[JOINT COMMITTEE PRINT]

DESCRIPTION OF BILLS
(S. 2402, S. 2403, S. 2404, AND S. 2405)

RELATING TO

DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION

LISTED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE

ON JUNE 20, 1980

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

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INTRODUCTION

This pamphlet provides a description of four bills (S. 2402, S. 2403, S. 2404, and S. 2405) relating to the disclosure of returns and return information, third-party summonses, penalties for unauthorized disclosure of tax information, and civil damages for unauthorized disclosure of tax information. The Subcommittee on Oversight of the Internal Revenue Service of the Senate Finance Committee has scheduled a hearing on these bills for June 20, 1980.

The first part of the pamphlet is a summary of the bills. 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. The fifth part describes the bills scheduled for the hearing.

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I. SUMMARY

A. S. 2402—Senators Nunn, Percy, Chiles, Cohen, DeConcini, Long, Talmadge, and Ribicoff

Disclosure of Returns and Return Information for Purposes Not Relating to Tax Administration

Under present law, Federal agencies may, in certain circumstances, receive tax returns, taxpayer return information, and return information [1] 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 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 the bill, all information collected by the IRS would be divided into two categories: (1) returns (that is, information a taxpayer is required by law to give the IRS), and (2) nonreturn information (that is, all information, other than returns, received by the IRS). Disclosure of returns and nonreturn information could be requested only by an "attorney for the Government" (generally, a Justice Department attorney). Disclosure of returns would be permitted only through a court order mechanism generally similar to that under present law. (However, strict time limits would be imposed both upon the courts and the IRS and a more relaxed relevancy standard would apply). Nonreturn information would be available to an attorney for the Government upon written request. The attorney to whom the disclosure has been made would be permitted to make further disclosures, in certain circumstances, to appropriate State and Federal law enforcement personnel pursuant to ex parte court orders allowing such further disclosures.

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[1] These terms are defined in Part III. A., under "Present Law."

The IRS would be required to disclose nonreturn information which may constitute evidence of a Federal crime, or which may be pertinent to a Federal criminal investigation, to an attorney for the Government to the degree necessary to permit the attorney to request additional nonreturn information. Moreover, under certain emergency conditions, the IRS would be required to disclose returns, as well as nonreturn information, to the extent necessary to apprise the appropriate Federal agency with responsibility to enforce the law.

Under the bill, if the disclosure of returns or nonreturn information would identify a confidential informant or seriously impair a civil or criminal tax investigation, the IRS would be permitted to apply for a court order to prevent disclosure.

B. S. 2403—Senators Nunn, Percy, Chiles, Cohen, DeConcini, Long, Talmadge, and Ribicoff

Third-Party Summonses

Under present law, the IRS must follow certain procedures to obtain testimony or records from a third-party recordkeeper (for example, a bank). In general, the IRS must give notice to the taxpayer identified in the summons served on the third-party recordkeeper, and the taxpayer may stay compliance with the summons by instructing the third-party recordkeeper not to comply with the summons and giving notice of that instruction to the IRS. If the taxpayer stays compliance, then the IRS may not examine the records without a court order or the consent of the taxpayer.

Under the bill, only individuals and partnerships of not more than five individuals would be entitled to notice of a third-party summons. In addition, the taxpayer would not be able to stay compliance with the summons by giving notice to the third-party recordkeeper and the IRS. Rather, the only judicial remedy to prevent compliance would be a motion to quash the summons filed in the United States district court for the district in which the taxpayer resides. The Government would have 10 days from receipt of a copy of the motion to file its response, and a district court judge or magistrate would be required to enter an order on the motion within 10 days after the government has filed its response.

C. S. 2404—Senators Nunn, Percy, Chiles, Cohen, DeConcini, Long, Talmadge, and Ribicoff

Penalties for Unauthorized Disclosure of Tax Information

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 the bill, it would be an affirmative defense to prosecution that an unauthorized disclosure resulted from a good faith, but erroneous, interpretation of the disclosure laws while a Federal employee was acting within the scope of his employment or duties.

D. S. 2405—Senators Nunn, Percy, Chiles, Cohen, DeConcini, Long, Talmadge, and Ribicoff

Civil Damages for Unauthorized Disclosure of Tax Information

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.

Under the bill, the United States would be liable for any civil damages if the unauthorized disclosure was made within the scope of office or employment of a Federal official or employee, unless the disclosure was made corruptly, maliciously, in return for anything of value, or willfully in violation of the disclosure provisions.

II. BACKGROUND

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 any proceedings in which the United States was a party.

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.

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. (This proposal differed substantially from the four bills scheduled for the June 19 hearing by the Finance Subcommittee on Oversight of the Internal Revenue Service—described in Part V of this pamphlet.)

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.

III. PRESENT LAW

A. Disclosure of Returns and Return Information for Purposes Not Relating to Tax Administration

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 diclosure unless specifically provided in section 6103 or other sections of the Code.

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" 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.

"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. 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.

The IRS is authorized to disclose returns or taxpayer return information to other Federal agencies, for purposes of nontax criminal investigations,[1] 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

[1] 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.

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.[2]

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 designated Federal criminal statute (not involving tax administration) to which the United States or the agency is a party. However, a return or return information 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)).

B. Third-Party Summonses

Under present law, the IRS has the right to issue a summons to any person to appear and give testimony or to produce books, papers,

[2] The third requirement is inapplicable if the judge determines that the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of a criminal act.

records, or other data relevant or material to the determination of the tax liability of any person (Code sec. 7602). These administrative summonses may be served on a person other than the taxpayer whose tax liability is subject to investigation.

The Tax Reform Act of 1976 enacted special requirements applicable to the enforcement of an administrative summons served on a third-party recordkeeper. In general, attorneys, accountants, banks, trust companies, credit unions, savings and loan institutions, credit reporting agencies, issuers of credit cards, and brokers in stock or other securities are third-party recordkeepers.

The IRS must follow certain procedures set out in Code section 7609 to obtain testimony or records from a third-party recordkeeper.[3] If a summons served on a third-party recordkeeper requires the production of records made of the business affairs of any person (other than the third-party recordkeeper) who is identified in the description of the records in the summons, then the IRS must give notice to the person identified in the summons (hereinafter "taxpayer") within 3 days of the day the summons was served, but no later than 14 days before the day the records summoned are to be examined. The notice given to the taxpayer must contain directions for staying compliance with the summons.

The taxpayer may stay compliance with the summons if within 14 days of receiving notice of the summons the third-party recordkeeper is given written notice not to comply with the summons and a copy of that notice is sent by registered or certified mail to the IRS officer specified in the notice given to the taxpayer.

The IRS may not examine any records required to be produced under a summons until the 14-day period during which the taxpayer may act to stay compliance has expired. If the taxpayer successfully stays compliance by giving the requisite notices, then the IRS may not examine the records without a court order or the consent of the taxpayer. In other words, the taxpayer may require the IRS to go to court and obtain an order to enforce the summons against the third-party recordkeeper. Present law states that a proceeding brought to enforce a summons takes precedence over all other cases except those the court considers of greater importance.

If compliance with the summons is stayed and the person who stayed compliance is the person whose tax liability is under investigation (or a person under the direction or control of the person whose tax liability is under investigation), then the running of the statutes of limitations for criminal prosecutions and the assessment and collection of tax is suspended while a proceeding to enforce the summons is pending.

C. 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

[3] Under limited circumstances, the Service may obtain information from third-party recordkeepers without complying with the procedural requirements in Code section 7609. (*E.g.*, Code secs. 7609(a)(4)(B) and 7609(g)).

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.

D. 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 has a need for information about U.S. citizens generally seeks 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 particular office or agency's need for the information involved with the citizen's right to privacy and the related impact of the disclosure upon the continuation of compliance with our country's tax assessment system.

Specific disclosure issues

In addition to these fundamental policy issues, the disclosure proposal raises a number of other technical and substantive issues that the committee may want to consider. These issues include: (1) the level at which disclosure should be permitted; (2) whether tax information disclosed to the Justice Department should be permitted to be disclosed further to other Federal agencies and to State law enforcement agencies; (3) the time limits imposed upon the courts in granting orders for the release of tax returns (and upon the IRS in complying with those orders); (4) the circumstances under which the IRS should be per-

mitted to refuse to disclose information; (5) the circumstances under which the IRS should have an affirmative duty, on its part, to disclose tax return and return information; and (6) the definitional categories of tax information which should be protected by court order on the one hand and tax information which should be available through written request on the other hand.

Third-party summonses

Additional issues are raised by the third-party summons proposal, S. 2403. These issues include (1) whether only individuals and partnerships of not more than five members should be entitled to notice of a third-party summons; (2) whether a taxpayer should be allowed to stay the enforcement of a third-party summons by giving notice to the third-party recordkeeper and the IRS; and (3) whether the taxpayer or the IRS should be required to petition a court to stay or to enforce, respectively, a third-party summons.

V. DESCRIPTION OF THE BILLS

A. S. 2402—Disclosure of Returns and Nonreturn Information for Purposes not Relating to Tax Administration

1. Disclosure of tax returns

Under the bill, the disclosure of tax returns for purposes not related to tax administration could be made only to an attorney for the Government pursuant to an ex parte order by a United States district court. (Disclosures from the IRS to heads of Federal agencies, other than the Department of Justice, would not be permitted.) An attorney for the Government would be the Attorney General, any Deputy Attorney General, Deputy Assistant Attorney General, United States Attorney, Attorney in Charge of a Criminal Division Organized Crime Strike Force, any other head of a regional office of the Department of Justice, or a supervisory attorney specifically designated by the Attorney General.

Upon application by an attorney for the Government, a United States district court [1] could, by ex parte order, direct the disclosure of a tax return for use during, or in preparation for, any administrative, judicial, or grand jury proceeding, or in a criminal investigation that may result in such a proceeding. The application for an ex parte court order would be required to contain: (1) the name of the taxpayer whose return is sought; (2) the time period to which the request relates; (3) the statutory authority under which the investigation is being conducted; (4) the nature and purpose of the proceeding or investigation; and (5) the reasons why, in the opinion of the attorney for the Government, the disclosure of the information on the return is material and relevant to the proceeding or investigation.

An ex parte order, directing the disclosure of a return, could be issued only upon a determination that: (1) the application for the order was made in connection with a lawful administrative, judicial, or grand jury proceeding, or an investigation which may result in such a proceeding, pertaining to the enforcement of a specifically designated criminal statute (not involving tax administration) to which the United States or any Federal investigative agency is or may be a party; and (2) there is reasonable cause to believe that the information contained in the return is material and relevant to such proceeding or investigation.

A United States district court would be required to act upon an application for an ex parte order within 5 days. If the application were denied, a motion for reconsideration would be acted upon within 5 days. Any appeals would be disposed of in no later than 30 days.

[1] The term "district court" would be defined as a United States district court judge or a United States magistrate so designated by a United States district court judge to perform his duties.

Once an order is granted, the IRS would be required to make disclosure within 10 days.

Returns disclosed to an attorney for the Government could be disclosed further to such other Government personnel as he deemed necessary to assist him during, or in preparation for, any administrative, judicial, or grand jury proceeding, or in any criminal investigation that may result in such a proceeding.

2. Disclosure of nonreturn information

The bill would establish a new category of information (that is, "nonreturn information") which would replace return information and taxpayer return information under present law. In general, nonreturn information would be information in the possession of IRS other than tax returns and other items the taxpayer is required by law to supply to the IRS.[2]

An attorney for the Government would be able to receive nonreturn information by written request. The Secretary of the Treasury or his designee [3] would be required to disclose nonreturn information within 10 days of receipt of the request. The written request for nonreturn information would be required to set forth the following information: (1) the name and address of the taxpayer; (2) the taxable periods to which the information relates; (3) that the request is being made in connection with an administrative, judicial, or grand jury proceeding, or an investigation which may result in such a proceeding, pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) which the United States or any Federal investigative agency is authorized to pursue; and (4) the reasons why, in the opinion of the attorney for the Government, the disclosure is or may be material to such proceeding or investigation.

The attorney for the Government would be permitted to disclose further any nonreturn information to such other Government personnel as he deemed necessary to assist him during, or in preparation for, any administrative, judicial, or grand jury proceeding, or in a criminal investigation which may result in such a proceeding.

Under the bill, taxpayer identity information [4] would be available to an attorney for the Government upon written request.

3. Duty of the Secretary of the Treasury to disclose nontax criminal information

Under the bill, the Secretary of the Treasury would be required to disclose to an attorney for the Government information (except returns) which may constitute evidence of a Federal crime or which may be pertinent to a Federal criminal investigation, to the degree necessary

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[2] Currently, taxpayer return information (that is, return information supplied by, or on behalf of, a taxpayer) may be disclosed for nontax criminal purposes only pursuant to court order. Uner the proposal, this information would not be subject to the court order procedure.

[3] A designee of the Secretary could include the Commissioner of Internal Revenue, any Regional Commissioner or Assistant Regional Commissioner in Charge of the Criminal Investigation Division of the IRS, or any District Director or Chief of the Criminal Investigation Division of any local IRS office.

[4] Taxpayer identity information would be any information in possession of the IRS which identifies the name, address, or social security number of any taxpayer or which reveals whether the taxpayer filed a tax return for any given year.

to permit the attorney to comply with the written request requirement with respect to nonreturn information.

Under exigent circumstances, including a possible threat to persons, property, or national security, the Secretary or his designee would be required to disclose any information (including returns) to the extent necessary to apprise the appropriate Federal investigative agency charged with the responsibility for enforcing such laws. In such circumstances, the Secretary would be required to notify an attorney for the Government of his actions and the attorney would be required to notify an appropriate United States district court of the disclosure.

4. Reasons for nondisclosure of returns or nonreturn information

Under the bill, the Secretary of the Treasury or his designee would be permitted to apply to a Federal district court to prevent the disclosure of returns or nonreturn information if it is determined that disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. An attorney for the Government would have 5 days to reply to an application for nondisclosure, stating his reasons why disclosure would not identify a confidential informant or seriously impair a tax investigation.

A district court would be required to rule on an application for nondisclosure in no less than 5 nor more than 15 days from receipt. If the district court denied the application, any motion for reconsideration would be acted upon within 5 days of receipt. Any appeal from the district court's order would be disposed of in no more than 30 days after the appeal is filed.

5. Subsequent disclosure of returns and nonreturn information

Under the bill, an attorney for the Government could, in certain circumstances, disclose returns and nonreturn information which constitute evidence of, or are material to an investigation of, the violation of a State felony statute, to an appropriate State law enforcement official. This information could be disclosed only upon issuance of an ex parte order by a district court. An application for disclosure to a State official would be required to set forth: (1) the name and address of the taxpayer; (2) the taxable periods involved; (3) the exact information sought to be disclosed; (4) the State felony violation and State statute involved; (5) a certification that disclosure is necessary to enable the State authority to investigate and prosecute the violation; and (6) the name of the State official to whom disclosure would be made.

No disclosure could be made unless, within 10 days, a district court issued an ex parte order based upon a finding that: (1) the application was made in connection with an investigation or proceeding concerning the enforcement of a specifically designated State felony statute; (2) disclosure is necessary to enable the State authority to investigate or prosecute a State felony violation; and (3) that the State official named in the application is an appropriate official to whom to make disclosure.

In addition to making disclosures to State law enforcement officials, the bill would establish a similar court order procedure to enable an attorney for the Government to further disclose information which is material to Federal civil litigation to other appropriate Federal authorities.

6. Other provisions

The bill would provide that no portion of Code section 6103 is to be interpreted as precluding or preventing the IRS from assisting any other Federal investigative agency in investigations of criminal matters which may lead to income tax violations or from investigating or gathering relevant information concerning persons involved in criminal activities.

In addition, the bill would require the Secretary to disclose returns and nonreturn information to an attorney for the Government for use in the performance of duties pursuant to a mutual assistance treaty between the United States and a foreign country which provides for an exchange of criminal evidence or information.

B. S. 2403—Third-Party Summonses

The bill would change the rules for the enforcement of a third-party summons in several ways. First, only individuals and partnerships of not more than five individuals would be entitled to notice of a third-party summons.

In addition, the taxpayer would not be able to stay compliance with the summons by giving notice to the third-party recordkeeper and the IRS. Under the bill, the only judicial remedy to oppose disclosure of records summoned would be a motion to quash the summons filed in the United States district court for the district in which the taxpayer resides. The motion to quash must contain two statements submitted under oath. First, the taxpayer must swear he is the person to whom the records sought by the summons relate. Second, the taxpayer must state why the records sought are not relevant to a legitimate tax inquiry or any other legal basis for quashing the summons.

The motion to quash must be filed within 14 days after the taxpayer is given notice of the third-party summons. The bill would require the government to include directions for filing a motion to quash in the notice of a third-party summons given to a taxpayer. Copies of the motion must be served on the third-party recordkeeper and the specified IRS officer. The government would then have 10 days to file its response.

A district court judge or magistrate would be required to enter an order on the motion within 10 days after the government has filed its response. An order denying the motion to quash would not be a final order and, therefore, the denial would not be appealable. The order could be appealed, however, as part of any appeal from a final order in any legal proceeding initiated against the taxpayer arising out of or based upon the records summoned. The bill would repeal the provision of present law which gives a proceeding to enforce a summons, a proceeding brought under Code section 7609, and an appeal precedence over all cases except those the court considers of greater importance.

The government would not be allowed to examine the records summoned until the 14-day period to file a motion to quash had expired. If a motion were filed, the government would not be allowed to examine the records summoned without a court order. The running of the statutes of limitations would be suspended while any litigation relating to the summons is pending.

The bill also provides that nothing in Code section 7609 shall enlarge or restrict any rights of a third-party recordkeeper to challenge a summons for records and nothing in the Internal Revenue Code shall entitle a person entitled to notice under Code section 7609(a) to assert the rights of a third party.

Finally, the bill would require the third-party recordkeeper, unless otherwise provided by law, to assemble the records summoned upon receipt of the summons. The bill further provides that third-party recordkeepers must be prepared to deliver the records summoned on the day the records are to be examined or, if a motion to quash has been filed, within 10 days of the entry of the court order.

C. S. 2404—Penalties for Unauthorized Disclosure of Tax Information

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

D. S. 2405—Civil Damages for Unauthorized Disclosure of Tax Information

Under this bill, the United States would be liable for any civil damages imposed for an unauthorized disclosure of returns or nonreturn information, if the disclosure was made within the scope of office or employment of a Federal official or employee, unless the disclosure was made corruptly, maliciously, in return for anything of value, or willfully in violation of the disclosure laws

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