

TECHNICAL EXPLANATION OF H.R. 6475 AND S. 2565

Relating to  
DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION  
FOR CRIMINAL INVESTIGATION PURPOSES AND  
CERTAIN OTHER NONTAX ADMINISTRATION PURPOSES

Prepared for the  
House Committee on Ways and Means  
and  
Senate Committee on Finance

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Joint Committee on Taxation

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## INTRODUCTION

This document provides a technical explanation of the provisions of H.R. 6475 (introduced by Messrs. Rangel, Conable, Gibbons, Pickle, Jenkins, Shannon, and Russo) and S. 2565 (introduced by Senators Nunn, Grassley, Dole, Roth, Chiles, and Rudman). These bills were introduced on May 25, 1982 (see 128 Cong. Rec. at E2459-2461 and S5974-5989 (daily ed. May 25, 1983)).

--- The bills, which are identical, relate to the disclosure of tax returns and return information for nontax Federal criminal investigation purposes and certain other nontax administration purposes. The major changes that would be made by the bills would be: (1) the modification of the standards for the granting of an ex parte order for the disclosure of returns and return information; (2) an expansion in the number of personnel who would be permitted to request disclosure; (3) new authority for the IRS to disclose return information, on its own initiative, in emergency circumstances; (4) the disclosure of return information for the purpose of locating fugitives from Federal justice; and (5) expanded tax return access for the General Accounting Office.





Technical Explanation of H.R. 6475 and S. 2565  
Disclosure of Tax Returns and Return Information for Purposes  
Not Relating to Tax Administration

Disclosure Pursuant to Court Order (sec. 1(a) of the bills and  
sec. 6103(i)(1)(A) of the Code)

Present law

Under present law, tax returns and return information generally are confidential and may be disclosed only as specifically authorized by the Internal Revenue Code. Returns and taxpayer return information (i.e., return information submitted by, or on behalf of, the taxpayer) may be disclosed by the Internal Revenue Service, pursuant to an ex parte order granted by a Federal district court judge, for nontax Federal criminal law enforcement purposes. This information may be disclosed only to officers and employees of a Federal agency who are personally and directly engaged in the preparation for any administrative or judicial proceeding (or any investigation that may result in such a proceeding), pertaining to the enforcement of a specifically designated Federal nontax criminal statute, to which the U.S. or the agency is or may be a party.

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Under the bills, returns and return information could be disclosed; for nontax Federal criminal law enforcement purposes, pursuant to an ex parte order granted by a Federal district court magistrate (as well as by a Federal district court judge). In addition, the categories of Federal officers and employees to whom disclosure could be made would be expanded to include those officers and employees who are personally and directly engaged in any Federal grand jury proceeding pertaining to enforcement of a nontax criminal statute to which the United States or a Federal agency is a party.

Thus, under the bills, disclosure could be made to officers and employees of a Federal agency who are personally and directly engaged in (1) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal nontax criminal statute to which the U.S. or the agency is or may be a party (or any investigation that may result in such a proceeding) or (2) any Federal grand jury proceeding pertaining to enforcement of a Federal nontax criminal statute to which the U.S. is or may be a party.





Application for Court Order (sec. 1(a) of the bills and  
sec. 6103(i)(1)(B) of the Code)

Present law

Under present law, the following individuals may authorize an application to a Federal district court judge for an ex parte order for the disclosure of returns and taxpayer return information for nontax criminal law purposes: the head of a Federal agency, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General.

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The bills would restrict the number of individuals who may authorize an application for court-ordered disclosure by no longer permitting heads of Federal agencies (other than the Attorney General) to do so. However, the number of individuals within the Department of Justice who could authorize applications would be expanded to include: the Associate Attorney General, any United States Attorney, any special prosecutor, and any attorney in charge of a Criminal Division Organized Crime Strike Force.

Thus, under the bills, the following individuals could apply for an ex parte order for the disclosure of returns or return information: the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States Attorney, any special prosecutor, or any Attorney in Charge of a Criminal Division Organized Crime Strike Force.

Standards for Granting of Court Order (sec. 1(a) of the bills  
and sec. 6103(i)(1)(B) of the Code)

Present law

Under present law, a Federal district court-judge may grant an order for disclosure if he determines that:

(1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(2) there is reason to believe that the return or return information is probative evidence of a matter in issue related to the commission of the criminal act; and





(3) the information sought to be disclosed cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of the criminal act.

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The bills would substantially modify the second and third standards for determining whether disclosure should be permitted pursuant to court order. The second standard would be that there is reasonable cause to believe that the return or return information that is being sought is or may be relevant to a matter relating to the commission of a specific criminal act. The third standard would be that the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning a specific criminal act, and that the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

Thus, under the bill a Federal district court judge or magistrate could grant a court order for disclosure if he determined, on the basis of facts submitted by the applicant, that:

(1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(2) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of the act; and

(3) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning the act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

Application for Return Information Other Than Taxpayer Return Information (sec. 1(a) of the bills and sec. 6103(i)(2) of the Code)

Present law

Under present law, certain individuals are authorized to apply for the disclosure of return information (other than taxpayer return information) by written request to the Internal Revenue Service. This information generally is tax information





that the IRS has received from someone other than the taxpayer under investigation or his representative. The persons who may request this information are the head of any Federal agency, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General. The information may be disclosed to officers and employees of a Federal agency who are personally and directly engaged in the preparation for any administrative or judicial proceeding (or any investigation that may result in such a proceeding), pertaining to the enforcement of a specifically designated Federal nontax criminal statute, to which the U.S. or the agency is or may be a party.

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The bills would expand the number of individuals who could authorize a written request for disclosure to include the Inspector General of any Federal agency, the Associate Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States Attorney, any special prosecutor, and any Attorney in Charge of a Criminal Division Organized Crime Strike Force. In addition, the bill would broaden the use for which this information could be disclosed to include use in any grand jury proceeding.

Thus, under the bills, a written request for return information (other than taxpayer return information) could be submitted by the following individuals: the head of any Federal agency or the Inspector General thereof, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, a United States Attorney, a special prosecutor, or an Attorney in Charge of a Criminal Division Organized Crime Strike Force. Furthermore, this information could be disclosed for use in preparation for an administrative or judicial proceeding (or any investigation that may result in such a proceeding), or any grand jury proceeding.

Contents of Application for Return Information Other Than  
Taxpayer Return Information (sec. 1(a) of the bills and  
sec. 6103(i)(2) of the Code)

Present law

Under present law, a request for return information (other than taxpayer return information) must set forth the following:

- (1) the name and address of the taxpayer with respect to whom the return information relates;





(2) the taxable period or periods to which the return information relates;

(3) the statutory authority under which the proceeding or investigation is being conducted; and

(4) the specific reason or reasons why the disclosure is or may be material to the proceeding or investigation.

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The bills would modify the showings that must be made in a written request for return information (other than taxpayer return information). Specifically, the fourth requirement would be modified to provide that there be a showing of the specific reason or reasons why the disclosure is or may be relevant to (rather than material to) the proceeding or investigation.

Thus, under the bills, a request for return information (other than taxpayer return information) would be required to set forth the following:

(1) the name and address of the taxpayer with respect to whom the return information relates;

(2) the taxable period or periods to which the return information relates;

(3) the statutory authority under which the proceeding or investigation is being conducted; and

(4) the specific reason or reasons why the disclosure is or may be relevant to the proceeding or investigation.

Taxpayer Identifying Information (sec. 1(a) of the bills and sec. 6103(i)(2) of the Code)

Present law

Under present law, the name and address of a taxpayer may be disclosed, pursuant to written request, for use in a nontax criminal investigation. That is, the name and address of a taxpayer are not considered to be taxpayer return information for that purpose.





Under the bills, a taxpayer's identity could be disclosed, pursuant to written request, for use in a nontax criminal investigation. That is, a taxpayer's social security number, as well as his name and address, would be treated as return information (other than taxpayer return information).

Disclosure of Return Information to Apprise Appropriate Officials of Criminal Activities or Emergency Circumstances (sec. 1(a) of the bills and sec. 6103(i)(3) of the Code)

Present law

Under present law, the IRS is permitted to disclose return information (other than taxpayer return information) that may constitute evidence of a violation of Federal criminal laws. This information may be disclosed to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing such laws. For purposes of this type of disclosure, the name and address of a taxpayer is not treated as taxpayer return information if there is return information (other than taxpayer return information) that may constitute evidence of a violation of Federal criminal laws.

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The bills would provide specifically that once the IRS has disclosed return information (other than taxpayer return information) concerning possible criminal activity to the head of any Federal agency, the agency head may, in turn, disclose the information to agency officers and employees to the extent necessary to enforce the law. (This makes explicit what is implicit under present law.) Moreover, the IRS would be permitted to disclose the taxpayer's social security number, as well as his name and address, if there is return information (other than taxpayer return information) that may constitute evidence of a violation by a taxpayer of a nontax Federal criminal law.

In addition, the bills would provide new authority for the IRS to disclose return information (including taxpayer return information) in certain emergency circumstances. Specifically, under circumstances involving an imminent danger of death or physical injury to any individual, the IRS would be permitted to disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal or State law enforcement agency of such circumstances. Furthermore, under circumstances involving the imminent flight of any individual from Federal prosecution, the IRS could disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.





Use of Disclosed Returns and Return Information in Judicial or Administrative Proceedings (sec. 1(a) of the bills and sec. 6103(i)(4) of the Code)

Present law

Under present law, returns or return information that have been disclosed to Federal officers or employees generally may be entered into evidence in an administrative or judicial proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the U.S. or a Federal agency is a party. However, in the case of returns or taxpayer return information that have been disclosed pursuant to court order, the court first must find that the return or return information sought to be entered into evidence is probative of a matter in issue relevant in establishing the commission of a crime or the guilt of a party. Also, returns or return information may not be admitted into evidence if the IRS determines that the admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The admission into evidence of returns or return information contrary to these provisions does not, as such, constitute reversible error upon appeal of a judgment.

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The bills would expand the use of returns and return information in judicial or administrative proceedings not involving tax administration. Specifically, this information could be disclosed in any judicial or administrative proceeding pertaining to the enforcement of a civil forfeiture that is related to a specifically designated Federal criminal statute (not involving tax administration) or to the extent required by court order pursuant to 18 U.S.C. sec. 3500 or rule 16 of the Federal Rules of Criminal Procedure. 1/

1/ 18 U.S.C. sec. 3500 allows defendants, in certain circumstances, to examine witnesses' statements for impeachment purposes. Rule 16 deals with pre-trial discovery between the parties.





Thus, under the bills, returns and taxpayer return information that have been disclosed pursuant to court order could be disclosed in any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party (1) if the court finds that the return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt (or liability) of a party, or (2) to the extent required by court order pursuant to 18 U.S.C. sec. 3500 or rule 16 of the Federal Rules of Criminal Procedure. (18 U.S.C. 3500 provides that if the government has the statement of a witness and the witness testifies, then the defendant may examine the witness' statement for impeachment purposes. Rule 16 of the Federal Rules of Criminal Procedure allows pre-trial discovery in very limited circumstances. Disclosure pursuant to these provisions currently is permitted in judicial and administrative tax proceedings.) Return information (other than taxpayer return information) could be entered into evidence or otherwise disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the U.S. or a Federal agency is a party.

As under present law, neither returns nor return information would be admitted into evidence or otherwise disclosed if the IRS determined that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. In addition, the bills would require a court, in ruling upon the disclosure or admissibility into evidence of returns or return information, to give due consideration to the Congressional policy favoring the confidentiality of returns and return information.

Disclosure to Locate Fugitives from Justice (sec. 1(a) of the bills and new sec. 6103(i)(5) of the Code)

#### Present law

Present law does not provide specifically for the disclosure of returns or return information for the purpose of locating Federal fugitives from justice.

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Under the bills, persons who are permitted to authorize an application to a Federal district court judge or magistrate for the disclosure of returns or taxpayer return information for Federal nontax criminal law purposes also would be permitted to authorize an application for the disclosure of returns and return information exclusively for the purpose of locating fugitives.





A Federal district court judge or magistrate would authorize a disclosure order if he determined, on the basis of facts submitted by the applicant, that:

(1) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

(2) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

(3) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

Confidential Informants (sec. 1(a) of the bills and new sec. 6103(i)(6) of the Code)

Present law

Present law permits the IRS to refuse to disclose returns or return information if it is determined that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

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The bills retain the discretion on the part of the IRS to refuse to disclose returns or return information if it is determined that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. However, as a technical matter, the bills consolidate this authority into one provision. (No substantive change is made.)

Civil Damages for Unauthorized Disclosure of Returns and Return Information (sec. 2 of the bills and new sec. 7430 of the Code)

Present law

Under present law, a person who knowingly or negligently discloses a return or return information with respect to a taxpayer, in violation of the restrictions in Code sec. 6103, may be sued in a civil action for damages in a district court of the United States.



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Under the bills, if an officer or employee of the U.S. knowingly or negligently disclosed a return or return information with respect to a taxpayer, in violation of the provisions of Code sec. 6103, the taxpayer could bring a civil action for damages against the U.S. (rather than the officer or employee). Present law would be retained for disclosure other than by officers or employees of the U.S.

Disclosure of Returns or Return Information for Use in Certain Audits by the General Accounting Office (sec. 3 of the bills and new sec. 6103(i)(6) of the Code)

Present law

Present law allows the General Accounting Office to have access to tax returns and return information for the purpose of conducting an audit of the Internal Revenue Service or the Bureau of Alcohol, Tobacco, and Firearms, and for the purpose of auditing the safeguards used by other agencies to safeguard returns and return information. However, before the GAO receives tax returns or return information in connection with an audit, it must notify the Joint Committee on Taxation of the audit. The Joint Committee may disapprove an audit by a vote of at least two-thirds of its members within 30 days of receipt of notice of the proposed audit.

In addition, the GAO is permitted access to returns and return information when it is acting as an agent for the Committee on Ways and Means, Committee on Finance, or Joint Committee on Taxation.

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The bills would extend GAO access to tax returns and return information to include any returns or return information obtained by a Federal agency for use in any agency program or activity. This information would be open to officers and employees of the GAO, and only to the extent necessary in, auditing such programs or activity. Furthermore, the GAO would be permitted access to returns and return information that have not been obtained by a Federal agency, provided that the agency is authorized to obtain the information for use in the program or activity that is the subject of the GAO audit.





The pre-audit notification procedures of present law would be retained. In addition, within 90 days after the completion of any audit with respect to which the GAO had access to tax returns or return information, the GAO would be required to notify the Joint Committee on Taxation of the completion. Such written notification would be required to include (1) a description of the use of the returns and return information by the Federal agency involved; (2) such recommendations with respect to the use of returns and return information by the Federal agency as the Comptroller General deems appropriate; and (3) a statement of the impact of any such recommendations on the confidentiality of returns and return information and on tax administration.

#### Effective Dates

In general, the provisions of the bills would take effect on the day after enactment. The provision relating to civil damages against the United States for unauthorized disclosures by officers or employees of the United States, however, would apply to disclosures made after the date of enactment.

