized to provide statistical studies, on request, provided the statistics did not reveal any taxpayer identity. However, the IRS would be authorized to contract with any Federal agency (including the requesting agency) to prepare the statistical study if the IRS were unable to do the work.

TREASURY EMPLOYEES

Present Law

Under the regulations, tax information can be inspected for nontax administration purposes by Treasury employees (who are not in the IRS) on the written request of the head of the appropriate bureau or office. The request is to state the name and address of the taxpayer, the kind of tax and the taxable period involved, and the reason why inspection is desired. Tax information obtained in this manner may be used as evidence in any proceedings before any "department or establishment" of the United States or any proceedings in which the United States is a party (this rule also applies to other agencies). Reg. § 301.6103(a)-1(e).)

Also, Customs, Secret Service, and other Treasury enforcement agents may obtain limited tax information on their own request, without the request of the head of their office. This includes information on whether a delinquent account has been issued, whether an audit was made, whether an Intelligence investigation was conducted, and the taxpayer's address. (IR Manual 1272, Disclosure of Official Information Handbook (14) 30.)

Tax returns also may be inspected by Treasury employees in administering the Economic Stabilization Act of 1970 (Public Law 91-379). (Reg. § 301.6103(a)-109.)

Alternative proposals

Mr. Ullman.—Treasury employees generally can inspect tax information only for use in the administration and enforcement of the Internal Revenue laws.

H.R. 9599 (Mr. Vanik).—Substantially the same as Mr. Ullman's proposal.

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Substantially the same as Mr. Ullman's proposal.

S. 1511 (Senator Montoya).—Treasury Department employees can inspect tax information only in connection with the administration or enforcement of the Internal Revenue laws, unless there is a written

consent from the taxpayer to disclosure of his return for other purposes.

S. 2324 (Senator Dole).—Substantially the same as Mr. Ullman's proposal.

Administration.—Tax information is available to inspection by Treasury employees whose official duties require such inspection or disclosure.

Additional considerations—Treasury law enforcement personnel.—The committee may wish to consider whether law enforcement officers who are Treasury employees (such as Secret Service officers) can obtain tax information to the same extent as can Department of Justice employees.

Additional considerations—access by IRS employees.—The GAO is now in the midst of a project studying the adequacy of IRS controls on access to tax information, including records to identify those who have had access. The committee may wish to postpone consideration of this area until the GAO study has been completed.

OTHER AGENCIES—CASE-BY-CASE INSPECTION

Present Law

Tax information is available to each executive department and other establishments of the Federal Government in connection with matters officially before them. To obtain this information, the head of the agency must make written request to the IRS setting forth the name and address of the taxpayer, the kind of tax and tax period in question, the reason why the inspection is desired, and the name and position of the person who will actually inspect the tax information. (Information obtained may be used as evidence in proceedings conducted by or before any Federal agency or proceedings to which the United States is a party.) (Reg. § 301.6103(a)–1(f).)

Facts

During calendar year 1974, the following agencies obtained tax information under this provision:

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	342	[1] 342
Interstate Commerce Commission	2	9	45
Department of Labor	1	2	6
Securities and Exchange Commission	8	49	169
Renegotiation Board	1	11	21
Totals	25	490	804

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

In 1972, the Joint Committee staff conducted a survey of the various Federal agencies which had previously requested tax data from the Internal Revenue Service. The agencies were asked the uses to which the information was put. For the most part, information ob-

tained by the agencies on a case-by-case basis (under Regs. § 301.6103 (a)–1(f)) was used in investigations of suspected violations of laws under the jurisdiction of the agency. These investigations concerned kickbacks, failure to file reports or verification of information and reports, concealment of assets and other undisclosed interests, unlawful control of assets, "financial fitness", etc. Additionally, the Renegotiation Board has used tax information in conjunction with its responsibility under the Renegotiation Act to eliminate excessive profits from contracts with the Federal Government.

Alternative Proposals

Mr. Ullman.—Case-by-case disclosure of tax information to other agencies generally would not be allowed. (As described in the next section of this pamphlet, disclosure would be allowed to certain other agencies to use in administering nontax matters for which they are responsible.[19]

H.R. 9599 (Mr. Vanik).—Substantially the same as Mr. Ullman.

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman.

S. 442 (Senator Bentsen).—Substantially the same as Mr. Ullman.

S. 1511 (Senator Montoya).—Substantially the same as Mr. Ullman.

S. 2324 (Senator Dole).—Substantially the same as Mr. Ullman.

Administration.—Tax information must be disclosed to other Federal agencies for preparation for use in any administrative or judicial proceeding (or investigation that might result in such proceeding) involving the enforcement of a Federal Statute and in which the government may be a party. The standards for disclosure applicable to the Justice Department nontax cases apply equally to the other agencies in their civil law enforcement proceedings and investigations. (As described in the next section of this pamphlet, special access is granted to the Social Security Administration, etc.)

OTHER AGENCIES—INSPECTION ON A GENERAL BASIS

Present Law

Under the regulations, several agencies may generally inspect tax information for qualified purposes, without the head of the agency having to write a specific request to the IRS identifying the taxpayer and the reason for the desired inspection.

The Department of Health, Education, and Welfare may inspect individual tax returns as required to administer Title II of the Social Security Act (old-age, survivor, etc., benefits). Inspection is authorized on the written application of any authorized officer or employee of the department. (Reg. § 301.6103(a)–100.)

The Advisory Commission on Intergovernmental Relations is authorized to inspect tax returns to make studies and investigations in connection with recommending methods of coordinating and simplifying tax laws and administrative practices. Inspection may be made by any member or employee of the Commission authorized to do so by the Chairman. (Reg. § 301.6103(a)–103.)

[19] This proposal concerns civil cases. With respect to criminal nontax cases, see the section of this pamphlet on the Justice Department, above.

The Renegotiation Board is authorized to obtain income tax information "in the interest of the internal management of the government." The Renegotiation Board is charged with administering the laws to renegotiate contracts with government contractors to eliminate excess profits. (Reg. § 301.6103(a)–105.)

The Federal Trade Commission is authorized to obtain income tax information of corporations "as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act." Any authorized officer or employee of the FTC may make inspection. (Reg. § 301.6103(a)–106.)

Several agencies which are able to obtain tax information on a general inspection basis under the regulations do so for statistical purposes, as described in the section of this pamphlet on statistical use. These include the Department of Commerce (Reg. § 301.6103(a)–104), the Federal Trade Commission (Reg. § 301.6103(a)–106), and the Securities and Exchange Commission (Reg. § 301.6103(a)–102).

The Federal Reserve Board may inspect interest equalization tax information returns made by commercial banks. (Reg. § 301.6103(a)–107.)

The Department of Treasury may obtain tax information for purposes of administering the Wage-Price Equalization Act. (Reg. § 301.-6103(a)–109.)

Facts

In calendar year 1974, the Social Security Administration was furnished 6,633 returns for administering Title II of the Social Security Act. In a study done in 1972, the Joint Committee staff was informed that in most cases tax data is requested by the Social Security Administration to obtain evidence of earnings so that an individual's entitlement to monthly benefits may be properly determined. This information can be used to the benefit of the individual or to the benefit of the government with respect to determining Social Security benefits.

The staff is informed the Advisory Commission on Intergovernmental Relations has never obtained tax information under its executive order and has recommended that it be revoked.

In 1974 the Renegotiation Board was furnished 1,803 transcripts (i.e., abstracts of corporation tax returns), including information on the taxpayer's gross receipts, taxable income, accounting period, identification of related companies, etc. In its earlier study, the staff was told by the Renegotiation Board that it uses tax information to eliminate excessive profits from contracts and related subcontracts made with the United States.

Information obtained for statistical purposes (by the Commerce Department, the FTC and the SEC) is described in the section of this pamphlet on statistical use of tax information.

Alternative Proposals

Mr. Ullman.—To administer the Social Security Act, the Social Security Administration could obtain information concerning the tax on self-employment income, the Federal Insurance Contributions Act tax, and the withholding tax. Also, the Railroad Retirement Board could obtain information on the railroad retirement taxes.

Information could be disclosed to the Department of Labor and the Pension Benefit Guaranty Corporation to administer the pension reform act (Employee Retirement Income Security Act of 1974). Also, as provided under the pension reform act, registration statements providing information on employees' vested benefits can be furnished to the Social Security Administration.

Information could also be disclosed to the Renegotiation Board as needed in administering the Renegotiation Act.

H.R. 9599 (Mr. Vanik).—Substantially the same as Mr. Ullman's proposal.[18]

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal.[18]

S. 442 (Senator Bentsen).—Substantially the same as Mr. Ullman's proposal.[18]

S. 1511 (Senator Montoya).—Substantially the same as Mr. Ullman's proposal [18] but permits disclosure to the Pension Benefit Guaranty Corporation, Department of Labor and Social Security Administration (of registration statements) only with taxpayer consent.

S. 2324 (Senator Dole).—Substantially the same as Mr. Ullman's proposal.[18]

Administration.—Substantially the same as Mr. Ullman's proposal.[18]

STATE AND LOCAL GOVERNMENTS

Present Law

On the written request of the State governor, individuals' and organizations' tax returns may be inspected by State tax officials for purposes of administering the State's tax laws. At the governor's written request, tax information also may be obtained for local governments to be used in administering their tax laws. (Sec. 6103(b).) Income tax information is not furnished directly by the IRS to local governments. Instead, State tax officials furnish such information to local governments where the IRS has approved such action at the request of the Governor. (IR Manual 1272 (12)41.)

Under the regulations, with the permission of the Commissioner and for purposes of State tax administration, a State may be allowed to inspect on a general basis all income tax returns filed in the district in which the State is located. (Regs. § 301.6103(b)–1(b).) The same is true for other types of returns, such as estate tax and gift tax returns (Regs. § 301.6103(a)–1(d)(5).) Additionally, specifically identified returns of taxpayers who filed within the relevant district, and of taxpayers who filed in districts which do not include the State in question, may be inspected on a case-by-case basis on the written request of the State Governor. (Regs. §§ 301.6103(b)–1(b); 301.6103(a)–1(d)(5).)

Facts and Problems

Disclosure by on Request,—On request, the Commissioner may allow each State to inspect on a general basis all tax returns filed by residents of the State. The staff understands that all States except

[18] Does not provide for inspection by the Renegotiation Board.
[18] Does not provide for inspection by the Renegotiation Board.

Nevada have made such requests and may make a general inspection of returns. The ability to inspect returns under this procedure applies to the physical inspection of the documents in question.

The States may also enter into tax coordination agreements with the IRS with respect to inspection of tax information. (All States except Nevada and Texas have entered into these agreements, and the staff is informed that Texas is now negotiating with the IRS regarding an agreement.[19])

These agreements generally provide for cooperation between the IRS and the States in tax administration, for an exchange of tax information, for assistance in locating delinquent taxpayers (and their property), for cooperative audits, and also provide for preserving the confidentiality of tax information. A model Agreement on Coordination of Tax Administration has been developed by the IRS (Manual Supplement 129–108, April 13, 1975).[20] The staff understands that this model (which is still under consideration) is to be used as the basis for new and renegotiated agreements.

Scope of disclosure.—By far the largest IRS/State information exchange program, in terms of amounts of information transferred, is the furnishing of Federal tax information on magnetic tape. In 1974, 38 States (plus the District of Columbia and Puerto Rico) participated in this program. Under the 1974 Individual Master File (IMF) program, information on nearly 63 million taxpayers was provided the States. (This covers approximately 80 percent of individual taxpayer records.) IMF tax data available to the States include: name, address, social security number, filing status, tax period, exemptions claimed, wages and salaries, adjusted gross income, interest income, taxable dividends, total tax, and audit adjustment amount.

Under the tape exchange programs, the States agree to conduct a joint review with the IRS of safeguards of tax information.

A Business Master File (BMF) program is also available to the States to aid them in establishing their own business master files. (Therefore, most States that use this program have made only one request.) Information from the Exempt Organization Master File is also available to the States, as is gift tax data.

Under the cooperative audit program, copies of examination reports are furnished the States. In 1974, nearly 700,000 abstracts of these reports were furnished the States. Also, the IRS furnishes the States information on returns that appear to have good audit potential but will not be audited by IRS because of manpower restrictions. In 1974, information was furnished on more than 70,000 returns under this program.

Problems.—It has been suggested that tax information that is supplied to tax officials at the local level may not be invariably subject to

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[19] A State is not precluded from inspecting tax information if it has not entered into an agreement. Therefore, Texas may inspect returns of its residents on a general inspection and case-by-case basis, and Nevada may inspect returns of its residents on a case-by-case basis.

[20] The new model Coordination Agreement provides that, when requested by the IRS, the State will review with the IRS its safeguard measures to protect the confidentiality of tax information. Also, the model Agreement provides that the State, at the request of the IRS, will provide safeguards that are deemed reasonable or appropriate or are reasonably requested by the IRS. Additionally, any unauthorized disclosure would be grounds for immediate termination of the Agreement. (However, since inspection by the States is provided for by statute, termination of the agreement would not terminate the State's ability to obtain tax information.)

appropriate safeguards on confidentiality. Also, it has been suggested that political considerations may produce unwarranted interest by State and local governments in tax information, even at higher levels, for nontax purposes.

In addition to problems at the local level, IRS studies have indicated that in several situations, State authorities have allowed other States (or local governments) to inspect Federal tax information, have not maintained adequate records of inspection of Federal tax information, and have inadequate procedures to instruct employees with respect to Federal tax return confidentiality.

On the other hand, it appears that it is important to the States that they have access to Federal tax information. With Federal tax information the States are able to determine if there are discrepancies between the State and Federal returns in, *e.g.*, reported income. Also, many States have only a few, if any, of their own tax auditors and rely largely (or entirely) on information concerning Federal enforcement in enforcing their own tax laws.

Alternative Proposals

Mr. Ullman.—The principal income tax official of the State (not the Governor) may make written request for and be furnished income tax information. This information is to be used only in the administration of the State income tax laws and could be available only to persons engaged in administering these laws. Similar restrictions would apply with respect to Federal estate tax returns, which would be used only for administering State inheritance tax laws and could be available only to persons engaged in administering these laws.

Federal tax returns would not be available to local governments (but presumably those with income taxes could make use of State audits).

No tax information could be furnished a State unless the State establishes procedures (including detailed records of access, and strict security measures) satisfactory to the IRS for safeguarding the tax information it received. If there were any unauthorized disclosures by State officers or employees, disclosure of Federal tax information to the State must stop until the IRS is satisfied that adequate protective measures have been taken to prevent a repetition of the unauthorized disclosure.

Mr. Pickle.—He would provide new provisions for the confidentiality of income tax returns, particularly guarding against giving income tax returns to any and all local and State officials, regardless of the tax system of the local jurisdiction.

H.R. 9599 (Mr. Vanik).—On the written request of a State Governor, tax returns are to be disclosed to the State for the purpose of administering State tax laws. The Governor's written request is to specify the reason for inspection, why the information sought is available only from the return, and that inspection is necessary to carry out a specified legal duty. Inspections of returns is to be made at the time, place, and manner provided in Treasury regulations. (A separate, but similar, provision applies to inspection of corporate tax returns by the States.)

No returns are to be available for inspection by a State unless the State has enacted a law providing for criminal penalties which limits disclosure of information obtained by the State from inspection of Federal returns and which substantially conforms with provisions of the Internal Revenue Code limiting disclosure.

Federal tax returns would be available to local governments at the request of the State Governor in the same manner (and subject to the same limitations) as this information is available to the States.

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Tax information could be disclosed to the persons who administer State tax laws for the purpose of such administration and on the written request of the principal tax official of the State. Disclosure would not be allowed to local governments.

S. 1511 (Senator Montoya).—Present law would be essentially unchanged.

S. 2324 (Senator Dole).—Tax information would be available to a State tax agency on the written request of the head of the agency. The written request is to specify by name the officers and employees of the State agency authorized to inspect tax returns and is to certify that the returns are to be used only for State tax administration purposes and will not be disclosed to local governments. Tax information is to be available to the States only in connection with State tax administration.

Inspection is not to be allowed by any State unless it is determined that disclosure would not seriously impair Federal tax administration and that State laws provide adequate safeguards against unauthorized disclosure.

If the IRS determines that these provisions are not being complied with, the IRS could (without advance notice) terminate any disclosure arrangement with the State.

Tax information is not to be available to local governments.

Administartion.—Tax information (other than wagering and firearms tax information) may be disclosed to agencies that administer State tax laws only for purposes of such administration. Disclosure may be made on written request of the head of the State tax agency. Tax information could not be disclosed to local government units.

Tax information is to be disclosed only to the extent that the IRS determines that disclosure would not seriously impair Federal tax law administration.

Other considerations.—The State tax administrators have indicated that if reports are required to the Congress with respect to disclosure of tax information, provision should be made with respect to the mass of information transmitted by the IRS to the States by computer tape, so a report would not be required listing each taxpayer included in the tape transmitted.

If the committee decides to allow tax information to be provided to local governments, it may wish to provide that the information is to go directly from the IRS to the local governments (and not through the States, as now) so they will be directly responsible to the IRS.

TAXPAYERS WITH A MATERIAL INTEREST

Present Law

Under the regulations, income tax returns presently are open to the filing taxpayer, trust beneficiaries, partners, heirs of the decedent, etc. (Reg. § 301.6103(a)–(1(c).) "Return information", as opposed to the tax returns themselves, is only available to the taxpayer, etc., at the discretion of the IRS.

Also, the statute specifically authorizes the inspection of a corporation's income tax returns by a holder of 1 percent or more of the corporation's stock. (Sec. 6103(c).)

Alternative Proposals

Mr. Ullman.—His proposal would to a substantial extent codify the regulations providing for disclosure to persons with a material interest in a tax return. For example, persons with a material interest to whom disclosure could be made would include either spouse who filed a joint return, the partners of a partnership, the shareholders of a subchapter S corporation, the administrator of an estate (and the heirs of the estate with a material interest that may be affected by the information) and the trustee of a trust (and beneficiaries with a material interest).

As under present law, a one percent shareholder of a corporation could obtain the corporation's return.

Return information (in contrast to "returns") could be disclosed only to the extent the IRS determines this would not seriously adversely affect the administration of the tax laws.

H.R. 9599 (*Mr. Vanik*).—Similar to Mr. Ullman's proposal. In addition, any person who is a bona fide shareholder of record could obtain the return of a corporation if a court of competent jurisdiction issues an order allowing him to obtain the return (after making a finding that there is reasonable cause to believe the shareholder has an interest which may be affected by the information in the return, and a finding that the information sought is available solely from the return). Also partners, shareholders of record and persons authorized to act for dissolved corporations, and certain other persons are to be allowed inspection of returns only for purposes directly related to the protection of the interests on which such inspection is based.

H.R. 9735 (*Mr. Litton*).—Substantially the same as Mr. Ullman's proposal.

S. 442 (*Senator Bentsen*).—Substantially the same as Mr. Ullman's proposal, but would repeal the one percent shareholder rule of present law.

S. 1511 (*Senator Montoya*).—Persons with a material interest (other than the taxpayer) could only obtain tax returns with the written consent of the taxpayer.

S. 2324 (*Senator Dole*).—Substantially the same as Mr. Ullman's proposal, but would repeal the one percent shareholder rule of present law.

Administration.—Substantially the same as Mr. Ullman's proposal, but would repeal the one-percent shareholder rule of present law.

Additional considerations.—The committee may wish to consider whether there should be a specific provision allowing disclosure to persons other than the taxpayer, to the extent authorized by the taxpayer, as provided in Mr. Ullman's proposal. (This is also provided for in H.R. 9735 (Mr. Litton) and in the administration proposal. Additionally, S. 2324 (Senator Dole) provides for disclosure to any Federal agency on the voluntary consent of the taxpayer.) S. 1511 (Senator Montoya) would permit disclosure to Federal or State agencies with the consent of the taxpayer.

DISCLOSURE OF PERSONS FILING INCOME TAX RETURNS

Present Law

Upon inquiry, the IRS is to disclose whether any person has filed an income tax return for the year in question (Sec. 6103(f).)

Facts

Inquiries under this provision (under which the IRS discloses whether a person has filed a tax return) are made by, among others, news media and commercial concerns.

Additionally, the IRS sometimes is asked to provide information concerning a taxpayer's address. Address information will be provided to State or local officials for tax administration purposes, to State or local enforcement officials if furnishing the information will aid in Federal special enforcement programs (*e.g.*, narcotics programs), to Federal agencies in general to assist in administering their responsibilities and to "educational lending institutions" to locate delinquent borrowers under Federal loan guarantees. Address information will not, however, be provided commercial concerns. (IR Manual 1272. Disclosure of Official Information Handbook (17) 23, 24, 25, 26.) Also, address information is provided to local welfare agencies regarding "runaway parents" under P.L. 90–248 (section 410 of the Social Security Act). Address information also may be provided individuals in emergency situations.

Alternative Proposals

Persons filing income tax returns.—Present law would be retained under Mr. Ullman's proposal, by H.R. 9735 (Mr. Litton) and by S. 1511 (Senator Montoya).

This provision of present law would be repealed by H.R. 9599 (Mr. Vanik), S. 442 (Senator Bentsen), S. 2324 (Senator Dole), and by the administration proposal.

Addresses of taxpayers.—The committee may wish to consider in what circumstances taxpayers' addresses should be disclosed by the IRS.

MISCELLANEOUS DISCLOSURES

Present Law

Under present law, several provisions of the regulations allow disclosure of tax information for miscellaneous administrative and other purposes. For example, accepted offers in compromise (under sec. 7122) are open to inspection (reg. § 301.6103(a)–1(j)). Internal Revenue

officers may disclose limited information to verify a deduction, etc. (Reg. § 301.6103(a)–1(i)). Additionally, in a number of cases, tax information may be disclosed at the discretion of the Commissioner, as the statute is wholly silent with respect to certain types of returns. For example, FICA tax returns and private foundation excise tax returns are within this category.

In other cases, the statute specifically requires public disclosure of certain types of returns. Under the code, applications for exempt status by organizations and applications for qualification of pension, etc., plans are generally open to public inspection. (Sec. 6104(a).) Also, the annual reports of private foundations are open to public inspection. (Sec. 6104(d).) Returns with respect to the taxes on gasoline and lubricating oils are open to inspection by State officials (Sec. 4102.) Under certain circumstances, the amount of an outstanding tax lien may be disclosed. (Sec. 6323(f); Reg. § 301.6323–1(c) Proposed Reg. § 301.6323(f)–1.)

Alternative Proposals

Mr. Ullman.—Disclosure now allowed by other provisions of the Internal Revenue Code would continue to be allowed. Also, offers in compromise, limited information to verify a deduction, etc., and information available under tax treaties with foreign governments could be disclosed. Additionally, alcohol, tobacco and firearms tax information could be disclosed to Federal agencies that require this information in their official duties. Also, disclosure would be allowed in connection with the regulation of income tax return preparers.

H.R. 9599 (Mr. Vanik).—Income, estate and gift tax returns (and certain withholding tax returns) could be disclosed only as specifically provided for in the bill.[21] The bill does not permit any provision for miscellaneous disclosures as offers in compromise, information to verify a deduction, etc.

H.R. 9735 (Mr. Litton).—Similar to Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—Disclosures presently allowed by other provisions of the code could continue. Additionally, the IRS may, in its discretion, disclose tax information regarding a specific taxpayer as advisable for purposes of tax administration and as necessary to correct a misstatement of fact which has become public with respect to the taxpayer's return or dealings with the IRS.

S. 1511 (Senator Montoya).—Miscellaneous disclosures and disclosures under other provisions of the code would be allowed only with the approval of the taxpayer involved.

S. 2324 (Senator Dole).—Disclosures under other code provisions would continue. The bill permits miscellaneous disclosures to other Federal agencies with taxpayer consent but does not provide for other miscellaneous disclosures.

Administration.—Similar to Mr. Ullman's proposal. Also disclosure could be made by the IRS to correct a misstatement of fact which has become public and disclosure could be made to the media when, after reasonable effort and time, the IRS is unable to locate a taxpayer who is due a tax refund.

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[21] Manufacturers' excise tax, communications tax, air transportation tax and interest equalization tax returns and certain miscellaneous excise tax returns would be disclosed under Treasury regulations.

PROCEDURES AND RECORDS CONCERNING DISCLOSURE

Present Law

Several different offices of the IRS have responsibility for approving disclosure of tax information to particular agencies. For example, the Disclosure Staff (National Office) deals with case-by-case requests for tax returns by other Federal agencies while the Statistics Division deals with the disclosure of information to Federal agencies (largely on magnetic tape) to be used for statistical purposes. Additionally, the Planning and Research Division deals with disclosure of information on magnetic tape to the States while the Disclosure Staff deals with case-by-case disclosure to the States.

While these offices negotiate and approve disclosures of tax information, the actual transfer of the information generally takes place in other offices, such as the Service Centers, District Office, Computer Center, etc. In addition, District Directors and Service Center Directors are authorized to approve applications for certain types of disclosure, such as disclosure to persons with a material interest in the returns, and returns of the taxpayer (in tax cases) to U.S. attorneys.

Generally, the Internal Revenue Manual describes the information that can and cannot be disclosed to specified persons, and also generally provides for the time and place of inspection (usually in the office in which filed, during regular business hours, and in the presence of an IRS employee). (See, *e.g.*, Reg. § 301.6103(b); IR Manual 1272, Disclosure of Official Information Handbook, 150, 410, 510, (10) 50, (12) 56, (12) 57.)

The IRS presently maintains records concerning disclosure. However, the staff understands that the type of records maintained are not standardized as between, e.g., Service Centers and that the IRS does not maintain a complete inventory of records so, for example, it cannot determine what has been disclosed and what has been returned or destroyed.

Under the Privacy Act of 1974 (P.L. 93–579) each Federal agency is to account for disclosures to other agencies, noting the date, nature, and purpose of each disclosure and the name and address of the agency to which disclosure is made. This rule does not apply to disclosures by State agencies. Additionally, the accounting is designed to enable the agency to inform the individual concerned of disclosures made with respect to him. The staff understands that the accounting system that the IRS may maintain to comply with this provision may not be readily adaptable for "management control" purposes, since tentatively this accounting will be added to the Individual Master File records.

Problems

Recently, there have been cases reported where tax information was transferred outside the IRS, without following what might be considered proper procedures. For example, John J. Caulfield testified before the Senate Select Committee on Presidential Campaign Activities that he received a "back door copy" of tax information on Billy Graham. Mr. Caulfield also testified that he received this information from Vernon Acree who was at that time Assistant Commissioner (Inspection). (Testimony of John J. Caulfield before the Senate Select Committee on Presidential Campaign Activities, Saturday, March 23, 1974.)

Additionally, as described above, there does not presently appear to be a standardized system of accounting for disclosure, so the IRS can determine what information has been transferred, for what purposes, what use has been made of it, and whether it has been destroyed, returned, etc. after it has been used. Also, studies done by the IRS indicate that in several situations inadequate records have been maintained of transfer of tax information to State authorities, and that IRS procedures have not been properly followed.

Alternative Proposals

Mr. Ullman.—Disclosure is to be made only in regular channels, at the time, place and manner prescribed by Treasury regulations. Additionally, the IRS is to review its procedures for the transfer of information and for the records it keeps on disclosure. The IRS is to report to the committee in no more than a year on this review and on steps it intends to take to correct deficiencies in its procedures and recordkeeping.

H.R. 9599 (Mr. Vanik).—This bill does not include similar proposals.

H.R. 9735 (Mr. Litton).—Disclosure is to be made only in regular channels and at the time, place and manner prescribed by Treasury regulations.

S. 442 (Senator Bentsen).—Similar to H.R. 9735 (Mr. Litton).

S. 1511 (Senator Montoya).—No similar provisions.

S. 2324 (Senator Dole).—No similar provisions.

Administration.—Similar to H.R. 9735 (Mr. Litton), with certain specific variations from Privacy Act recordkeeping requirements.

Additional considerations.—The committee may wish to consider whether the IRS (as a part of any system of safeguards) should require that each Federal and State agency that receives tax information maintain a standardized system of records on the use and disclosure of that information. Maintaining such records might appropriately be a prerequisite to obtaining tax information. (Such a system of records would also be an aid in tracking down violations of the disclosure rules.)

Also, the committee may wish to consider whether requests by other agencies for tax information should be reviewed periodically by the IRS to determine how they are best filled (from the point of view of tax administration and also the view of the requesting agency), *i.e.*, by providing computer tape information, the tax returns themselves, or by providing the information desired in some other form.

SAFEGUARDS

Present Law and Problems

Except for the general criminal penalty for unauthorized disclosure, the tax law does not provide rules for safeguarding tax information disclosed by the IRS to other agencies. However, some of the existing Agreements on Coordination of Tax Administration entered into between the Federal Government and the States include provisions for safeguarding tax information, and the model Agreement (described in the section on State and local governments) includes provisions relating to safeguards and auditing of safeguards.

The Privacy Act of 1974 (P.L. 93–579) requires that each agency establish appropriate administrative, technical, and physical safe-

guards to secure records on individuals. This requirement applies to each Federal agency that maintains a "system of records". While this provision applies to the IRS and to each other Federal agency, it does not apply to State or local government agencies that receive Federal tax records. (Additionally, these rules apply to a "system of records" and it is possible that tax information could be held by another agency outside such a system.)

The IRS has no authority under the Privacy Act to audit the safeguards established by other agencies, or to stop disclosure to other agencies that did not properly maintain safeguards. Also, under the present Office of Management and Budget Privacy Act Implementation Guidelines, each agency is to develop its own safeguard system. (Privacy Act Guidelines, section (e) (10).)

Alternative Proposals

Mr. Ullman.—Generally, no tax information is to be furnished another Federal or State agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives. Disclosure of tax information to Federal agencies and to State agencies would be conditioned on the recipient maintaining a secure place for storing the information, restricting access to the information to people whose duty requires access and to people to whom disclosure can be made under the law, providing other safeguards necessary to keeping the information confidential, and returning or destroying the information when the agency is finished with it. Regulations would be specifically authorized to allow the IRS to carry out these provisions.

If there are any unauthorized disclosures by employees of the other agency, disclosure of tax information to that agency must be stopped until the IRS is satisfied that adequate protective measures have been taken to prevent a repetition of the unauthorized disclosure. The IRS is to review, on a regular basis, safeguards established by other agencies.

S. 2324 (*Senator Dole*).—A State could not obtain Federal tax information unless its governing law regarding disclosure provides adequate safeguards.

Administration.—Substantially the same as Mr. Ullman's proposal, with respect to the safeguards required.

Additional considerations.—The committee may wish to consider requiring the IRS to report periodically to the tax committees on the procedures established for maintaining the confidentiality of tax information disclosed outside the IRS, on the implementation of these procedures, and on any problems that may develop in connection with these procedures.

H.R. 9599 (*Mr. Vanik*). A State could not obtain Federal tax information unless it has enacted a law, including criminal penalties, which limits disclosure of that information in conformity with the limits provided by the code.

H.R. 9735 (*Mr. Litton*).—Substantially the same as Mr. Ullman's proposal.

S. 442 (*Senator Bentsen*).—Tax information could only be disclosed subject to conditions established by the IRS consistent with maintaining tax information as confidential records.

S. 1511 (Senator Montoya).—The GAO is authorized to investigate the use of tax returns by any Federal or State agency to ascertain whether appropriate procedures are used to ensure that this information is treated as confidential.

REPORTS TO CONGRESS

Present Law

Since 1971 the Joint Committee on Internal Revenue Taxation has received from the IRS a semi-annual report on disclosure of tax information.

Alternative Proposals

Mr. Ullman.—The IRS is to maintain a record of all requests for inspection and disclosure of tax information and of all disclosure of information to the White House, the Justice Department and the States on its request, etc. Reports are to include the reason for the request and the date of the request. Records maintained for disclosure to the States are to take into account the fact that much information is transmitted on computer tape and it would not be practical to compile a list of all the taxpayers on whom information is disclosed in such circumstances. The Joint Committee on Internal Revenue Taxation and its staff is to be able to inspect these records, and on request of the Chief of Staff, a summary of these records is to be furnished to the staff.

H.R. 9599 (Mr. Vanik).—The IRS is to report every 6 months to the Congress on requests to inspect returns made by persons with a material interest.

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal.

S. 442 (Senator Bentsen).—The IRS is to submit a report to the Joint Committee semi-annually listing the returns furnished for inspection with respect to Federal law enforcement, to the States, to the White House, and to the Congress. The report also is to include the reasons for the request and the date on which the request for inspection was received.

S. 1511 (Senator Montoya).—Includes no similar provision.

S. 2324 (Senator Dole).—Within 90 days after the end of each calendar year, the IRS is to report to the Joint Committee on all written requests received to inspect tax information. Except with respect to disclosures for State tax administration purposes, the report is to include a list of the names of all taxpayers who were the subject of the request, the name of the person making the request, and the date on which the request was received. The report is to be confidential unless a majority of the Members of the Joint Committee agree by record vote to disclose the report.

Administration.—Substantially the same as Mr. Ullman's proposal.

ENFORCEMENT

Present Law

Unauthorized disclosure of Federal tax information by a Federal or State employee is a misdemeanor punishable by a fine of up to $1,000, or imprisonment of up to one year or both (together with the costs of prosecution). Federal officers or employees also are to be dismissed from

office or discharged from employment. It also is a misdemeanor (punishable in the same manner) for any person to print or publish in any manner not provided by law any income return or financial information appearing therein. (Sec. 7213(a)(1), (2), see also 18 U.S.C. § 1905.)

One percent shareholders who examine a corporate return are guilty of a misdemeanor (punishable as above) if they disclose in any manner "not provided by law" the amount of any income, etc., shown on the return.

Facts and Problems

The IRS has conducted investigations concerning the possible improper disclosure of confidential information as follows:

	Fiscal year—		
	1973	1974	1975
Investigations conducted	58	103	179
Disciplinary actions	9	23	23
Separations from employment	4	2	5

There have also been criminal prosecutions for illegal disclosure of confidential tax information, as follows:

	Fiscal year—		
	1973	1974	1975
Prosecution referrals	8	8	4
Prosecutions declined	7	5	4
Convictions	1	3	0

Two of the four people convicted were IRS employees and two were private detectives. The two IRS employees were given probation (and one was fined $350). The two private detectives were each fined $250, placed on two-year probation, and jailed for short periods of time (i.e., 24 hours for two Tuesdays).

It has been suggested that the criminal penalty is too low, since the offense is a misdemeanor, with a maximum $1,000 fine and one year in jail. Also, it appears that the criminal penalty is rarely used and, therefore, may be of little effect.

Alternative Proposals

Mr. Ullman.—The offense of unauthorized disclosure would become a felony rather than a misdemeanor. Additionally, the penalty would be raised to a fine of up to $5,000 or imprisonment of up to two years or both. The offense would be extended explicitly to former employees, as well as current employees. The provision governing 1 percent shareholders would be repealed. Willful receipt of tax information which the recipient knows is disclosed in violation of the law is to be a felony punishable by a fine of up to $10,000 or up to five years imprisonment or both.

A civil penalty (payable to the Government) would be provided for unauthorized disclosure of tax information. The civil penalty would be $1,000 for each violation, but no more than $25,000 for any calendar year. The civil penalty would be due on unauthorized disclosure unless it would be shown that violation of the law was due to reasonable cause and not due to willful neglect. The civil penalty also would apply to

persons receiving tax information disclosed in violation of the law where the recipient knows it is so disclosed, unless it can be shown that such receipt was due to reasonable cause and not to willful neglect.

H.R. 9599 (Mr. Vanik).—Any person who knowingly discloses information in violation of the provisions of the Code providing criminal penalties for unauthorized disclosure is to be liable in civil damages to the taxpayer involved. The taxpayer may sue in any court of competent jurisdiction for damages arising from the disclosure.

H.R. 9735 (Mr. Litton).—Substantially the same as Mr. Ullman's proposal, except that the criminal penalty would be raised to $10,000 and five years in jail.

S. 442 (Senator Bentsen).—The existing criminal penalties would be increased to $5,000 (instead of $1,000) and up to five years in jail (instead of one year).

The taxpayers injured by illegal disclosure could sue for civil penalties of up to $20,000 (including actual and punitive damages) plus court costs. This penalty would be owed by any person who knowingly discloses tax information in violation of the law.

S. 1511 (SenatorMontoya).—The criminal offense would be changed to a felony from a misdemeanor. Punishment for violation of the criminal offense would be changed to a maximum $10,000 fine or five-year imprisonment or both. A Federal officer or employee convicted under this provision would be dismissed or discharged. Knowing receipt of material disclosed in violation of the law would be a felony punishable by up to a $10,000 fine, or five-year imprisonment or both.

S. 2324 (Senator Dole).—Violation of the disclosure rules would be a felony. The criminal penalties for unlawful disclosure would be increased to $5,000 (instead of $1,000) and up to five years in jail (instead of one year).

Administration.—The criminal penalty of present law is explicitly extended to former Federal and State officers or employees (and also is extended to unauthorized disclosure of any tax returns or return information by any person). The criminal penalty and certain Privacy Act procedures would be the exclusive remedy for violation of the disclosure rules. A $5,000 fine and up to 1 year imprisonment would be the maximum applicable penalties.

DEFINITION OF TAX RETURN AND TAX INFORMATION

Present Law

The general statutory rules governing disclosure apply to tax "returns." (Sec. 6103 of the code.)[22]

The regulations under sec. 6103(a) have defined tax "return" to include information returns, schedules, lists, and other written statements filed with the IRS which are supplemental to or become a part of the return. (Reg. § 301.6103(a)-1(a)(3)(*a*).) Tax "return" also includes other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof relating to returns and schedules, etc. The definition also includes reproductions or recordings of all or part of any such documents. (Reg. § 301.6103(a)-1(a)(3)(*b*).)

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[22] The criminal penalties for unauthorized disclosure of tax information apply to "the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any income return. They also apply to "any income return or copy thereof or any book containing any abstract or particulars thereof." Also, with respect to State officials, the criminal penalties apply to "any information" acquired under the disclosure rules (Sec. 7213(a) of the code.)

The regulations under sec. 6103(b) and 6103(c) provide a different definition of tax return. Under these regulations, a "return" includes information returns, schedules, lists and other written statements filed with the IRS which are supplemental to or become a part of the return, and also includes, in the discretion of the Commissioner, other records or reports containing information included or required by statute to be included in the return. (Reg. §§ 301.6103(b)–1(d); 301.6103(c)–1(d).)[23]

Alternative Proposals

Mr. Ullman.—His proposal would define both tax "returns" and also tax "return information." A "return" would be defined as any tax or information return, any declaration of estimated tax, any claim for refund, and any report or statement filed with the IRS. The term includes supporting schedules and attachments which are part of or supplemental to a return, any amendment of a return (and any information contained in these documents).

"Return information" would be defined as any information obtained by the IRS about a person relating to his rights or obligations under the tax laws, and any information about a person relating to actions by the IRS in administering the tax laws.

(Mr. Ullman's proposal with respect to private letter rulings, etc. under the Freedom of Information Act is described in another pamphlet.)

H.R. 9599 (*Mr Vanik*).—The definition of "tax return" is the same as the definition under present law.

H.R. 9735 (*Mr. Litton*).—Substantially the same as Mr. Ullman's proposal.

S. 442 (*Senator Bentsen*).—A tax "return" is defined as any tax (or information) return or declaration of estimated tax under the tax laws filed with the IRS, and any amendment or supplement to the return or any claim for refund. It would include supporting schedules, attachments or lists designed to become supplemental to or part of the filed return.

The term "return information" is defined as any data with respect to a return (including the taxpayer's identity, nature, source or amount of income, payments, receipts, deductions, net worth, etc.) whether the return is being examined, or any other data the IRS has with respect to a return or the existence of a tax liability.

S. 1511 (*Senator Montoya*).—The term "return" is defined as including a declaration of estimated tax, information returns, schedules and lists which accompany or are supplemental to such declarations and returns, and information obtained by the IRS in administering the tax laws (but not including information that indicates the taxpayer may be in violation of the general criminal laws under title 18 of the United States Code).

S. 2324 (*Senator Dole*).—Similar to S. 442 (Senator Bentsen). Special provision is made for private rulings; this is discussed in another pamphlet.

Administration.—Similar to the definition in S. 442 (Senator Bentsen). (Special provision is made for private rulings; this is discussed in another pamphlet.)

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[23] There have been several recent cases involving the definition of "tax return." These include cases involving whether private ruling letters are tax returns and thus not open to inspection under the Freedom of Information Act. (The private rulings issue is discussed in another pamphlet.)

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