

[JOINT COMMITTEE PRINT]

DESCRIPTION OF S. 732
AND PRESENT LAW
RELATING TO
DISCLOSURE OF TAX RETURNS
AND RETURN INFORMATION
FOR PURPOSES OF NONTAX
CRIMINAL LAW ENFORCEMENT
LISTED FOR A HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF
THE INTERNAL REVENUE SERVICE
OF THE
COMMITTEE ON FINANCE
ON NOVEMBER 9, 1981

PREPARED FOR THE USE OF THE
COMMITTEE ON FINANCE
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INTRODUCTION

The Subcommittee on Oversight of the Internal Revenue Service of the Senate Finance Committee has scheduled a hearing on November 9, 1981, on the subject of the disclosure of tax information to assist with the enforcement of Federal and State criminal laws. This pamphlet provides a description of present law relating to the disclosure of tax returns and return information for purposes of administering nontax Federal criminal laws, and a bill (S. 732, sponsored by Senators Nunn, Chiles, DeConcini, Cohen, Bentsen, Domenici, Long, Roth, Rudman, Jackson, Schmitt, Boren, Pryor, Johnston, Holland, Exon, Stennis, Danforth, Mattingly, and Zorinsky) which would expand disclosure for that purpose.

The first part of the pamphlet is a summary of the bill. The second part contains certain background information, including a brief description of recent Congressional interest in the disclosure law. The third part of the pamphlet contains an explanation of present law. The fourth part contains a brief discussion of the issues relating to the disclosure of tax information for purposes of nontax criminal law enforcement. The fifth part provides an explanation of the provisions of the bill.

I. SUMMARY

S. 732—Senators Nunn, Chiles, et al.

Disclosure of Tax Information for Purposes of Nontax Federal and State Criminal Law Enforcement

Under present law, Federal agencies may, in certain circumstances, receive tax returns, taxpayer return information, and return information¹ from the Internal Revenue Service for their use in nontax criminal investigations. Returns and taxpayer return information are available only pursuant to an ex parte order granted by a Federal district court judge. Return information, other than taxpayer return information, may be received by written request. The IRS may refuse to disclose tax returns, taxpayer return information, or return information if it determines that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. Present law also permits, but does not require, the IRS to disclose return information, other than taxpayer return information, which may constitute evidence of a violation of Federal criminal laws, to the extent necessary to apprise the head of the appropriate Federal agency charged with enforcing such laws.

Under present law, the unauthorized disclosure of tax returns or return information is a felony punishable upon conviction by a fine of not more than \$5,000 or imprisonment of not more than 5 years, or both.

Under present law, a taxpayer may bring a civil action for damages against a person who knowingly or negligently discloses returns or return information in violation of the disclosure provisions.

The bill would modify the standards for obtaining an ex parte court order for the disclosure of returns and books and records of individuals. In addition, the books and records of any business or other entity consisting of more than two owners would be available upon written request. Furthermore, tax information that has been disclosed by the Internal Revenue Service to the Department of Justice could be redisclosed to other Federal law enforcement personnel and witnesses and could, pursuant to court order, be redisclosed to certain State law enforcement officials.

The Internal Revenue Service would be required to disclose any nonreturn information (generally books and records of a business or other entity consisting of more than two owners) that may constitute evidence of a violation of Federal criminal law to the appropriate Federal agency. Moreover, in certain emergency situations, the Internal Revenue Service could disclose returns on its own initiative.

In certain circumstances, the bill would permit disclosure of tax information to foreign law enforcement officials.

Under the bill, a Federal employee would not be criminally liable for a wrongful disclosure that results from a good faith, but erroneous, interpretation of the law while the employee was acting within the scope of his employment. Moreover, any civil action for wrongful disclosure would be brought against the appropriate Federal agency, rather than a Federal employee.

¹These terms are defined in Part III of this pamphlet ("Present Law").

II. BACKGROUND

Prior Law

Under the law prior to the Tax Reform Act of 1976, income tax returns were described as "public records." However, tax returns generally were open to inspection only under regulations approved by the President, or under Presidential order. Pursuant to those regulations, a U.S. Attorney or Justice Department attorney could obtain tax information in any case "where necessary in the performance of his official duties," by written application to the IRS. Tax information obtained by the Justice Department could be used in proceedings conducted by or before any department or establishment of the Federal Government or in which the United States was a party.

In connection with the enforcement of nontax criminal and civil statutes, tax information was made available to each executive department and other establishments of the Federal Government in connection with matters officially before them, on the written request of the head of the agency. Tax information obtained in this manner could be used as evidence in any proceeding before any "department or establishment" of the United States or in any proceedings in which the United States was a party.

Tax Reform Act of 1976

In enacting the disclosure provisions contained in the Tax Reform Act of 1976, the Congress was concerned with the fact that the Justice Department and other Federal agencies were able to obtain tax returns and tax information for nontax purposes almost at their sole discretion. It was the intent of Congress that private papers which an American citizen is compelled by the tax laws to disclose to the IRS should be entitled to essentially the same degree of privacy as those private papers maintained in his home. Thus, the Congress decided that the Justice Department and any other Federal agency responsible for the enforcement of a nontax criminal law should be required to obtain court approval for the inspection of a taxpayer's return or return information submitted by, or on behalf of, the taxpayer. Furthermore, with respect to nontax civil matters, the Congress decided that returns and return information generally could not be disclosed to the Justice Department.

Other Congressional Action

On December 7, 11, 12, 13, and 14, 1979, the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs held hearings on illegal narcotics profits. Among other things, these hearings examined the extent of cooperation between the IRS and other Federal law enforcement agencies in the area of narcotics enforcement, and the effects of the disclosure provisions on that cooperation.

On December 11, 1979, the Senate agreed, by a vote of 65 to 8, to table an amendment to the Crude Oil Windfall Profit Tax Act, offered by Senator DeConcini, which would have authorized disclosure of any tax information in the possession of the IRS upon the written request of the head of a Federal law enforcement agency. In addition, the amendment would have placed an affirmative duty upon the IRS to notify the appropriate law enforcement agency whenever there was reasonable cause to believe that information within its control could indicate the violation of any Federal criminal law constituting a felony.

On April 22, 1980, the Subcommittee on Treasury, Postal Service, and General Government of the Senate Appropriations Committee held hearings on proposed budget estimates for fiscal year 1981 for the IRS. Among other things, these hearings focused on the disclosure of information by the IRS to Federal law enforcement agencies, and recent efforts to improve coordination between the IRS and Justice Department in the investigation and prosecution of nontax Federal criminal cases.

On June 20, 1980, the Subcommittee on Oversight of the Internal Revenue Service of the Senate Finance Committee held a hearing on several bills relating to the disclosure of tax returns and return information for purposes not relating to tax administration. Several of the bills that were the subject of that hearing, although different than S. 732, were similar in thrust.¹

The provisions of S. 732 were contained in the Senate version of the Economic Recovery Tax Act of 1981.² The provisions were not agreed to in conference. However, the conferees indicated their intention that the matter should be examined thoroughly in Congressional hearings in the near future and that appropriate legislative action should be taken.³

¹ For a description of the bills that were the subject of that hearing, see the pamphlet prepared by the staff of the Joint Committee on Taxation (JCS-30-80, June 18, 1980).

² Floor amendment by Senator Nunn, adopted by voice vote; motion to table defeated 28 to 66. (See, 127 *Cong. Rec.* S. 8513 (daily ed. July 27, 1981)).

³ See, H.R. Rep. No. 97-215, 97th Cong. 1st Sess. 263 (1981).

III. PRESENT LAW

Disclosure of Returns and Return Information for Purposes of Nontax Criminal Law Enforcement

Section 6103 of the Internal Revenue Code governs the disclosure of returns and return information. Under present law, returns and return information are to be confidential and not subject to disclosure unless specifically provided in section 6103 or other sections of the Code. The level of protection that currently is afforded to tax information depends upon whether the particular information is a return, return information, or taxpayer return information.

Definitions

Return.—The term “return” is defined as any tax or information return, declaration of estimated tax, or claim for refund which is required (or permitted) to be filed on behalf of, or with respect to, any person. A return also includes any amendment, supplemental schedule, or attachment filed with the tax return, information return, etc.

Return information.—“Return information” includes the following data pertaining to a taxpayer: his identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, and tax payments. Also included in the definition of return information is any particular of any data, received by, recorded by, prepared by, furnished to, or collected by the IRS with respect to a return filed by the taxpayer or with respect to the determination of the existence, or possible existence, of liability for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense provided for under the Code. A summary of data contained in a return and information concerning whether a taxpayer’s return was, is being, or will be examined or subject to other investigation or processing also is return information. However, data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer is not return information. (Notwithstanding this sentence, or any other provision of law, nothing is to be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure would seriously impair assessment, collection, or enforcement under the internal revenue laws.)¹

Taxpayer return information.—“Taxpayer return information” is return information which is filed with, or furnished to, the IRS by, or on behalf of, the taxpayer to whom the return information relates.

¹ This latter provision was added by section 701 of the Economic Recovery Tax Act of 1981 (P.L. 97-34).

This includes, for example, data supplied by a taxpayer's representative to the IRS in connection with an audit and data received by the IRS from a taxpayer's representative pursuant to an administrative summons issued in connection with an IRS civil or criminal investigation of the taxpayer.

Disclosures

The IRS is authorized to disclose returns or taxpayer return information to other Federal agencies, for purposes of nontax criminal investigations,² only upon the grant of an ex parte order by a Federal district court judge (Code sec. 6103(i)(1)). An ex parte order may be granted upon the determination of the judge that: (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed; (2) there is reason to believe that the return or return information is probative evidence of a matter in issue related to the commission of the criminal act; and (3) the information sought to be disclosed cannot reasonably be obtained from any other source, unless the information is the most probative evidence of a matter in issue relating to the commission of the criminal act.

In the case of the Justice Department, only the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may authorize an application for an order. In the case of other Federal agencies, the head of the agency is required to authorize the application.

Return information, other than taxpayer return information, may be disclosed to the head of a Federal agency or to the Attorney General, Deputy Attorney General, or an Assistant Attorney General upon written request setting forth: (1) the name and address of the taxpayer with respect to whom the information relates; (2) the taxable periods involved; (3) the statutory authority under which the proceeding or investigation (to which the information is relative) is being conducted; and (4) the specific reasons why the disclosure is or may be material to the proceeding or investigation (Code sec. 6103(i)(2)). In addition, the Secretary of the Treasury is authorized to disclose return information, other than taxpayer return information, which may constitute evidence of a violation of Federal criminal laws to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility of enforcing those laws (Code sec. 6103(i)(3)).

In the case of any requested disclosure, the Secretary has the authority to withhold the requested return or return information if it is determined that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

In general, returns or return information disclosed by the IRS to a Federal agency may be entered into evidence in any administrative or judicial proceeding pertaining to enforcement of a specifically des-

² That is, for use by the agency in preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party.

ignated Federal criminal statute (not involving tax administration) to which the United States or the agency is a party. However, a return or return information disclosed pursuant to the court order procedure may be entered into evidence only if the court finds that it is probative of a matter in issue relevant in establishing the commission of a crime or the guilt of a party. The Secretary has the authority to withhold a return or return information from a criminal trial or hearing upon his determination that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. The admission into evidence of any return or return information contrary to these disclosure provisions does not, as such, constitute reversible error upon appeal of a judgment (Code sec. 6103(i)(4)).

A return or return information may be disclosed to a competent authority of a foreign government that has an income tax or gift and estate tax convention or other convention relating to the exchange of tax information with the United States. This information may be disclosed only to the extent provided in, and subject to the terms and conditions of, such convention.

Penalties for Unauthorized Disclosure of Tax Information

Under present law, an unauthorized, willful disclosure of a tax return or return information constitutes a felony which, upon conviction, is punishable by a fine of up to \$5,000 or imprisonment of up to 5 years, or both (Code sec. 7213(a)). These penalties may apply to present and former Federal and State officers and employees, to one-percent shareholders, and to officers and employees of contractors for processing, storing, and reproducing returns and return information.

Civil Damages for Unauthorized Disclosure of Tax Information

Under present law, any person who willfully or negligently discloses tax returns or return information in violation of the law may be liable for actual damages sustained by the taxpayer (Code sec. 7217). Punitive damages are authorized in situations where the unlawful disclosure is willful or is the result of gross negligence. In no event are these damages to be less than \$1,000 for each unauthorized disclosure. However, no liability for this penalty shall arise in the event of an unauthorized disclosure which results from a good faith, but erroneous, interpretation of the disclosure laws.

IV. ISSUES

In General

As indicated in the Background section of this pamphlet, there has been much recent Congressional interest in the laws relating to the disclosure of tax returns and return information, and the impact these laws have had on Federal criminal law enforcement. Many individuals, while acknowledging that the disclosure laws prior to 1977 were too loose and permitted far too many disclosures, believe that the Tax Reform Act of 1976 was too restrictive and has had a deleterious effect on legitimate law enforcement activities. Others have felt that it is the primary function of the IRS to collect taxes, rather than participate in nontax criminal law enforcement, and that the 1976 Act struck a proper balance between these activities. Some have raised questions with respect to whether tax returns and return information should be used for any purposes other than tax administration.

To some individuals, it is not present law which has hampered cooperation between the IRS and other Federal agencies with respect to criminal law enforcement, but, rather, the way in which they believe present law has been interpreted and administered by the IRS. These individuals, while preferring that present law be maintained, would favor sending a signal from Congress to the IRS mandating that the IRS comply expeditiously with the present law disclosure provisions and that it not attempt to circumvent the law by establishing artificial barriers to the dissemination of tax information in legitimate circumstances.

As the Congress noted in the consideration of the 1976 Act, the IRS probably has more information about more people than any other government agency in this country. Consequently, almost every other agency that had a need for information about U.S. citizens generally sought it from the IRS. Accordingly, in considering any legislation dealing with the disclosure of tax returns and return information, the committee probably would want to balance the needs of law enforcement agencies for IRS assistance and information with the citizen's right to privacy and the related impact of the disclosure upon the continuation of compliance with the Nation's tax assessment system.

Specific Disclosure Issues

In addition to these fundamental policy issues, S. 732 raises a number of other technical and substantive issues that the committee may want to consider. These issues include: (1) the types of tax information that should be protected by court order on the one hand and tax information that should be available through written request on the other hand; (2) whether the standards for obtaining a court order for

the disclosure of tax information should be modified; (3) whether it should be easier to obtain books and records of business and other entities comprised of more than two individuals than it is to obtain books and records of smaller businesses or of individuals; (4) whether tax information that has been disclosed to the Justice Department should be permitted to be redisclosed to other Federal law enforcement agencies; (5) whether tax information that has been disclosed to the Justice Department or to other Federal agencies should be permitted to be redisclosed to certain State law enforcement officials for purposes of enforcing State felony statutes; (6) the extent to which tax information should be disclosed to foreign governments for use by a foreign country in a foreign nontax criminal investigation or proceeding; (7) the circumstances under which the IRS should be permitted to refuse to disclose tax information; (8) the circumstances under which the IRS should have an affirmative duty, on its own initiative, to disclose tax information; (9) whether Federal district court magistrates, as well as judges, should be permitted to grant court orders for the disclosure of tax information; and (10) the personnel level at which an application for a disclosure order should be permitted.

V. DESCRIPTION OF S. 732

Senators Nunn, Chiles, et al.

Explanation of Provisions

Classification of tax information

For purposes of disclosure, the bill would divide all tax information into two major categories: (1) return information and (2) nonreturn information.¹ The level of protection afforded to tax information would depend upon which category the particular information is in.

Return information.—Return information would be a tax return, information return, declaration of estimated tax, or claim for refund, as well as any amendment or supplement thereto, that is filed with the Secretary by, on behalf of, or with respect to, any person. (Amendments or supplements would include supporting schedules, attachments, or lists that are supplemental to, or part of, returns or information taken from returns.) In addition to returns, etc., return information also would be any information provided to the Secretary by, or on behalf of, an individual taxpayer to whom the information relates. An individual taxpayer would be any natural person or a corporation, partnership, association, union, or other entity consisting of no more than two owners, shareholders, partners, or members.

Nonreturn information.—Nonreturn information generally would be any information that is not included within the definition of return information. Specifically, this would be any information (other than a return) provided to the Secretary by, or on behalf of, someone other than the taxpayer to whom the information relates (for example, information with respect to an individual that is submitted by a third-party). In addition, this would include any information (other than returns), received by the Secretary, that relates to any corporation, partnership, association, union, or other entity consisting of more than two owners, shareholders, partners, or members. Nonreturn information also includes written determinations from the Internal Revenue Service, or any background file documents relating to written determinations, that are not open to public inspection. However, nonreturn information would not include data in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.²

¹As noted in Part III (Present Law), above, present law divides tax information into three categories: (1) returns, (2) return information, and (3) taxpayer return information.

²The present law definition of return information was amended by section 701 of the Economic Recovery Tax Act of 1981 (P.L. 97-34). The amendment provides that no provision of law is to be construed to require disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure would seriously impair assessment, collection, or enforcement under the internal revenue laws.

Disclosure of return information

The Internal Revenue Service would be required to disclose return information pursuant to the order of a Federal district court judge or magistrate. Upon the issuance of an ex parte order, return information would be open to inspection by, or disclosure to, officers and employees of the Department of Justice who are personally and directly engaged in, and solely for their use in preparation for, any administrative, judicial, or grand jury proceeding (or investigation that may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or Department of Justice is, or may be, a party. The order may provide for continuous disclosure.

Only certain specified officers and employees of the Department of Justice would be permitted to authorize an application to be filed with a Federal district court judge or magistrate for the disclosure of return information. The officers and employees specified are the Attorney General, the Deputy Attorney General, an Assistant Attorney General, a United States attorney, or the attorney in charge of a criminal division organized crime strike force.

A Federal district court judge or magistrate could grant an order requiring the disclosure of return information only if, on the basis of facts submitted by the applicant, certain findings were made. These findings would be that (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed or is being committed; the information is being sought exclusively for use in a Federal criminal investigation or proceeding concerning such criminal act; and (3) there is reasonable cause to believe that the information may be relevant to a matter relating to the commission of such criminal act. The Secretary would be able to decline to disclose any return information if he determines, and certifies to the court, that the disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. If this is not a problem, then the Secretary would be required to disclose return information, with respect to which an order has been granted, as soon as practicable after receipt of an order.

The bill would permit attorneys to whom disclosure has been made to disclose the information further to such other Federal Government personnel or witnesses as is deemed necessary for assistance during a criminal investigation or in preparation for the administrative, judicial, or grand jury proceeding that formed the basis for the order.

Disclosure of nonreturn information

The bill would permit nonreturn information to be disclosed upon written request from the head of a Federal agency, the Inspector General of a Federal agency, or the Attorney General or his designee. This written request would be required to set forth (1) the name and address of the taxpayer with respect to whom the requested nonreturn information relates; (2) the taxable period or periods to which the nonreturn information relates; (3) the statutory authority under which the proceeding or investigation is being conducted; and

(4) allegations of criminal conduct giving rise to the proceeding or investigation.

The Secretary would be required to disclose nonreturn information as soon as practicable unless it is determined that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. The disclosure would be made to the officers and employees of a Federal agency who are personally and directly engaged in, and solely for their use in, or preparation for, any administrative, judicial, or grand jury proceeding (or investigation that may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or a Federal agency is or may be a party.

The head of a Federal agency, or the Attorney General or his designee, to whom the disclosure of nonreturn information has been made, could disclose further such information to other Federal Government personnel or witnesses who are deemed necessary for assistance during a criminal investigation or in preparation for the administrative, judicial, or grand jury proceeding that formed the basis for the disclosure request.

The bill would provide that the name, address, and social security number of a taxpayer, whether a taxpayer filed a return for a given year or years, and whether there is or has been a criminal investigation of a taxpayer is nonreturn information for purposes of the provisions governing the information available through written request. Thus, that type of information, as well as information received from a third party and books and records of a business or other entity comprised of more than two persons, would be available upon written request (i.e., without having to apply to a Federal district court judge or magistrate for an *ex parte* order).

Duty of the Secretary to disclose information concerning possible criminal activities

The bill would require the Secretary to disclose in writing, as soon as practicable, any nonreturn information that may constitute evidence of a violation of Federal criminal laws. This disclosure would be initiated by the Secretary. Nonreturn information would be disclosed to the extent necessary to apprise the head of the appropriate Federal agency (or his designee) who is charged with the responsibility for enforcing the law that has been violated. For purposes of this provision, nonreturn information would include the name and address of a taxpayer.

Furthermore, when the Secretary makes a recommendation to the Department of Justice for prosecution for a violation of the Internal Revenue Code, any return or nonreturn information reviewed, developed, or obtained during the tax investigation that may constitute evidence of a violation of Federal criminal laws would be required to be furnished to the Department of Justice, for use in a nontax criminal investigation without securing a court order.

The Secretary could decline to disclose any return or nonreturn information under the foregoing provisions if it is determined that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

Finally, the Secretary would be permitted to disclose information in certain emergency circumstances. Under emergency circumstances that involve an imminent danger of physical injury to any person, serious physical damage to property, or flight from prosecution, the Secretary or his designee could disclose any information (including return information) to the extent necessary to apprise the appropriate Federal agency of the emergency. The Secretary or his designee would be required to notify the Department of Justice that a disclosure was made because of emergency circumstances, as soon as practicable after the disclosure. The Department of Justice then would notify the appropriate United States district court or magistrate of the disclosure.

Use of tax information in judicial or administrative proceedings

Any tax information (return and nonreturn information) that is disclosed under the provisions of the bill, except information disclosed in emergency circumstances, could be entered into evidence in accordance with the Federal Rules of Evidence or other applicable law in any administrative, judicial, or grand jury proceeding pertaining to enforcement of a specifically designated Federal criminal statute (not involving tax administration) or in any ancillary civil proceeding to which the United States or any Federal agency is a party. This information could be disclosed pursuant to applicable Federal discovery requirements, to the extent required by a court order. The court, in issuing such order, would be authorized to give due consideration to Congressional policy favoring the confidentiality of return and nonreturn information.

Tax information generally would not be admitted into evidence in any judicial or administrative proceeding if the Secretary determined and notified the Attorney General or his designee, or the head of the Federal agency to whom disclosure has been made, that admission into evidence would identify a confidential informant or seriously impair a civil or criminal tax investigation. However, the court would be able to direct that disclosure be made over the objection of the Secretary.

Assistance of IRS in joint tax and nontax investigations

The bill would provide that no portion of Code section 6103 (the provision governing disclosure of tax information) could be interpreted to preclude or prevent the Internal Revenue Service from assisting the Department of Justice or any other Federal agency in joint tax and nontax investigations of criminal matters that may involve income tax violations. Moreover, no portion of that provision could be interpreted to preclude or prevent the Internal Revenue Service from investigating or gathering relevant information concerning persons engaged in criminal activities that may involve tax violations.

Redisclosure of tax information to State authorities

Under the bill, any official who is authorized to apply for disclosure³ could apply to a Federal district court judge or magistrate for an ex parte order to disclose any return or nonreturn information in

³That is, in the case of return information, the Attorney General, the Deputy Attorney General, an Assistant Attorney General, a United States attorney, or the attorney in charge of a criminal division organized crime strike force; and, in the case of nonreturn information, the Attorney General or his designee, and the head of any other Federal agency or Inspector General thereof.

his possession, which is relevant to the violation of a State felony statute, to the appropriate State attorney general or district attorney. An application for redisclosure of tax information to a State attorney general or district attorney would be required to set forth (1) the name and address of the taxpayer and the taxable period or periods to which the information relates; (2) a description of the information sought to be disclosed; and (3) the State felony violation involved.

A Federal district court judge or magistrate could grant an order for redisclosure of tax information to a State attorney general or district attorney only if certain findings were made. Specifically, the judge or magistrate would have to determine, on the basis of facts submitted by the applicant for redisclosure, that (1) there is reasonable cause to believe, based upon information believed to be reliable, that a specific State felony violation has occurred or is occurring and (2) there is reasonable cause to believe that the information may be relevant to a matter relating to the commission of the violation.

Disclosure to competent authority under an international convention

The bill would permit the disclosure, in certain circumstances, of return or nonreturn information to a competent authority of a foreign government that has an income tax or gift and estate tax convention, treaty on mutual assistance, or other convention relating to the exchange of tax information with the United States. However, this information could be disclosed only to the extent provided in, and subject to the terms and conditions of, the treaty or convention.

The bill provides that if return or nonreturn information is sought pursuant to the terms of a treaty on mutual assistance in criminal matters for use in an investigation or proceeding that is not related to the tax laws of the requesting foreign country, then disclosure may be made for the use of officials of the requesting country only after the issuance of an ex parte order by a United States district court judge or magistrate. An ex parte order for disclosure would be granted only upon a finding by the judge or magistrate that (1) there is reasonable cause to believe that the information sought may be relevant to a matter relating to the commission of a specific criminal act that has been committed or is being committed against the laws of the foreign country, and (2) that the information is sought exclusively for use in the foreign country's criminal investigation or proceeding concerning that criminal act.

Penalties for unauthorized disclosure of tax information

Under the bill, it would be an affirmative defense to prosecution for the unauthorized disclosure of return or nonreturn information that the disclosure resulted from a good faith, but erroneous, interpretation of Code section 6103 while a Federal employee was acting within the scope of his employment.

Civil damages for unauthorized disclosure of tax information

The bill provides that if an employee of a Federal agency knowingly or negligently discloses return or nonreturn information with respect to a taxpayer in violation of the provisions of Code section 6103, then

the taxpayer who has been wronged may bring a civil action for damages exclusively against the agency for whom the employee works. If any person other than an employee of a Federal agency knowingly or negligently discloses return or nonreturn information, then the taxpayer could bring a civil action directly against that person.

Any civil actions commenced under this provision of the bill would be within the jurisdiction of the district courts of the United States.

Effective Date

The provisions of the bill would be effective upon enactment.

Revenue Effect

The provisions of the bill would have no direct revenue effect, but could involve some additional administrative costs to the IRS.

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