FEDERAL TAX RETURN PRIVACY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

APRIL 21 AND 28, 1975, AND JANUARY 23, 1976

PART 2 OF 2 PARTS

(JANUARY 23, 1976)

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

67-145 WASHINGTON : 1976

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $2

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

HERMAN E. TALMADGE, Georgia	CARL T. CURTIS, Nebraska
VANCE HARTKE, Indiana	PAUL J. FANNIN, Arizona
ABRAHAM RIBICOFF, Connecticut	CLIFFORD P. HANSEN, Wyoming
HARRY F. BYRD, JR., Virginia	ROBERT DOLE, Kansas
GAYLORD NELSON, Wisconsin	BOB PACKWOOD, Oregon
WALTER F. MONDALE, Minnesota	WILLIAM V. ROTH, JR., Delaware
MIKE GRAVEL, Alaska	BILL BROCK, Tennessee
LLOYD BENTSEN, Texas	
WILLIAM D. HATHAWAY, Maine	
FLOYD K. HASKELL, Colorado	

MICHAEL STERN, *Staff Director*
DONALD V. MOOREHEAD, *Chief Minority Counsel*

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

FLOYD K. HASKELL, Colorado, *Chairman*

HERMAN E. TALMADGE, Georgia	ROBERT DOLE, Kansas
HARRY F. BYRD, JR., Virginia	PAUL J. FANNIN, Arizona

WILLIAM MORRIS, *Professional Staff Member*

CONTENTS

PUBLIC WITNESSES

COMMUNICATIONS

FEDERAL TAX RETURN PRIVACY

FRIDAY, JANUARY 23, 1976

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION
OF THE INTERNAL REVENUE CODE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to recess, in room 2221, Dirksen Senate Office Building, Senator Floyd K. Haskell (chairman of the subcommittee) presiding.

Present: Senators Long, Haskell, and Fannin.

Senator HASKELL. The Subcommittee on Administration of the Internal Revenue Code today resumes its hearings on Federal tax return and tax return information privacy.

I am very pleased to welcome the witnesses here. I wish to thank both the American Civil Liberties Union and the representatives of the various State tax departments for coming here today to assist us in developing further information on this important issue.

Our first witness this morning is Mrs. Hope Eastman, associate director of the American Civil Liberties Union, Washington office.

Mrs. Eastman?

STATEMENT OF MRS. HOPE EASTMAN, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mrs. EASTMAN. Good morning, Senator Haskell, and Senator Fannin.

Thank you for the opportunity to appear this morning. I apologize and appreciate the subcommittee's indulgence for my not having a prepared statement, I would like to request at the outset that the record be kept open so I could supply you with some additional documents.

Senator HASKELL. Would two weeks be adequate?

Mrs. EASTMAN. Fine.

Senator HASKELL. The record will remain open for 2 weeks.

Mrs. EASTMAN. My name is Hope Eastman. I am a lawyer and associate director of the ACLU Washington office.

One of my primary tasks in the last several years has been the development of legislation and other remedies to preserve the right to privacy.

One of the things, of course, that is important to the right of privacy is the question of governmental use and access to tax return information.

I would like to talk briefly about the right of privacy in general without spending too much time on it, because, as I read through your last opening statement and the earlier hearing, you have gone into this question in some detail. The fact that the right of privacy exists in the Constitution has been recognized by the courts. It places on the Government an obligation to refrain from practices which invade the right of privacy unless the Government can find a compelling interest which would outweigh that right.

I would like to do three things. The first is to raise some questions with you about the scope of the right of privacy in the area of tax returns. Then I would like to turn to what I think the bill ought to look like and ought to include and talk a little bit about some of the abuses.

I had planned to talk quite a bit about information that the ACLU has collected on abuses, but I think that information is really before you.

The evidence in the impeachment hearing, the evidence which has been released by the Church committee, the White House abuses of tax return privacy, of political entertainment and industry figures; Daniel Schorr; the Clark Mollenhoff incident, Jack Anderson, and the tax returns of George Wallace's brother—all of these have already been brought to your attention.

The Center for National Security Studies, a tax-exempt project of the Fund for Peace, has published a book called "The Abuses of the Intelligence Agencies." A portion of that deals with the IRS, and if I might, I would like to supply you with a copy of the portion that deals with the IRS.

Senator HASKELL. We would appreciate that.

Mrs. EASTMAN. The basic questions I would like to raise about the scope of privacy are these. Most of the discussions about tax returns and tax return information privacy has talked about tax returns and tax information in general. Very little question has been raised, I think, about whose tax returns ought to be kept private. I would like, from my vantage point as someone who cares about privacy and wants to see that the Congress does its utmost to protect the right of privacy, to raise some questions which I don't think have really been raised before:

Should the tax returns of the President be confidential?

Should the tax returns of high Government officials be confidential?

Should the tax returns of elected officials, such as Members of Congress, be confidential?

Should the tax returns of corporations be treated the same as the tax returns of individuals?

People's expectations of privacy and the kinds of invasions which access to tax return information present are quite different when you are dealing with human beings who have personal problems, medical problems, who join political groups and engage in other kinds of conduct which are really none of anyone else's business.

In the context of corporations, there have been theories that have been developed about trade secrets and other information which needs to be confidential. I am not so familiar with these that I can say what should be private and what public. I don't have answers for you, but

I do not think that rather than saying, of course, they all ought to be treated exactly the same, it is important for you to look at the kinds of information that you really want to protect and to look at the same time at information which the public should know about.

I think that you may find that the tax returns ought to be treated somewhat differently from those of private individuals. The same is true of public officials who make the vital decisions that affect us all. Perhaps the scope of their right to privacy ought to be much narrower. I have some beginning views that there are differences in the scope of the right and the countervailing interests in these areas. I hope that the fact that I am not prepared to tell you this morning exactly where I would draw the line will not end the inquiry. I do hope that these questions are examined. If I can be of help to you as the bill is developed, I would be glad to do that.

Turning to the question of the way in which the bill is to be structured, the ACLU proposes three very basic elements be included in any such bill. We start with the assumption that people—and when I say "people" it is limited to the private people for the moment—are compelled to supply this tax information to the Government by the law in order to administer the tax laws.

It is not something people do voluntarily. I think we have to keep that fact in mind when you decide what other uses can be made of tax return information. On that assumption, our first suggestion is that the use of the tax return and tax return information be limited to enforcement of the tax laws. Along the lines suggested by Senator Montoya, all other uses of the tax return would require the individual's prior consent.

Our second suggestion relates to the privilege against self-incrimination. I do not think this factor is really addressed by any of the bills. When you are talking about using tax returns where possible criminal liability is concerned—because it is information that you are compelled to give to the Government—I believe you have a very strong fifth amendment right which you should be allowed to assert before other uses are made of your tax return and tax return information. Thus, we urge very strong limitations on transfer of tax return information without an opportunity to first assert a claim of fifth amendment privilege, including transfers to the Justice Department, transfers to congressional committees, and transfers to anyone else that you decide should have access to those returns.

Consent and prior notice, with a prior right to raise fifth amendment protections, should be available even when you are transferring them to the Justice Department.

Due processes of the law does not mean that you can do anything you want outside the trial. Our concept of due process has extended back in time and outside the courtroom to limit Government conduct in the way it conducts investigations.

As you know, there is a case presently before the Supreme Court, *United States* v. *Garner*, in which this issue is raised.

As the case comes to the Supreme Court from the ninth circuit, the ninth circuit has ruled that if the taxpayer wishes to make a claim of fifth amendment privilege, that claim has to be made when the tax return is filed. If you don't make the claim when the tax return is

filed, presumably all subsequent investigative uses of the tax return would be perfectly legitimate and there would be no obligation on the Government's part to allow you to assert a fifth amendment defense when it later tries to use the information against you.

The problem with that, it seems to me, from the standpoint of those who administer the tax laws, is that, as I understand the procedure, the rules in the tax law are set to promote maximum disclosure of sources of income to the Internal Revenue Service at the outset so that they can collect all the moneys that are due the Government.

If this decision stands from the ninth circuit, it may well greatly interfere with collection of Internal Revenue taxes from the basic tax return. If that is the case, and that decision does not stand, then there has to be some provision made for later assertions of the fifth amendment privilege with respect to tax returns far in advance of their use at trial.

It is not enough to say that you have an opportunity to assert your fifth amendment privilege to keep it from being introduced at trial. That is the issue in the *United States* v. *Garner*. We believe that Congress must enact even a broader remedy so that investigative use of returns after a claim of fifth amendment would be barred.

Most of the bills you have before you don't really deal with that question and, I think, simply assume that that is not a privilege that should be given to someone in the investigative phase. That is the point on which we disagree.

The other major suggestion that I would like to make with respect to tax returns is that whatever rights you create be enforced not only by criminal penalties, but by civil penalties.

In several other contexts before the Congress, there are proposals now being debated for special prosecutors for certain kinds of enforcement of the criminal laws—intelligence agency abuses, various Watergate type abuses, and others. These proposals, suggest that you cannot really depend on the Justice Department to prosecute violations by other government agencies.

The 20-year agreement by which the Justice Department let the CIA make the judgment about whether their own people ought to be prosecuted is the best example. But even where no agreement exists, the temptation to look the other way rather than prosecute friends and colleagues is obvious. Thus, I think it is unrealistic to enforce the limitation on access to tax returns by those fulfilling Government missions through criminal penalties. People in the Government feel they have a good reason to have access to tax returns to conduct the Government's business. I simply don't think you are going to find that the law is carefully and rigorously enforced, if that is the only way of enforcing it.

Senator HASKELL. How do you set up a civil right of action?

Mrs. EASTMAN. I think the Privacy Act is a good model to follow. The Privacy Act limits internal government uses of private records. There is a system where certain routine uses are authorized without any further record being kept of that use. As you may know, all Government agencies have now published in the Fedreal Register lists of routine uses they make of private types of information.

All other uses under the Privacy Act would have to be logged, say, here on the tax return. You would have to keep a sheet on the tax

return, which would say that so and so looked at the tax return for such and such a purpose.

The recordkeeping system helps you monitor limitations on who can see the tax return inside the Government. If you provide a civil penalty for violating those restrictions, you enable the private person who is aggrieved by an alleged abuse to bring suit and through discovery attempt to find out what happened.

Senator HASKELL. For whatever the penalty is that is specified?

Mrs. EASTMAN. Yes, the statute could specify monetary damages, recovery of actual damages, attorneys' fees, or whatever you establish. That would put the remedy in the hands of the person who has a reason to bring suit. That gives enforcement more toughness.

I recognize that there is a problem with my remedy. There are people who cannot afford or find a lawyer. You put quite a lot of burden on them if the civil penalties are the sole remedy. That is why I would not delete the criminal penalties. I would keep them. I would also set up some kind of internal supervisory, noncriminal mechanism inside the Government to monitor compliance with this statute so that the Governments' enforcement choice is not just bringing a criminal prosecution or ignoring what is going on.

That seems to me a very important addition to the legislation.

There were a couple of other comments I wanted to make. I would like to reserve comment if I could, about a provision which I saw in the administration bill. It would make several changes in the Privacy Act, and I did not have a chance last night to go through the Privacy Act to see exactly what the effect of those changes would be. I would like to supply you a letter, if I might, if I see any problems with the proposals they have made for changing the Privacy Act.

Senator HASKELL. By all manner of means, Mrs. Eastman.

[The letter referred to follows:]

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., February 26, 1976.

Hon. FLOYD K. HASKELL,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR HASKELL: This is in fullfillment of my promise to supply you with my comments on the changes the Administration's tax return privacy bill would make in the Privacy Act, P.L. 93-579. However, I would also like to observe at the beginning that the Administration bill, wholly apart from its impact on the Privacy Act, is a totally inadequate response to the problem of tax privacy and should not be enacted.

The bill would make two basic changes in the Privacy Act. The ACLU is unalterably opposed to the first and believes the second is at best premature and, in any event, can be accomplished by far narrower language.

First, section (p)(3) of the Administration's proposed bill would exempt the Treasury Department from section (c) of the Privacy Act which now requires each federal agency to keep a record of each disclosure of records other than to the individual to whom the record relates or under the Freedom of Information Act. The Administration bill would direct the Treasury to establish its own system of accountability but would exempt entirely from even that record-keeping requirement many, many disclosures, including inspections by Treasury or the Justice Department officials, disclosure by the IRS to unspecified persons for "investigative purposes," and disclosures by the Secretary in his or her discretion which are advisable for tax administration purposes. With no records kept, there would be no way to trace abuses of these very sensitive uses of tax information.

There is no justification for giving the Treasury Department special treatment and there is good reason for keeping them bound by the Privacy Act's more stringent requirements applicable to the rest of the government.

The second change purports to be intended merely to make it clear that the Privacy Act be used as an additional route for challenging tax liability. The Administration has produced no evidence that anyone has sought to make such a use of the Privacy Act. If sometime in the future this problem occurs, that is the time for amendatory language. Moreover, the method chosen to accomplish that objective is far too broad.

Section 7 of the Administration bill would exempt from the Privacy Act's mechanism for administrative and judicial review of refusals to correct records all of subtitle F of the Tax Code. This subtitle, Procedure and Administration, governs the entire operation of the IRS and includes a wide-range of functions for which records may be created on individuals which have nothing to do with challenges to ultimate tax liability. The Administration's amendments would bar use of the Privacy Act's administrative and civil remedies to correct these records. The breadth of the proposed language suggests that the service seeks to exempt far more from the Privacy Act. Since the Privacy Act establishes no remedies in either the Tax Court or the Court of Claims, the Administration could accomplish its asserted purpose by a simple amendment, not to the Privacy Act, but to 26 U.S.C. § 7422 (f), Limitations on Right of Action for Refund, to add a new subsection:

(3) *Privacy Act Not Alternate Remedy.*—The provisions of section 552(a) (g) shall not provide an alternate to the action for refund authorized by this section.

These Administration proposals, which seek broad exemptions from basic Privacy Act requirements, are reminiscent of Administration efforts to restrict the Freedom of Information Act during House consideration of the Tax Reform Act. Ostensibly to provide rules to govern disclosure of IRS rulings, they proposed very broad language which would have had the effect of substantially exempting the IRS from the FOIA. Only a last ~~minute~~ amendment restricted their proposal to the problem to which it was ostensibly addressed. Their proposal here should be similarly restricted.

One final comment is in order. In addition to its impact on the Privacy Act, the Administration bill would have an important effect on the way the Freedom of Information Act applies to the IRS. This question is currently under consideration in the Supreme Court, *IRS* v. *Fruehauf Corp.*, No. 75-679, *cert. granted* January 12, 1976, and in other legislation pending before the Finance Committee. Under these circumstances, it seems inappropriate to include here any provision, such as the broad definition of "return information", which would affect those deliberations.

Again, we appreciate the opportunity to appear before your Subcommittee and would be happy to help with this bill in any way we can.

Sincerely yours,

HOPE EASTMAN,
Associate Director.

Senator HASKELL. Just one question on your civil penalty suggestion: Would you also suggest that that apply in the case of a State official?

Mrs. Eastman, just to set the background of it, we have a system of Federal returns and then we have a system of State returns, and then to eliminate the duplication of what we provide—this possibly will have to have some tightening up—there will be a transfer back and forth so that you don't have two sets of agents.

So, if you are suggesting that it deal with a civil penalty for, let's say, a Federal employee's misusing a tax return, my question to you is: Whether you would also recommend that a comparable statute be adopted for States that use Federal returns?

Mrs. EASTMAN. Yes; I would clearly recommend that States themselves adopt such a statute, and in fact I see no reason why the Congress cannot require what I see in some of the other bills, that before States can have access to the information that they have to have fairly well-defined prohibitions on misuse or disclosure of tax returns. I see

no reason why the Congress couldn't require that they have to set certain kinds of penalties.

I think, also, the Congress itself could establish civil penalties that could run against State officials, certainly with respect to the Federal tax return information. You might have possibly a different kind of constitutional question about the reaches of congressional powers over State tax returns. I am not sure about that. I think you might be able to reach pretty far under the Constitution. An argument could probably be made that would enable you to reach the State tax returns, but certainly with respect to the Federal tax returns, I don't see any problem at all.

Senator HASKELL. Thank you, Mrs. Eastman.

Senator Fannin?

Senator FANNIN. Thank you, Mrs. Eastman, for your testimony.

If you would require that high public officials make a disclosure of their tax returns, public disclosure, would the ACLU be willing to make that the price paid by anyone wishing to engage in public service?

Mrs. EASTMAN. I am not sure. I think it depends on the level of public service. I think we might come a lot closer to making that a requirement for candidates for high office.

I am not sure about county assessors or similar local officers. I think that is something that I am not prepared to make an across-the-board judgment on one way or the other. I think we might have to look very carefully at the kind of offices you are talking about, but I would go a lot further than I——

Senator FANNIN. When we talk about conflict of interest there is a problem we have that is not always from the high officials.

Usually, the ones that are handling the procedural activities, and money in many respects, are not at the high level, and so I am just wondering if you would be willing to make that a requirement of anyone in public office or public service.

Mrs. EASTMAN. I think we would look very favorably and carefully at a combination of tax-return disclosure and carefully tailored conflict-of-interest forms which took off the tax return a lot of information, but preserved things which would not be relevant to assessing a conflict of interest, but would be private matters.

Maybe that is the way for higher Government officials to go as well, an alternative to our suggestion.

Senator FANNIN. As I understand it, you would require anyone running for public office, challenging an incumbent, that they would have the same obligation as an incumbent, as far as disclosure is concerned?

Mrs. EASTMAN. I am not sure.

Senator FANNIN. You made the statement.

Mrs. EASTMAN. My suggestion refered to elected officials, not candidates. I see where you are sending me, and I am trying to think carefully about the kinds of competing values that the Constitution carries with respect to keeping the political process open. That is why I think I might say that people who are candidates for public office stand in a slightly different postition until they are elected. Again you might require some kind of limited conflict-of-interest type disclosure, but you might not require the full tax return. I am not prepared to go that far.

Senator FANNIN. Won't equity require that you treat both candidates—they are both candidates, one for reelection and one for challenging—won't they have the same obligations?

Mrs. EASTMAN. I am not sure they would.

Senator FANNIN. What do you feel is the obligation of the IRS? Is it to see that everyone pays their fair share of the taxes?

Mrs. EASTMAN. I think that is the job of Congress, who is——

Senator FANNIN. Everyone pays their fair share of liability, then?

Mrs. EASTMAN. Of course.

Whatever you submit in your tax return, the Government is interested in seeing that you submit honestly all the information so that they can make a judgment on whether your tax liability is accurate.

Senator FANNIN. You hear so many people say that IRS sees that everyone pays a fair share. Congress, of course, sets up what the fair share is, but IRS does have the obligation to see that everyone pays their fair obligation of liability.

That is really what we are talking about; is it not?

Mrs. EASTMAN. I don't think I used the words "fair share."

Senator FANNIN. If people are not paying their fair share, there are tax exempt bonds and so forth.

Mrs. EASTMAN. I think that is a different question.

Senator FANNIN. You talk about criminal cases. Is it your feeling, the ACLU's feeling, that there should not be assistance from the IRS in other departments as far as criminal cases are concerned, like dealing with the Mafia or dealing with gangsters?

Mrs. EASTMAN. I am sorry. I did not hear you. That there should not be assistance, you said?

Senator FANNIN. Yes.

Mrs. EASTMAN. No, I don't think I suggested that, and I don't mean to suggest that.

I see no reason why the IRS could not cooperate, and certainly the Justice Department, the FBI, and IRS could investigate tax liability.

What I am suggesting is that with respect to the information that one is compelled to give the Government for enforcement of another law, different rules should apply, and at that point if the IRS is choosing to assist the Justice Department by using your tax return, the Government has an obligation to allow you to make your fifth amendment claim at that point.

That is all I am suggesting.

As far as information independently collected by the IRS, that is a question of another investigative technique; it is not a question of the tax return.

Senator FANNIN. I am not sure I follow you.

You say the time to state the fifth amendment, or that you are applying the fifth amendment to your return. I don't think anyone is going to subject a return to that much scrutiny by saying, I am going to apply the fifth amendment to my return.

Mrs. EASTMAN. At the point at which they submit the return.

Senator FANNIN. Yes.

You say when they submit the return they make the stipulation.

Mrs. EASTMAN. We suggest that should not be the rule. That is why I raised the question about the IRS wishing people to be frank on their

tax returns. I was commenting about a ninth circuit opinion in California, where a taxpayer tried to raise the fifth amendment objection at the introduction of the tax return at the trial. The trial court agreed, but the ninth circuit said, "No, if you wish to raise that objection, you have to do it when you file the tax return," that seems to me a ridiculous ruling.

Senator FANNIN. It does.

Mrs. EASTMAN. Because everyone would raise those objections if there were the remotest chance of later criminal liability.

What I am suggesting is that the people be given an opportunity to raise that objection before the Government uses that return for other than tax collection purposes. This would protect the individual while preserving the flow of tax information to the IRS in the first instance.

Senator FANNIN. You have clarified the question. Thank you.

Senator HASKELL. Thank you, Mrs. Eastman.

We look forward to receiving the additional material you spoke of.

Mrs. EASTMAN. Thank you very much.

[The following material was subsequently supplied by Mrs. Eastman:]

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., February 19, 1976.

Hon. FLOYD K. HASKELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HASKELL. As promised during my appearance before your Subcommittee, I enclose several documents, for inclusion in the hearing record. They include 1) a portion of a report done by The Center for National Security Studies, "The Abuses of the Intelligence Agencies," 2) the complaint in an ACLU suit, *Teague* v. *Alexander*, and 3) an interim report done in January, 1974, by the ACLU Privacy Project on the Nixon "Enemies List."

These documents support the need for legislation to control access to tax returns and tax return information. They also highlight the need for Congress to insure that the IRS does not abuse its access to this information by improperly motivated audits and other procedures.

In further support of our proposal that any statute include civil remedies, I have also enclosed a copy of the Report of the Bar Association of the City of New York entitled "The Privacy of Federal Income Tax Returns" which shares our view on the importance of this remedy.

The ACLU hopes that you will move to speedy enactment of legislation along the lines we have suggested and we remain ready to help in any way we can.

Sincerely,

HOPE EASTMAN.

THE ABUSES OF THE INTELLIGENCE AGENCIES

BY THE CENTER FOR NATIONAL SECURITY STUDIES

EDITED BY JERRY J. BERMAN AND MORTON H. HALPERIN

Preface

This Report is an effort to inform the public about the abuses of power committed by the Intelligence Agencies of the United States Government in the name of national security. It brings together the facts about the intelligence and counterintelligence activities of the CIA, FBI, IRS, NSA, Secret Service, and Military Intelligence directed against American citizens and covert actions against foreign governments. For this report, the staff has relied primarily on official records and documents. It is a public record. Since this record is still being compiled, and much is still secret, it is, of course, incomplete. As various agencies complete their own internal reviews, as hearings are held and reports issued by the Senate and House Intelligence Committees, and as civil litigation moves through the judicial process towards judgment more facts will come out.

It is our hope that this report provides a background and a framework for public understanding of how our intelligence agencies have operated beyond the law and the Constitution and contributes to the debate about the need for fundamental reform of the intelligence agencies.

Internal Revenue Service

SUMMARY

The Internal Revenue Service is a unit of the Treasury Department charged with enforcing the tax laws. It is authorized by Congress to investigate possible violations of these laws and has broad power to examine records and other relevant data. The IRS has from time to time used its power to conduct audits of groups and individuals whose political views and activities were of concern to others. Special groups were established to conduct such audits under the Kennedy, Johnson and Nixon Administrations. On at least one occasion an audit was conducted at the request of a congressional committee. The IRS has also established files on politically active groups and individuals, and has disclosed tax information, in violation of its rules, to officials outside the IRS on groups and on individuals such as George Wallace's brother and Ronald Reagan.

The IRS, in general, relies on information from tax audits and from other agencies, but from time to time it conducts its own surveillance, including infiltration of tax protest groups. The Special Services Staff set up during the Nixon Administration was the most concentrated effort by the IRS to use all available means to investigate and harass groups and individuals because of their political beliefs and activities. The IRS has halted most of these activities.

AUTHORITY

Under Section 7601 of the Internal Revenue Code, the Secretary of the Treasury is authorized to "cause officers or employees of the Treasury Department to . . . inquire after and concerning all persons . . . who may be liable to pay any internal revenue tax . . ."[1] To establish liability, Section 7602 gives the IRS, a unit of the Treasury Department, the authority to examine "any books, papers, records or other data which may be relevant or material" in ascertaining the correctness of any return or making a return where none has been made.[2] The IRS "seeks to encourage and achieve the highest possible degree of voluntary compliance" with federal tax regulations and employs random and selective audit procedures to stimulate such compliance.[3]

The authority for the IRS to inquire into political activities of persons and groups is defined solely in terms of its authority to insure that all tax-exempt organizations comply with the provisions of Section 501(c)(3) of the Internal Revenue Code, which provides that tax-exempt charitable, educational organizations cannot participate or intervene in political campaigns for public office or devote a substantial part of their activities to "carrying on propaganda, or otherwise attempting, to influence legislation."[4]

Section 6103(a) of the Internal Revenue Code provides that income tax returns are to be "open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President."[5]

ACTIVITIES AND PROGRAMS

Politically Motivated Audits

Either on its own initiative or at the request of the White House, other Executive Branch officials, or congressional committees, the IRS conducted audits and otherwise harassed organizations and individuals because of their political beliefs or lawful political activities.

Lenske Audit.—The IRS spent two and one half years (1955–1958) conducting a total audit of Reuben G. Lenske, including the interviewing of between 500 and 1500 witnesses, and made assessments many times the real value of Lenske's

---

[1] 26 U.S. Code 7601.
[2] 26 U.S. Code 7602.
[3] 39 Federal Register 11572, March 29, 1974.
[4] 26 U.S. Code 501 (c)(3).
[5] 26 U.S. Code 6103 (a).

worth. IRS files included law enforcement information alleging that Lenske was a Communist and was affiliated with the National Lawyers Guild. A federal court, in reversing an IRS decision claiming Lenske owed money to the Government, charged the IRS with conducting "a crusade . . . to rid our society of unorthodox thinkers and actors by using federal income tax laws and federal courts to put them in the penitentiary." [6]

Communist Party Harassment.—From 1954 until 1964, the IRS employed a number of delaying tactics to prevent the Communist Party from appealing an IRS ruling that it owed back taxes for the year 1951. In 1964, a United States Court of Appeals, after examining the record, ordered the appeal, finding that the Communist Party "cannot be thrown out of court, for the reasons and under the circumstances obtaining without verging too closely towards the wholly unacceptable proposition that the rules of the game vary with the players." [7]

Kennedy/Johnson "Extremist Groups".—In 1961, the IRS launched an investigation aimed at 22 organizations, 12 "right-wing" and 10 "left-wing." This action was stimulated by a press conference statement made by President Kennedy raising the possibility that tax-exempt funds of "right-wing" organizations were being diverted for non tax-exempt purposes, and a followup suggestion by Attorney General Robert Kennedy to investigate the tax status of extremist groups. As a consequence, the tax-exempt status of two "right-wing" organizations was revoked.[8]

In 1963, the IRS again focused on "extremist" organizations because, according to former IRS Commissioner Mortimer Caplin, President Kennedy told him in a phone call "to go ahead with an aggressive program—on both sides of center." [9] Four of 25 organizations examined lost their exempt status, including one "left-wing" group. This program, started under President Kennedy, was terminated in 1966 under President Johnson.[10]

Nixon Enemies List.—At various times from 1969 through 1973, President Nixon, acting through his White House staff, applied pressure on the IRS to use its powers against political opponents. Proposals to the IRS ranged from a 1969 White House request to go after "left-wing groups" [11] to the 1972 effort to have the IRS audit key persons on the White House "Enemies List," which included a score of persons and organizations across the political spectrum.[12] Individuals such as Larry O'Brien,[13] Harold Gibbons of the Teamsters Union,[14] and Senator McGovern's campaign staff [15] were subjects of particular White House requests. Although IRS officials have stated that they resisted these efforts (a claim substantiated in part by White House staff memorandums accusing the IRS of "lack of guts and effort" [16]), certain enforcement actions were taken. For example, the Center for Corporate Responsibility, a Washington, D.C. public interest group started by Ralph Nader was denied tax-exempt status. On May 2, 1973, the group

---

[6] *Reuben G. Lenske* v. *United States*, 383 F 2d 20 (CA 9, 1967), page 27.

[7] *Communist Party U.S.A.* v. *Commissioner of Internal Revenue*, 332 F 2d 325 (App D.C. 1967), page 329. The case was concluded in 1967 when the Court of Appeals again reversed a Tax Court ruling and held that CPUSA had shown its central contention that, like other political parties, it was not subject to federal income taxes. (*Communist Party U.S.A.* v. *Commissioner of Internal Revenue*, 373 F 2d 682, 1967).

[8] Special Service Report, 1975, Source 11, pages 13–105.

[9] Special Service Report, 1975, Source 11, page 106.

[10] Special Service Report, 1975, Source 11, page 14.

[11] Special Service Report, 1974, Source 12, page 9.

[12] Impeachment Book VIII, Source 13, pages 9–11, 25–26. The list was compiled from June 24, 1971 throughh June, 1972, and included over 200 names of individuals. On September 11, 1972, John Dean gave the list to Commissioner of Internal Revenue Johnnie Walters and requested that the IRS begin investigations or examinations on individuals on the list. Upon the advise of Secretary of the Treasury Schulz, no action was taken. On September 25, 1972, Dean telephoned Walters to inquire about the progress made on the list, and when informed that no action had been taken requested that perhaps the list could be reduced to fifty to seventy individuals, and action taken against this smaller list. Again, no IRS action resulted.

[13] Johnnie Walters Affidavit, June 10, 1974, Impeachment Book VIII, Source 13, page 218. John Ehrlichman of the White House staff contacted Commissioner Walters several times to inquire as to the status of the audit on Lawrence O'Brien; when no action resulted, the matter eventually reached the attention of President Nixon.

[14] Charles Colson Memorandum, June 12, 1972, Impeachment Book VIII, Source 13, page 216.

[15] Johnnie Walters Affidavit, May 6, 1974, Impeachment Book VIII, Source 13, page 238.

[16] Impeachment Book VIII, Source 13, page 196. A November 1971 "talking paper" discussed specifically the problem of making IRS politically responsive to the White House. It read, in part: "The Republican appointees appear afraid and unwilling to do anything with IRS that could be politically helpful. For example:

"We have been unable to obtain information in the possession of IRS regarding our political enemies

"We have been unable to stimulate audits of persons who should be audited.

"We have been unsuccessful in placing RN supporters in the IRS bureaucracy."

filed suit claiming that it had been unlawfully denied tax-emept status as a result of selective treatment for political, ideological and other improper reasons having no basis in the statute and regulations. In 1973, a United States District Court held that the tax exemption had been unlawfully denied, and drew an inference of political interference and bias when the White House refused to comply fully with discovery orders.[17]

Black Panthers Audit.—On October 14, 1970, the IRS responded to a request of the House of Representatives Committee on Internal Security [18] with the assurance that it would "strictly enforce" the provisions of the U.S. tax regulations against the Black Panther Party. The Committee was then examining the Party as possibly "subversive". In a letter from IRS Commissioner Randolph W. Thrower to Committee Chairman Richard H. Ichord, Thrower stated: "The organization and its principals are currently under a full scale investigation. . . . I appreciate your giving me the opportunity to inform you of the Service's action in the matter, and want to assure you that any tax obligation for which the organization may be found liable will be strictly enforced." [19]

Intelligence files

The IRS has established files on politically active groups and individuals ostensibly for tax enforcement purposes. Various methods were used to gather information with the aim of affecting political activity.

Intelligence Gathering and Retrieval System.—Between 1973 and 1975 the IRS developed the "Intelligence Gathering and Retrieval System" or IGRS, a nationwide index system for intelligence gathering and retrieval. The initial stated purpose of IGRS was "to provide an effective, uniform means of gathering, evaluating, cross-indexing, retrieving, and coordinating data relating to the individuals and entities involved in *illegal activities* and having potential tax violations on a district and individual basis." (emphasis added)[20] Under this program, suspended in January, 1975,[21] the IRS had indexed information on 465,442 individuals, organizations and other entities. Indexed items included news articles, tax return information, memorandums or reports from special agents, police reports, financial information from public records, and information from informants.[22] According to one account of the IGRS files, they include information on public political figures, primarily "liberals, anti-war activists, ghetto leaders and the like," [23] including Los Angeles Mayor Thomas Bradley, Ex-Attorney General Ramsey Clark, and Congressman Augustus Hawkins, and groups such as the American Civil Liberties Union, the Communist Party, the Baptist Foundation of America and the Medical Committee for Human Rights.[24]

Disclosing tax information

Without using its formal procedures IRS disclosed tax information which was used for political purposes to the White House and other agencies. For example, in April, 1968, the IRS formalized a "National Security Case" procedure with the Internal Security Division of the Justice Department whereby it made tax data available upon request on various political organizations and individuals.[25] Then, during the Nixon Administration, IRS files were turned over to the White House staff. The returns made available to the White House included those of the brother of George Wallace (Gerald Wallace),[26] the Brookings Institu-

---

[17] Impeachment Book VIII, Source 13, page 32, and *Center for Corporate Responsibility v. Schultz,* 368 F Supp 863, pages 871–872.

[18] October 14, 1970 letter from Randolph Thrower to Richard Ichord, Black Panther Hearings, Source 5, page 5096.

[19] October 14, 1970 letter, Black Panther Hearings, Source 5, page 5096.

[20] FY 76 Appropriations Hearings, Source 14, page 461.

[21] FY 76 Appropriations Hearings, Source 14, page 461.

[22] FY 76 Appropriations Hearings, Source 14, page 462.

[23] Donner, Source 3, page 56. Donner's source for this information was a selective printout of 172 names leaked to the public in late Spring of 1975, presumably by an IRS employee.

[24] Donner, Source 3, pages 56, 57. Donner's source is described above.

[25] Special Service Report 1974, Source 12, page 22.

[26] Impeachment Book VII, Source 13, page 3. On or about March 21, 1970, Special Counsel to the President Clark Mollenhoff sent a memorandum to H. R. Haldeman transmitting material on the federal income tax returns of Gerald Wallace. Mollenhoff has testified that he obtained the material from the IRS on instructions from Haldeman who assured him that the report was to be obtained at the request of the President. On April 13, 1970 an article by Jack Anderson appeared containing information from confidential IRS field reports, and detailing IRS investigation charges of corruption in the Wallace administration and the activities of Gerald Wallace. The origins of the leak are unclear, although Former Commissioner Thrower has stated that an IRS investigation concluded the material had not been leaked by the IRS or the Treasury Department. Clark Mollenhoff Memorandum, March 21, 1970 and "IRS Probes Wallace, Lurleen Reigns", *Washington Post,* April 13, 1970, Source 11, pages 36, 37.

tion,[27] Lawrence Goldberg,[28] Reverend Billy Graham,[29] Ronald Reagan,[30] John Wayne and other entertainers.[31] In the Wallace case, the material was used by a reporter to write an article charging corruption in the Wallace Administration.[32] The IRS also disclosed tax information about *Ramparts* magazine to the CIA, which was seeking a means to suppress a forthcoming story on CIA ties to the National Student Association.[33]

Surveillance activities

Although in most cases the IRS appears to have relied on tax audits or other agencies to gather information, from time to time it engaged in its own surveillance activities.

Operation Leprechaun.—In Miami, Florida, IRS agents developed "Operation Leprechaun" in April 1972. The program was designed to gather information on the sex and drinking habits and on the political activities of prominent individuals in the area; 34 informers were employed for this purpose.[34]

Tax Protesters.—From June, 1972 through January, 1975, the IRS maintained surveillance on 5 tax protest groups. Agents of the IRS went to tax protest meetings and took down names, license plate and telephone numbers of persons attending. Agents' memorandums include the political and other opinions expressed at these meetings.[35]

Special services staff

Because its activities cut across many of the areas described above and because it is the most questionable activity of the IRS this report describes the activities of the Special Services Staff together here.

On ~~July 18,~~ 1969, the IRS established a Special Service Staff "to coordinate activities in all Compliance Divisions involving ideological, militant, subversive, radical and similar type organizations; to collect basic intelligence data, and to insure that the requirements of the Internal Revenue Code concerning such organizations have been complied with." [36]

The origin of the SSS appears to be a request by President Nixon to White House aide Tom Charles Huston "for the IRS to move against leftist organizations taking advantage of tax shelters." [37] Huston and Dr. Arthur Burns, a top domestic advisor to President Nixon, conveyed this request to IRS Commissioner Randolph Thrower ~~at a~~ meeting on June 16, 1969 and in followup letters and memorandums.[38]

At a meeting on July 2, 1969, officials of the Compliance Division of IRS discussed the creation of a group inside the IRS to examine "ideological organizations" and to collect intelligence on these groups through a "strike force" opera-

---

[27] Memorandum from John Dean to Bud Krogh, July 20, 1971, Impeachment Book VIII, Source 13, page 80.

[28] Memorandum from John Caulfield to John Dean, October 6, 1971, Impeachment Book VIII, Source 13, page 133. A memorandum dated October 6, 1971 from John Caulfield to John Dean contained a list of charitable contributions obtained from Goldberg's tax returns, and was sent to the White House outside of "regular channels" by IRS Assistant Commissioner (Inspection) Vernon Acree. Acree was subsequently promoted to Commissioner of the U.S. Customs Service.

[29] Memorandum from John Caulfield to John Dean, September 30, 1971, Impeachment Book VII, Source 13, page 147. Tax information on Graham was also sent to the White House by Vernon Acree.

[30] Memorandum from John Caulfield to John Dean, October 6, 1971, Impeachment Book VIII, Source 13, page 156.

[31] Memorandum from John Caulfield to John Dean, October 6, 1971, Impeachment Book VIII, Source 13, page 156.

[32] "IRS Probes Wallace, Lurleen Reigns," *Washington Post,* April 13, 1970, Impeachment Book VIII, Source 13, page 37.

[33] CIA Document Released to Church Committee, Source 6.

[34] Jacksonville Report, Source 9, pages 13–17. One IRS agent involved in "Operation Leprechaun" made use of 62 confidential informants, 34 paid and 28 unpaid, at a cost of $15,140.01. One of his paid informants was directed in 1972 to spy on 30 Miami residents, including federal judges and a state attorney. (Source 9, pages 18, 24.)

[35] April 13, 1975 *New York Times,* Source 4.

[36] Memorandum from D. W. Bacon to Assistant Commissioners, Special Service Report, 1974, July 18, 1969, Source 12, page 123.

[37] Memoranum from Tom Huston to H. R. Haldeman, September 21, 1970, Watergate Book 3, Source 7, page 1338.

[38] Special Service Report 1975, Source 11, pages 5 and 29–31. Mr. Thrower's Memorandum to the File of June 16, 1969, concerning the meetings, states that Dr. Burns was "initially interested principally in expressing to me the concern of the President about enforcement in the area of exempt organizations. The President had expressed to him great concern over the fact that tax-exempt funds may be supporting activist groups engaged in stimulating riots both on the campus and within our inner cities." (Source 5, page 18).

tional approach.[39] Following this meeting the SSS was established. The IRS admitted in a July 24th memorandum that, "from a strictly revenue standpoint. we may have little reason for establishing this committee or for expending the time and effort which may be necessary." However, the memo continued, "we must do it." [40]

On September 21, 1970, White House aide Huston said this about the SSS in an internal memo: "What we cannot do in a court room via criminal prosecutions to curtail the activities of some of these groups, IRS could do by administrative action. Moreover, valuable intelligence-type information could be turned up by the IRS as a result of their field audits." [41]

The Special Services Staff, from its inception until its termination in August, 1973, engaged in the following activities:

Used an informant to collect political intelligence information: from mid-1970 until August, 1973, the SSS received bi-weekly "intelligence digests" from an informant active in organizations engaged in anti-war activities in Washington, D.C.[42]

Established post office "drop boxes" registered under assumed names to collect publications with information that might relate to activist political organizations and persons.[43]

Received intelligence from other units of the IRS, particularly field offices, Service Centers, andthe files of its divisional Intelligence files.[44]

Collected intelligence-type information from other agencies of government on individuals and groups of certain political persuasions. The SSS received 11,818 separate reports from the FBI, over 6,000 of them classified, including FBI COINTELPRO reports, and an-FBI list of over 2,300 organizations categorized as "Old Left," "New Left," and "Right-Wing." [45] Although 43% of its information came from the FBI, SSS also collected information from other agencies, including the Inter-Divisional Information Unit of the Department of Justice (10,000 persons and organizations who might potentially engage in civil disturbances),[46] the Social Security Administration (several hundred requests to identify and supply names of employers, wage records, etc.),[47] the Department of the Army, and the Internal Security Committees of Congress.[48]

Developed files on political individuals and groups: By 1973, the IRS had political and tax intelligence files on 8,585 individuals and 2,873 organizations, of which 41% were on black and ethnic organizations and individuals, 18% on anti-war organizations and individuals, 11% on "New Left" radical groups and individuals, and 15% right-wing extremist or racist organizations.[49] According to the Senate Intelligence Committee, files were maintained on such persons as former Senator Charles Goodell (R-N.Y.), the late Senator Ernest Gruening (D-Alaska), former New York Mayor John Lindsay, columnist Joseph Alsop, and Nobel Prize winner Linus Pauling.[50] The organizations listed and filed by the IRS included the Student Non-Violent Coordinating Committee, the Minutemen, the Ku Klux Klan, Americans for Democratic Action, the Communist Party, the National Student Association, the Urban League, the California Migrant Ministry, and the Church League of America.[51] When the program was terminated in August, 1973, 78% of the files was "selected out" as not containing tax-related information.[52]

Used the compiled list aes a basis for initiating tax audits: an IRS file on an individual typically includes a report on political affiliations and activities (e.g. "listed as anti-war speaker," "signed anti-war advertisement," and "officer under Communist Party discipline"), an FBI report, and his tax returns.[53] An orga-

---

[39] Memorandum from D. O. Virdin for file, July 2, 1969, Special Service Report 1974, Source 12, pages 120–121.
[40] Special Service Report 1974, Source 12, page 320.
[41] Memorandum from Tom Huston to H. R. Haldeman, Sept. 21, 1970, Impeachment Book VIII, Source 13, p. 44.
[42] Special Service Report 1975, Source 11, p. 51.
[43] Special Service Report 1975, Source 11, p. 52.
[44] Special Service Report 1974, Source 12, pp. 32–34.
[45] Special Service Report 1975, Source 11, pp. 50, 57.
[46] Special Service Report 1975, Source 11, pp. 48, 50.
[47] Special Service Report 1975, Source 11, p. 61.
[48] Special Service Report 1975, Source 11, pp. 62, 64.
[49] Special Service Report 1975, Source 11, p. 45.
[50] IRS Data Article, Source 1.
[51] IRS Documents, Source 2.
[52] Special Service Report 1975, Source 11, p. 44.
[53] Special Service Report 1974, Source 12, pp. 44–47.

nization file typically includes similar materials and such recommendations as "revocation of exempt status" or "no action necessary 'Returns filed and taxes paid. . . .' "[54] SSS requested 225 field audits of persons and organizations, including 63 black militant individuals, 24 anti-war group members, 3 religious organizations, 23 left-wing organizations, 3 welfare and anti-poverty organizations.[55] Generally, field referrals for audits were not made without some consideration of tax-related information, but in some cases the tax deficiency potential appeared marginal, and in other "national security cases" field referrals were made without evidence of potential tax violations.[56]

Distributed returns to other agencies. For example, some files indicated "requests from Internal Security Division, Department of Justice for tax returns."[57]

REACTION

As noted, the IRS has terminated the Special Services Staff. It has suspended "Operation Leprechaun." IRS files have been culled to remove non tax-related information. On September 24, 1974, President Ford issued Executive Order 11805 to provide that a taxpayer's return "shall be delivered to or open to inspection by the President only upon written request signed by the President personally." It further provides that no representative of the President may be authorized to see such tax returns "without the written direction of the President."[58]

SOURCES

1. "Church Says IRS Tax Data Used to 'Harass' U.S. Citizens," *Washington Post*, October 3, 1975, page A–3. (hereafter cited as IRS Data Article)
2. Documents released by the Internal Revenue Service to the Tax Reform Research Group, 133 C Street, S.E., Washington, D.C., and on file at the Center for National Security Studies, 122 Maryland Ave., N.E., Washington, D.C. (hereafter cited as IRS Documents)
3. Donner, Frank, "The Internal Revenue Service: The Search for a Sanction," chapter from an unpublished manuscript, New Haven, Connecticut. (hereafter cited as Donner)
4. "IRS Accused of Recent Spying", *New York Times*, April 13, 1975, page 17. (hereafter cited as April 13, 1975 *New York Times*)
5. *The Black Panther Party: Hearings of the House of Representatives Committee on Internal Security, Part 4*, 91st Congress, 2nd Session (1970). (hereafter cited as Black Panther Hearings)
6. CIA Document released at the October 2, 1975 meeting of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (hereafter cited as CIA Document Released to Church Committee)
7. *Hearings Before the Select Committee on Presidential Campaign Activities of the United States Senate, Phase I: Watergate Investigation—Book 3*, 93d Congress, 1st Session (1973). (hereafter cited as Watergate Book 3).
8. *Hearings Before the Subcommittee on Government Information and Individual Rights of the House Committee on Government Operations*, 94th Congress, 1st Session, March 13, 1975 (Stenographic Transcripts). (hereafter cited as March 13, 1975 Hearings).
9. "Inspection Report on Information Gathering Activities, Jacksonville District," Released through the Joint Committee on Internal Revenue Taxation by the Internal Revenue Service, June 23, 1975. (hereafter cited as Jacksonville Report)
10. *Investigation Into Certain Charges of the Use of the Internal Revenue Service for Political Purposes*, Staff of Joint Committee on Internal Revenue Taxation, 93d Congress, 1st Session (Committee Print 1973). (hereafter cited as IRS Investigation).
11. *Investigation of the Special Service Staff of the Internal Revenue Service*, Staff of the Joint Committee on Internal Revenue Taxation, 94th Congress, 1st Session (Committee Print 1975) (hereafter cited as Special Service Report 1975)

[54] Special Service Report 1974, Source 12, p. 40.
[55] Special Service Report 1975, Source 11, p. 11.
[56] Special Service Report 1975, Source 11, p. 73.
[57] Special Service Report 1974, Source 12, pp. 44–47.
[58] Federal Register 11572, Mar. 29, 1974.

12. *Political Intelligence in the Internal Revenue Service: The Special Service Staff*, Staff of the Subcommittee on Constitutional Rights on the Senate Committee on the Judiciary, 93d Congress, 2d Session (Committee Print 1974). (hereafter cited as Special Service Report 1974).
13. *Statement of Information, Hearings before the Committee on the Judiciary, House of Representatives, 93d Congress, 2d Session, pursuant to H. Res. 803, Book VIII, Internal Revenue Service May–June, 1974.* (hereafter cited as Impeachment Book VIII).
14. *Treasury, Postal Service, and General Government Appropriations Fiscal Year 1976. Hearings Before the Senate Committee on Appropriations*, Part 1, 94th Congress, 1st Session, 1975. (hereafter cited as FY 76 Appropriations Hearings).

Report on the White House Enemies

Project on Privacy and Data Collection of the American Civil Liberties Union Foundation, Douglass Lea, Director

"When I was in Cambridge, I was paranoid, but in Washington it is impossible to be paranoid."

—Henry Kissinger
to staff aide, 1969

A secret enemies list, sanctioned by powerful public officials, is an exotic notion to many Americans. To this day, it carries overtones of foreign intrigues, its roots hardly penetrating the surface of our political culture and its consequences barely comprehensible to our political imagination.

To many Americans, an enemies list brings to mind the Soviet purges of the 1930's. To others, there are more poignant and ominous associations with the Nazi "hit lists" that accompanied the blitzkriegs and concentration camps of World War II. Today, an enemies list still smacks of totalitarian regimes and conspiratorial attitudes—the Shah of Iran's blacklist or perhaps the recently discovered "death list" of 1,617 Italians whom neo-Fascist plotters had allegedly planned to assassinate.

Yet the most brazen example of an American enemies list was found, not in the hands of an obscure cabal, but at the center of American government and democracy, at the White House.

The initial reaction to the White House enemies list was one of high humor, a reaction often reserved for the bizarre and the incomprehensible. Senator Sam Ervin, noting the large number of names, joked that he could not understand why the Democratic vote had been so light in 1972. Several hundred enemies and their friends held a party in New York amidst general good cheer. This effort to ridicule the list was epitomized by Paul Newman's parody: "I am sending Gordon Liddy to pick up my reward and I would like to thank John Mitchell, Jeb Magruder, John Dean III and Maurice Stans for making this award possible."

As more evidence about the enemies list, and the project established to institutionalize it, becomes known, the laughter begins to appear premature, if not hollow. For the fact remains that a number of individuals and organizations suffered real injuries and all of the enemies had their basic Constitutional rights hanging in the balance. To take just one example, the listing of Joe Namath of the New York Giants (sic) was generally interpreted as a Kafkaesque aberration, an absurdity that proved the list was not be taken seriously; but the flamboyant quarterback is, in fact, the subject of a detailed and extensive FBI file of undigested rumors and gossip that traces his activities over the past few years.

At this time it is clear that the scope and intensity of the actions taken against the Administration's enemies are not yet fully known.

A more precise picture should emerge as the official investigations of the Watergate scandals begin to reveal the internal structure of the White House operations. Private legal actions also give promise of shedding further light on these practices. And the news media are continuing to produce the memoranda and other evidence that illuminate the mode of thinking that lurks behind the creation of an enemies list.

Given the still fragmentary state of our knowledge, it may be necessary in the future to issue another report that will discuss the "enemies" phenomenon from a wider perspective—bringing together the known evidence, surveying the experiences of the newly discovered enemies, developing the historical context and drawing upon additional sources of information.

BACKGROUND

The Nixon Administration has brought to the blacklister's craft a number of innovations: centralizing the creation and coordination of the enemies list in the White House itself; establishing an "Enemies Project" to institutionalize and depersonalize the list; developing a pilot project to work out the bugs in the system on a few selected, experimental enemies; viewing the whole panoply of federal agencies as potential instruments of punishment; devoting an unknown, but evidently large, amount of taxpayer-supported time and energy to the effort; and keeping the enemies list secret, thereby Balkanizing the targeted enemies, leaving them unaware that their individual tribulations are the results of membership in a special class.

In fairness, however, the White House conspirators did not embark upon their efforts in a total vacuum. Indeed, there are several traditions that previous Administrations and segments of private industry have encouraged from time to time that have precedential value. These traditions include the long campaigns to expose "un-American" subversives, the various crusades against crime and the often intense relationships that exist between Presidents and the news reporters who follow their activities.

"Our objectives are to keep the party off balance, to know what they're up to, to keep their membership low through harassment, to expose their leaders." These words were spoken in late 1964 by the then Assistant Attorney General in charge of the Justice Department's Internal Security Division, and they refer to the Communist Party; but, following the revelations of the Watergate scandals generally and the enemies list particularly, they might just as well be the words of a White House official in 1972 describing the Democratic Party. The objectives and tactics once used against "subversives" are now being applied to the political enemies of the White House.

During the "Red Scare" of 1919–20, Attorney General Palmer and J. Edgar Hoover conducted massive roundups of persons, almost always aliens, who were listed as members of such organizations as the Union of Russian Workers. Simple membership was considered sufficient grounds for deportation. In fact, virtually all unionizing activity, whether "alien" or "subversive" or otherwise, was subject to surveillance and industry-wide blacklisting.

The search for the names of subversives began again in 1930 with the creation of a House committee under the chairmanship of Congressman Hamilton Fish, Sr. The effort collapsed after a year when Fish admitted that the "half-million" Communists he was investigating came to exactly 12,000 after an exhaustive headcount.

(According to an item in a recent issue of *Human Events*, Fish believes that the Roosevelt Administration maintained an enemies list during the 1930's and tapped Fish's own phone as well as those "of many other Republican members of Congress." Fish also says that his tax returns were minutely investigated for five consecutive years during that period.)

A House committee chaired by Texas Congressman Martin Dies broadcast in 1943 a list of 39 "subversives" that it thought unfit for federal employment. The successor to the Dies committee, the House Un-American Activities Committee, and other Congressional units, including Senator Joseph McCarthy's, continued to explore this tactic and held well-publicized hearings in which witnesses were pressured to "name names" and thereby lengthen the blacklist. In contrast to the current efforts by the White House, the creation of the subversives lists was a public process with the goal of stigmatizing the named individuals.

The same principle of deterrence through public stigmatization explicitly lay behind the legislative authorizations of the "Attorney General's list" of subversive organizations and the investigations of the Subversive Activities Control Board. The mere fact that one's name was listed on the membership rolls of proscribed organizations was often enough to compromise certain rights of citizenship.

The private sector also became involved in the blacklisting business. The best known example, of course, is the movie industry which established blacklists of all who would not cooperate with legislative inquiries. Many educational institutions, both public and private, examined their professionals in search of subversive traits. The New York City Board of Education maintained a blacklist of organizations, including the ACLU, that were barred from using school property for meetings.

In the executive branch, the FBI's intelligence apparatus has shown an unusual dedication to the concept of isolating people it considers enemies of the state. Until 1943 Bureau intelligence reports were reviewed by the Justice Department's Special War Policies unit, which prepared "danger cards" on suspect individuals and lengthy analyses of "dangerous" organizations. Later, this data served as the basis for placing organizations on the Attorney General's list, which was part of the Federal Employee Security Program. FBI dossiers were compiled on people associated with the 1948 Presidential campaign of Henry Wallace.

Once placed on the Bureau's list, it was difficult to get off. Survivors from the Cold War Era report that in changing from job to job, they often found the FBI one step behind, informing the new employer of the individual's past associations.

The Emergency Detention Act of 1950 authorized the FBI to create a "Security Index" of persons to be "rounded up" in the event of an "internal security emergency." The Security Index now also serves to identify individuals who might pose a threat to the President. In 1964 alone approximately 9,000 names were sent to the Secret Service. During the late Johnson and early Nixon administrations, the FBI supplied much of the raw data for the Justice Department's Interdivisional Information Unit, which computerized the names of suspected organizations and participants in demonstrations and forwarded them to other federal agencies. In a parallel activity, the State Department keeps an index of "persons suspected of traveling or known to have traveled in Cuba." This list circulates to immigration agents at all ports of entry.

Meanwhile, the U.S. Office of Censorship—recently renamed the Wartime Information Security Program (WISP)—has delegated to one of its military subcommittees the task of preparing a "national watchlist," which at least one Congressman believes would contain the names of politically "questionable" citizens. Until June of 1972, James McCord, one of the Watergate defendants, was a member of a WISP unit.

The FBI also figures prominently in the crime-fighting tradition of listmaking. Its "Public Enemy No. 1" and "Ten Most Wanted Persons" projects have, for the most part, been successful public relations tools for targeting the full force of the nation's criminal justice system against specific wrongdoers.

The single episode in the crime-fighting tradition that bears the closest resemblance to the Nixon administration's enemies list occurred during Robert Kennedy's tenure at the Justice Department.

One of Kennedy's first action as Attorney General, according to Victor Navasky's *Kennedy Justice*, was to compile a list of the country's top racketeers. These men were singled out as priority targets in the crime war. The list started at 40 and by 1964 it was up to 2,300. "Our technique," one Justice official told Navasky, "was to circulate the list among twenty-seven different investigative agencies and then investigate these guys up to their eyeballs." This approach led to the vigorous prosecution of organized crime figures on marginal charges, such as speeding, jaywalking and shooting more than the limit during hunting season. The Justice Department created cross-referenced information folders and file cards for each person on the list. When the organized crime folders reached the tax experts, "they were routinely moved from the bottom to the top of the tax prosecution pile." Kennedy's innovation was criticized at the time for using the tax law to justify judgments about people on other grounds.

The antagonism that persists between Presidents and the reporters who watch them is axiomatic, a tradition that stretches back toward the dawning of the Republic. The participants in this tradition have, for the most part, learned to live with the endemic friction and periodic flare-ups caused by two powerful institutions that grind away at each other on a daily basis. Occasionally the mix of personalities, events and even ideologies have caused small irritations to grow into more damaging vendettas. At no time was this more true than during the Nixon Administration, when both the President and his official family and the reporters nursed long-standing and often bitter antagonisms. The inevitable result was rendered in graphic terms when the White House enemies became public knowledge and showed a disproportionate number of reporters and news executives on the list.

As described in David Wise's *The Politics of Lying*, the interaction between Presidents and press has consistently been contentious. Presidents Washington, John Adams, Jefferson, Lincoln, Cleveland, Theodore Roosevelt, Taft and Wilson have all expressed contempt for the press from time to time, and some of them

have occasionally tried to move against their adversaries in a punitive fashion. In more recent times, Franklin Roosevelt invented a Dunce Cap Club, to which he would banish annoying reporters. Truman publicly berated a critic who panned his daughter's musical talents.

Columnist Drew Pearson's diary indicates that over several years he was the object of Presidential attempts at intimidation. Pearson wrote on September 20, 1949, that a source in the National Security Council told him "that the White House was waiting to pounce on my 1948 return and sure enough they examined it shortly after it was filed." The same source also told Pearson that "Truman had ordered my tax returns gone into twice this year—as far back as 1935." Later on June 14, 1951, the columnist noted: "This is the second or third time the FBI has been prying into me this year. Two or three months ago they had one of their top agents . . . interview about 30 witnesses. . . . (The agent) . . . tried to find out the names of my servants, whether I had a night watchman, when I went away to the farm, whether the house was unguarded during trips to the farm, where I kept my files, and what my files were like. He even asked questions as to how I felt toward the FBI and whether I was a real friend of Hoover's. . . . This is the kind of Gestapo tactic which they had in Germany and Russia. . . . Apparently, civil liberties and the sanctity of a man's home or office now mean nothing."

President Kennedy was known to become upset over critical news reports or leaks of sensitive material. He reportedly tried to get the publisher of the *New York Times* to transfer the paper's Saigon correspondent, David Halberstam, whose stories on the American involvement in Vietnam were often critical of the Administration's policies. Kennedy and some of his assistants also harbored strong opinions about the *New York Herald Tribune's* coverage of national affairs, particularly the editorial cartoons and Earl Mazo's articles about the Billie Sol Estes scandal. For a time, the *Herald Tribune's* White House subscriptions were cancelled and some of its reporters subjected to the "silent treatment" and other minor indignities at the hands of the Administration's spokesmen.

President Johnson had a consuming interest in even the smallest personal details concerning the reporters who followed him. Johnson's combative relationship with Douglas Kiker, then the *Herald Tribune's* White House correspondent, attained near legendary status in the Washington press corps. At one point an economic crisis almost resulted from a confusing effort by Johnson to create a newsworthy event in hopes of embarrassing Kiker in the eyes of his superiors.

In 1963, shortly before the Kennedy assassination and during a period of rapid expansion in the Washington Bureau of the *Los Angeles Times*, Johnson invited *Times* publisher Otis Chandler to the LBJ ranch for a brief vacation. Johnson surprised Chandler by pulling from his pocket a list, at this time still unannounced, of the new reporters being added to the bureau and then proceeded to give Chandler a detailed critique of each of the new reporters.

President Nixon has never enjoyed a relaxed relationship with the press. Many of his closest associates have shared his distrust. Indeed, the earliest manifestations of the Administration's obsession with "enemies" appeared in the context of memoranda discussing the problems of dealing with the news media. One document, dated October 17, 1969, reveals that the President had made 21 written requests in the preceding 30 days for specific actions to counter "unfair news coverage." The same document then leaps immediately to recommendations for "concentrated efforts" against the media by the FCC, the IRS, the antitrust agencies and the Republican National Committee. Almost a year later another memorandum in this genre gloats over the Administration's ability to intimidate top executives of the television networks.

All of these traditions—the search for subversives, the urge to stamp out crime and the unavoidable conflicts between Presidents and press—have contributed in varying degrees to the creation of an atmosphere in which a secret enemies list could be nurtured by high officials. But these powerful public servants took what they found, added their own view of the world, and transformed the whole into a new synthesis, something foreign to the American experience.

WHITE HOUSE ENEMIES

There were scattered hints throughout the first Nixon term that the White House was deeply concerned about opposition to its policies. But the dimensions of this loathing were little understood until John W. Dean III, former Counsel

to the President, released a series of revealing documents to the Senate Watergate Commitee during the last week of June, 1973.

These papers showed a remarkably persistent effort on the part of White House functionaries to assemble the names of persons and organizations who had expressed—or might in the future express—opposition to Administrtaion policies. This crew also sought to develop imaginative schemes to "use the available federal machinery to screw" the annointed individuals. More than 200 people and organizations were mentioned in the first batch of documents. Additional names have appeared from time to time, indicating that the concept of the "enemy" was much more pervasive and vivid in the minds of the Administration's upper eschelons than even Dean's papers revealed.

The Project on Privacy and Data Collection questioned the 189 individuals mentioned in the first cascade of "enemies" in an attempt to "get at least a rough idea of the extent, if any, of the punitive use of government power." The Project received 97 substantive responses.

The project's letter asked a series of questions that were suggestive of ways in which abuses of government power could intrude upon one's personal privacy or interfere with one's business or associational life. The letter also asked the respondents to assess the degree of their own certainty that such abuses actually happened.

The responses were extraordinary in their variety, ranging from simple statements reporting nothing untoward to detailed chronicles of unrelenting pressure and harassment.

A few notes of caution should be registered. The staff of the Project has made no effort to test the merits of the reported actions. We seek to chart general patterns and to relate the moods and experiences of the people on the list. We do not claim to have established rigorous controls for all possible variables. Also, there are inherent difficulties in attempting to impose the categories of a structured report upon an information base that is sometimes subjective and filled with nuance.

Nonetheless, it is entirely plausible that some abuses may have gone unreported simply because they were undertaken behind a wall of secrecy. The subjects were unaware of the clandestine activities. Many of our respondents were aware of this possibility, for they prefaced their remarks with language suggesting doubt that they had been, in fact, really left alone.

Of all the questions raised by the Project's letter to the enemies, the one demanding the least subjectivity dealt with IRS audits. A thorough audit requires the active participation of the person under investigation. Twenty six of the respondents (27%) reported audits, and many of them were audited several times during the first Nixon term.

For purposes of comparison, it is interesting to note that in early 1973 the *Wall Street Journal* published the following audit rates for fiscal 1971: 1.4% for incomes under $10,000 a year; 1.8% for individuals making between $10,000 and $50,000 a year; and 12.8% for returns on incomes of more than $50,000 a year.

The Joint Committee on Internal Revenue Taxation, chaired by Congressman Wilbur Mills and Senator Russell Long, issued a report in December 1973 on its examination of possible IRS involvement in the White House enemies operation. The report, based on interviews with IRS personnel and reviews of IRS files, generally exonerated top Treasury Department and IRS officials of active collusion with the enemies project. The Joint Committee's report also claimed that the high rates of audits and preliminary screenings conducted on the tax returns of the enemies could, for the most part, be justified by the size of their incomes, the nature of their occupations and income sources, or by traditional computerized selection techniques.

In the course of its investigation, the staff of the Joint Committee obtained an additional list of 490 enemies, a list that had been inspired by John Ehrlichman and transmitted by John Dean to then IRS Commissioner Johnnie Walters in September, 1972. Walters assured the Congressional investigators that "the IRS never took any action with respect to this list."

Morris Dees, a member of the second enemies list, notes a qualitative difference between his 1972 audit and a previous tax investigation. In charge of all the direct mail operations for the McGovern Presidential campaign, Dees was interrupted during the summer of 1972 in order to satisfy a particularly insistent tax review. Dees is actively considering a lawsuit.

The staff of the Joint Committee was unable to gauge the extent of the punitive actions taken by the IRS' special Services Group, which was established in 1969 and had, until disbanded in 1973, collected dossiers and intelligence reports on 3,000 "extremist" groups and 8,000 individuals. The reason: FBI material was commingled with the IRS files and the FBI repeatedly ignored requests from the IRS and the Joint Committee to open the files to Congressional scrutiny.

The mechanics if implementing political audits are still obscure. Certainly White House aides developed an informal network of IRS "buddies" to carry out at least some of the White House requests. Jack Anderson, a columnist and an enemy, has suggested that anonymous letters were used by the White House to stimulate tax audits without leaving any trace. Enemy Robert Greene, an investigative reporter for *Newsday* who worked on a critical account of Bebe Rebozo's activities, had his audit channeled through the New York State tax agency.

The tax-exempt status of certain organizations was a matter of grave concern to the White House. Tom Charles Huston wrote a memo in late 1970 to H. R. Haldemann which included the following passage: "Nearly eighteen months ago, the President indicated a desire to move against leftist organisations taking advantage of tax shelters. I have been pressing IRS since that time to no avail." Immediately thereafter a chilling wind swept through public interest groups, including many whose chief concerns were environmental deterioration and consumer education. IRS announced their exemptions were under review.

Among the organizations applying for exempt status was the Center for Corporate Responsibility. It waited two and a half years for the tax experts to act. Finally, its funds depleted, the Center went to court on May 2, 1973, where, alleging that IRS had deliberately delayed the requested action, the Center introduced a photocopy of its application bearing the handwritten inscription "perhaps White House pressure."

On December 12, 1973, Federal District Court Judge Charles R. Richey ordered IRS to grant the tax exemption to the Center. Richey also asked the U.S. Court of Appeals for the District of Columbia Circuit for permission to release the texts of four documents—produced finally after a reluctant and limited search of White House files by counsel J. Fred Buzhardt—which in Richey's words, provide evidence of "misconduct or perversion of power by government officials." At this writing, the Appeals Court decision is still pending.

The respondents who encountered audits during the first Nixon term included Senator Walter Mondale, Common Cause Chairman John Gardner, *New York Post Editor* James Wechsler, columnist Tom Braden and United Auto Workers President Leonard Woodcock, to name a few.

Wrote one respondent: "My returns for 1969 and 1970 were audited in 1971 with the result that I was assessed about $35,000 in back taxes. The returns were made by an experienced accountant, and the results of the audit were so illegal and irrational as to defy belief . . . Ruling out a degree of incompetence which would be tantamount to insanity, I can only conclude that I was here faced with a political reprisal."

Another enemy commented: "Each year our company is audited rather thoroughly by the IRS. In the past only minor 'adjustments' have been necessary. Our accountants are among the most reputable and are very strict with us. This year (in the late winter) the IRS team was headed by a man from the Criminal Fraud Division (or some such nomenclature) rather than from the normal corporate tax examining staff . . . Incidentally, no assessments or irregularities resulted or were found. But the accountants were truly quite jolted."

Larry O'Brien, former chairman of the Democratic National Committee, was subjected to long campaigns of tax harassment, according to an interview he gave to the *St. Louis Post-Dispatch* in November, 1973. The first clues appeared in 1970, soon after O'Brien returned to the party chairmanship with a vigorous attack on Nixon policies. The IRS initiated a full field audit of this 1969 returns, an investigation that lasted for months and has been described by O'Brien's tax accountant as the most intensive he had experienced in 35 years of handling tax matters. O'Brien finally agreed to pay the sum the IRS was seeking, somewhere between $400 and $500.

The next year his 1970 return was audited and approved. There was no audit of his 1971 return. Then, just a few days before the April 15, 1973 expiration of

the statute of limitations, IRS moved to reopen the investigation of O'Brien's 1969 return, claiming that he still owed "thousands of dollars." O'Brien sought legal advice and was told that IRS appeared to have violated a number of its own regulations by the manner in which it had proceeded. "My attorneys also told me that there was no way that a full field audit that had been closed could be reopened without an order from the highest level of the IRS," O'Brien told the *Post-Dispatch*.

O'Brien then wrote a letter of protest to incoming IRS Commissioner Donald C. Alexander. Within 10 days, according to O'Brien, Alexander had responded with three letters promising a personal investigation, then withdrawing the claim for additional taxes and closing the case. Alexander has since promised to make sure that the IRS does not engage in selective enforcement of the tax laws.

There can be little doubt about where the interest in O'Brien's tax returns originated. John Dean's diary, supplied to the Senate Watergate Committee by White House counsel, confirms that during their meeting of September 15, 1972, Dean and the President discussed the investigation of O'Brien's taxes.

Yet another variation on the White House attempts to manipulate the IRS was suggested by the promulgation of Executive Order 11697 (later amended slightly by E. O. 11709) on January 17, 1973. The executive order and its regulations were published in the *Federal Register;* no other public or press announcement was made. It was an action of great significance, however, for with this move President Nixon permitted the Department of Agriculture to inspect the more than 3 million federal income tax returns filed annually by farmers. The action was unprecedented because for the first time in American history an entire class of citizens was singled out for such disclosure. Moreover, the original executive order was prepared with language designed to serve as a prototype for further tax inspections by other agencies.

Congressman Bill Alexander of Arkansas immediately saw a connection between Nixon's executive order and the White House enemies project. Gordon Liddy, the Watergate conspirator, and John Caulfield, who advised John Dean on matters pertaining to political enemies and the IRS, were both employed by the Treasury Department at the time the language for the executive order was being drafted. Congressman Alexander is particularly concerned, however, by a reference in one of the documents Dean submitted to the Senate Watergate Committee that described a way in which the IRS could "target" individuals by requesting an IRS audit "of a group of individuals having the same occupation." Executive Orders 11697 and 11709 are, of course, aimed at a "group of individuals having the same occupation."

Many respondents reported odd, sometimes frightening, encounters with audits. However, several enemies emphasized that they had been treated considerately by individual IRS employees. But even the most perfunctory audit carries with it certain burdens—the possibility of owing more money to the government, perhaps lawyers' and accountants' fees and a degree of mental stress and consternation. To undergo these trails as a result of arbitrary political judgments is intolerable.

The question in the Project's letter about wiretapping and other eavesdropping produced responses with more subjectivity. These activities are harder to detect and, once detected, very difficult to trace to their origins.

Sixteen of our respondents (17%) reported these activities and supplied substantiating material for the claim. Thirteen others (13%) thought they were likely.

It is difficult to compare these figures with national averages, for the issue is clogged by slippery definitions, "national security" secrets and evasive statements by government officials. Herman Schwartz, professor of law at the State University of New York (Buffalo), calculates that for 1971 there were 792 court-approved federal and state electronic surveillance installations, involving 32,509 people and 496,629 conversations. National security installations must be added to these totals. Schwartz figures there were 113 such installations (97 taps and 16 bugs) in 1970, involving from 31,000 to 84,000 people and from 546,000 to 1,350,000 conversations per year. These numbers are undoubtedly low because they do not include illegal, privately commissioned electronic intrusions, the Army's activities in this area, possible surveillance by the CIA, IRS, NSA and other agencies, or interception of teletype messages.

The wiretapping victims included Morton H. Halperin, a Republican, who managed to survive 21 months of this ordeal. The government has admitted the

intrusion; it would be interesting to learn how much the taxpayers, including Halperin, paid for their electronic extravaganza.

Halperin and his lawyers have discovered that the FBI does all of its wiretapping in Washington from a central location, the Old Post Office Building in the Federal Triangle. Inside are banks of voice-activated tape recorders that are linked to the tapped phones through extension lines provided by the telephone company. New York, Las Vegas and other cities have similar arrangements.

Thus, the active cooperation of the telephone company enables the FBI to install and operate its surreptitious taps in relative safety at a distance far removed from the actual targets.

A group of private citizens in the United States and Great Britain have spent the past few years quietly investigating scattered evidence that the wiretapper's art has moved into a new phase—from the passive function of information collection to the active role of interfering with wire communications. The technology for the new age of wiretapping is relatively simple; it closely resembles that which has always been used for answering services, requiring only the collaboration of the telephone company and the installation of "drawn loops" or "looped lines" at central telephone exchanges. This kind of system makes a wiretapping operation virtually undetectable and allows the monitoring personnel to intrude upon, or to interrupt a specific telephone call. There is some evidence to suggest that the telephone "dirty tricks" experienced by the McGovern campaign were performed through the medium of private cables and interposed switchboards.

Halperin, suggests that much of what passes for wiretapping may, in fact, be intrusive electronic bugging. A number of our respondents, for example, echoed each other in reporting the following: the comings and goings of unsolicited telephone repairmen; "telephone trucks" and "linesmen" operating for extended periods on the streets near their residences; and erratic behavior inside the telephone instrument itself. Since wiretapping can be pursued remotely with little risk of discovery, these reports are likely to reflect attempts to provide cover for the installation of bugging devices.

Among those under electronic surveillance were Representatives Ronald Dellums and Bella Abzug. Dellums reported that he has a sworn affidavit stating that the telephones in his district offices were tapped in May, 1973. Abzug recalls that "in the fall of 1972 while I was in my Washington office talking to Assemblyman Albert Blumenthal in New York, we both heard a third voice on the phone indicating that our conversation was being tapped."

Stuart H. Loory, formerly the White House correspondent for the *Los Angeles Times* and now Kiplinger Professor of Public Affairs Reporting at Ohio State University, supplied the following anecdote:

> Last spring, during the period in which I was an expert witness at the Ellsberg trial, my son picked up the phone one day and heard someone on it. He was told it was the phone company repair man who would be off the wire soon. We had not complained about our service at the time.
>
> At the Ellsberg Trial, David Nissen, the prosecutor at one point asked me if, during June, 1971, I had been in telephone contact with Leonard Boudin's office. Indeed I had been and he obviously knew about it. The judge cut off the line of questioning before it could be determined how much Mr. Nissen knew about our conversations. . . . Subsequently, Leonard Boudin submitted an affidavit to the court charging the government with the tapping of our conversations.

Fifteen of our respondents (15%) were subjected to federal investigations by the FBI or other agencies. Fully one third of the enemies in the academic world who responded had such investigations, as did 25% of the respondents from the news media.

CBS Correspondent Daniel Schorr received the most extensive examination by the FBI. Columnist Joseph Kraft's house was surreptitiously entered for the purpose of installing a phone tap and Kraft was shadowed by government agents while working on a story in Paris. Congressman Parren Mitchell was also investigated after he received copies of the files taken from the FBI office in Media, Pa.

John Kenneth Galbraith told of the aftermath of a speech he gave at the University of Minnesota in the wake of the Cambodian invasion: "This was part of a publicly-supported effort by the university to meet the adverse reaction with the fullest possible discussion. I subsequently discovered that army intelligence agents had covered the speech and reported on it. I protested, and asked

for the reports. I got somewhat of an ambiguous response from the Pentagon to the effect that it was all a mistake and that the reports had been destroyed."

Jack Anderson underwent numerous investigations, including one directed by Assistant Attorney General Robert Mardian: "My FBI sources tell me that he sent for the FBI file on me, that he assigned several cars to follow me wherever I went and that he conducted a deep-digging operation for dirt. My sources gave me the license numbers of the cars that were tailing me and my nine children quickly located the cars which were staked out at three different locations so they could follow me whichever way I turned. After my children took pictures of the men in the cars, they gave up and disappeared from the neighborhood."

Earlier this year, Anderson continues, FBI agents arrested his associate Les Whitten for "allegedly receiving stolen Indian documents. Assistant Attorney General Henry Petersen has admitted to me that the FBI was hoping to catch me. The FBI also arrested the *Boston Globe*'s Tom Oliphant for allegedly consorting with the Indians. The charges against both Whitten and Aliphant were so silly that the Justice Department was compelled to drop them."

Seven respondents reported suspicious burglaries. Although none (with the exception of Daniel Ellsberg) could prove the burglaries were instigated by the government, almost all felt that something was amiss in that the chief targets seemed to be files and documents rather than items of monetary value. Parenthetically, there have been a number of press reports about burglaries happening to persons who, while not on the enemies list, are in some way involved in litigating, investigating or reporting Watergate. An FBI spokesman says that in 1972 approximately 1.13% of the inhabitants of the United States were burglarized.

Nine enemies reported physical surveillance. Senator Edward Kennedy, who was not one of the nine, was watched almost from the beginning of President Nixon's first term by the "plumbers" and their predecessors. Kennedy's colleagues who pursued the 1972 Democratic nomination were subjected to highly organized snooping that ranged from informers and spies planted in campaign staffs to "reporters" moonlighting for Nixon's re-election effort. Two enemies reported mail covers, and another two noted leaks of sensitive information that had previously been given in confidence to a government agency. Five respondents reported that their organizations had been infiltrated by informers, and four described punitive enforcements of federal laws and regulations. Katharine Graham, chairman of the Washington Post Company, has charged that the FCC licenses for her company's two Florida TV stations were challenged for political reasons. Nixon intimates are participating in both challenges. *Washington Post* reporters have experienced a number of low-grade indignities at the hands of White House aides, including exclusion from normal "pool" rotations and reduced access to news sources.

Some of the enemies had experiences that do not fit into ready categories. Larry O'Brien, in addition to his tax problems, had to watch helplessly as one of his lifelong friends suffered heavy financial losses caused by a Cabinet-level decision to delay approval for housing projects that the friend's company planned to build. Another O'Brien friend, Charles Dyson, was designated "enemy number 5" on the top priority list of 20 chiefly because of the friendship.

George Fischer, former head of the National Education Association, reported that one of his letters to a relative had been opened and stamped: "Opened by Mistake by the Treasury Department." Fischer also said that he has been audited every year since 1969 and he has good reason to believe that his telephone has been tapped. "I feel," Fischer wrote, "that the Administration has no doubt violated the Bill of Rights on many counts. My own personal rights, if not violated, have been abused."

Another respondent, whose organization supports political candidates of generally liberal persuasion, observed that the results of private conversations with these politicians have from time to time appeared in the columns of conservative commentators or in the speeches of conservative Senators and high executive branch officials.

The chief of a large corporation, a well-known McGovern supporter, says that the Price Commission delayed his application for a price rise through lengthy bureaucratic maneuvers while two competitors, well-known Nixon contributors, received speedy consideration and approval for similar hikes.

CBS and ABC have charged in court papers that the Justice Department's antitrust action against the television networks are politically motivated. CBS

alleged that "from at least as early as October 1969, agents of plaintiff prepared and carried out an unlawful plan to use the power and machinery of the federal government to restrain, intimidate and inhibit criticism of the President of the United States and his appointees, in violation of the First Amendment."

In an interview with the *New York Times*, Allard Lowenstein, former Congressman and enemy number 7 on the top priority list, noted several coincidences that may merit further investigation:

> Lowenstein's income tax returns were audited in 1969 and 1970, even though he deliberately "underclaimed" the deductions he was entitled to. He was cleared for the first year, but the 1970 audit is continuing.
>
> During his campaign to register young voters for the 1972 Presidential election, files in Pittsburg and Texas disappeared; rally sites were cancelled at the last minute, and the local authorities demanded huge "peace bonds" and in one case threatened youths with arrest if they attended the rally.
>
> The mother of one of Lowenstein's chief aides, an employee of the federal government, was "called by the White House" and told not to allow her daughter to participate in the registration campaign.
>
> During Lowenstein's 1972 campaign against Congressman Rooney of New York, one union was threatened with an income tax audit if it supported Lowenstein, and another was warned that it risked an adverse ruling by the Pay Board.

At the time of these incidents, Lowenstein was reluctant to make an issue of them for fear of "feeding the atmosphere of paranoia." But that caution, he told the *Times*, "played into the hands" of the Administration.

Reporter Stuart Loory told how Henry Kissinger had complained to Loory's immediate superior, David Kraslow, about a personality profile that Loory had written. Kissinger implied that he never wanted to see Loory in his office again. Interviewed recently, Kraslow emphasized that Kissinger harbored only warm feelings toward Loory but had been very upset by the profile. Kissinger later attended a going-away party for Loory. "I had my specific grievances," Kissinger told Loory at the party, "but what did my colleagues have against you that put you on the enemies list?"

SOME OBSERVATIONS

It is still early, as noted before, to address all of the issues raised by Kissinger's question, but it may be helpful to review some of the commentaries on the enemies phenomenon and to advance a few observations.

Conservative columnists like William Buckley and James Kilpatrick have denounced the enemies project and what it signals about White House attitudes, seeing in it one of the most pernicious of the Watergate revelations. Max Ways, writing in the November 1973 *Fortune*, views the enemies list as one of the inevitable results of the "excessive self-pity" reigning at the center of power.

The latest treatment in *The Nation* appeared in the issue of November 19, 1973. Frank Donner and Richard Lavine believe that the recent "growth of Caesarism in the White House" depended upon widespread political intelligence, "a system of surveillance and related practices ranging from informers and wiretapping to sabotage, break-ins, mail interceptions and dossiers." Mounting frustrations on any front tended to transform the passive capacity to gather political intelligence into a weapon of attack: "In the tightly knit Presidential circle, an ominous thesis was evolving, a sort of political Manicheanism in which legitimate critics and rivals for power, regardless of their political affiliation, were indiscriminately condemned as 'enemies' to be stopped by any means necessary."

Andrew St. George writes in the November 1973 issue of *Harper's* about the internalization of the Cold War. He argues that the principal objective, the "glandular thrust," of the men implicated in Watergate was to translate the traditional Presidential power to persuade into a vastly expanded power to command. "We know," he writes, "that behind the scenes they labored to *increase* the number of White House enemies, not to diminish it. They created new enemies by drawing up long lists with absurdly assembled names—Carol Channing? Joseph Kraft? Tony Randall? *Joe Namath?*—they stockpiled enemies and went shopping for more."

Garry Wills, author of *Nixon Agonistes*, writes in the December 1973 *Playboy* about the siege mentality in the White House. "It was typical of slick Chuck

Colson to pooh-pooh the White House enemies list as a mere screening process for those to be invited to the White House. But there was some genetic connection, after all: Each person entering the White House was seen as potential enemy. . . . If you cannot trust the Johnny Mann singers, who can you trust?"

Finally, Frank Mankiewicz, an enemy and author of *Perfectly Clear: Nixon from Whittier to Watergate*, finds in the list of enemies "a calculated reflection of an awareness that there is a 'Nixon way' of doing everything, from financing schools to making movies."

While all of these efforts to explain the enemies list provide insights, its central feature, its most threatening aspect, remains its incipient institutionalization. The White House memoranda, taken together, form a textbook-like managerial blueprint—they trace in detail the process of creating an Enemies Project. This was not to be a one-time affair like Truman's reaction to the music critic. Instead, they were running a talent search, looking for an intelligent, tough, knowledgeable, highly motivated person like Lyn Nofziger, then a White House aide, to head the project. They sought "coordination" and "good support for the project." Presumably, they would also develop a "delivery system"; they would concentrate on "follow-through"; and finally, like good, gray organization men everywhere, they would inevitably analyze the costs and benefits of their efforts and issue a report.

The process of institutionalization carries with it a degree of abstractness, of remoteness. These qualities tend to splinter any sense of responsibility for actions taken on behalf of the institution. Thus, in the White House, the man who writes down the name will not be the man who applies the pain. These qualities may also help to explain the odd way in which the list was complied—the juxtapositions and rankings of persons with little in common, the misspellings, the inaccurate alignment of people with their organizations, the posthumous inclusions. When enemies are depersonalized, such considerations are trivial and bothersome, not to mention inefficient.

The "technological imperative," coupled with the "bureaucratic imperative," now makes the creation of an enemies list at the highest level of government power more threatening than ever before. The heightened potential for abuse comes from advances in electronics and telecommunications, in surveillance devices of all varieties, in the flood-like spread of computers throughout the government and the ease with which they can be interconnected, and, of course, in the vast expansion and centralization of the government's recordkeeping and its pervasive interactions with the daily activities of citizens and private organizations. Soon it will not be necessary to send the "plumbers" to Los Angeles to get psychiatric records. The data processing industry left its mark on the Watergate hearings with terms like "time frame" and "input." It also left its mechanistic trademark on the annotations to the top priority enemies list Picker— . . . both Ruth and David Picker should be *programmed* . . .; Barkan— . . . the most powerful political force *programmed* against us in 1968 . . . 176,000 workers—all *programmed* by Barkan's COPE . . . ; Feld—They will *program* an "all court press" against us in '72; Dogole—Could *program* his agency against us. (Italics added.)

The responses to the Project's letter indicate that reporters—especially those engaged in investigative or critical work—received the most intense heat. They are closest to the fire. The results of their work are immediately obvious. While often working for large corporations, they usually operate as independent agents, in terms of both their need for access to government information and news sources and their lack of legal and accounting support. They make excellent targets. Blacks and academics also seemed to receive rather consistent attention. There is, as one might suspect, a correlation between how close an enemy lived to the District of Columbia and how much harassment he reported. For this reason, the other principal centers of activity were New York City and Cambridge, Mass. The White House enemies tend to be card-carrying members of the "Eastern Establishment"—the same constellation of people, organizations and interests that has fertilized so much of the Administration's rhetoric. Most Americans seem to sympathize with the plight of the Establishment on the matter of the enemies list: a September 1973 Lou Harris poll found that, by 68% to 17%, a majority of Americans feel that the drawing up of an enemies list by the White House was beyond the acceptable bounds of government behavior.

Seven of the first eight enemies on the top priority list of 20 were Jewish, a fact that may reflect only the prominence of Jews in the Democratic Party, liberal

causes and the news media—or it may reveal deeper, perhaps sub-conscious, reservoirs of prejudice.

The keeping of enemies lists by White House ripens into an illegal and unconstitutional practice when the lists are used or intended to be used, as John Dean so delicately put it, "to screw our enemies." When persons are selected because their names appear on the lists for a regulatory investigation (such as a tax audit or a security check), or when they are denied a benefit (such as a government loan or a license), or when they are targeted for surveillance (such as a mail cover or a wiretap), they are victims of discriminatory enforcement of the laws. It is not sufficient for the government to claim in response that the regulatory or enforcement activity was legal—that is, because IRS can audit any taxpayer, or because the wiretap was installed in compliance with the procedures required by the Omnibus Crime Control Act.

The governing principle is derived from the Fifth and Fourteenth Amendment prohibition against federal or state action which deprives a person of equal protection of the laws. It has been established since *Yick Wo* v. *Hopkins*, 118 U.S. 356, 373–74 (1886) that government is constitutionally bound to refrain from administering the law "with an evil eye and an unequal hand." When members of a particular class, for example, are selected for prosecution, proof that their selection is irrational or intentionally discriminatory has been held to constitute a defense to the charges against them. *Cox* v. *Louisiana* (*I*), 379 U.S. 536, 557–58 (1965); *United States* v. *Falk*, —— F. 2d —— (7th Cir. 1973) (en banc).

There is some disagreement about whether mere arbitrariness in applying the law can amount to discriminatory enforcement, although several Justices took that position in the recent death penalty decisions. *Furman* v. *Georgia*, 408 U.S. 238, 257, 293–95 (Brennan, J., concurring), 306, 309–10 (Stewart, J., concurring). Whatever the limits of the discriminatory enforcement doctrine, however, it is crystal clear that it prohibits any singling out of persons for prosecutions or regulation "for the purpose of deterring [them] from exercising their right to protest official misconduct and petition for redress of grievances." *Dixon* v. *District of Columbia*, 394 F.2d 966, 988 (D.C. Cir. 1968). See also *Gutknecht* v. *United States*, 396 U.S. 295 (1970) (prohibiting draft reclassification of antiwar activists); *United States* v. *Steele*, 461 F.2d 1148 (9th Cir. 1972) reversing conviction of census resistance leader for refusing to answer census questions); *United States* v. *Falk*, — F.2d — (7th Cir. 1973) (reversing conviction of draft counsellor for non-possession of draft card). Obviously, this principle would apply with even greater force to the singling out of persons by the White House solely because their political views were non-Nixonian.

What kind of proof is necessary? It is probably not enough to have been a nominal enemy whose name appeared on one of the lists. There must be some evidence that the laws were applied against the enemies in a discriminatory fashion. Without proof of discrimination in individual cases, it is possble to show through the Dean and Huston memoranda and other documents that surfaced in the Watergate hearings that the purpose of the lists was to "screw our enemies."

The use fo IRS for this purpose is probably better documented than other practices. In addition to the information given by enemies who responded, there is a significant IRS memorandum dated December 18, 1972, about the Special Services Staff formalized on February 11, 1972, "to receive and analyze all available information on organizations and individuals promoting extremists' views or philosophies. The identification of those included in the program . . . was directed to the notoriety of the individual or organization, the probability that publicity might result from their activities, and *the likelihood that this notoriety would lead to inquiries regarding ther tax status.*" (Italics added.) Presumably, some or most of these "inquiries" would come from the White House, as apparently had been the case since 1969 when a "special compliance group" to monitor activists was first set up by IRS. This memorandum suggests that procedures and channels between the White House and IRS were well established when the enemies list was in its heyday.

There remains the practical question of whether or not there exists a "pattern or practice" of civil liberties violations, of whether White House aides trespassed upon the words and spirit of the architects of the Constitution, who, as Justice Brandeis observed in 1928, "conferred, as against the government, the

right to be left alone—the most comprehensive of rights and the right most valued by civilized men."

One school of thought holds that the prevailing atmosphere at the White House encouraged the growth of a competitive attitude among White House aides, in which the display of toughness, the proverbial "macho complex," toward the Administration's opponents would be rewarded by Nixon loyalists John Erlichman and H. R. Haldeman, and perhaps even by the President himself. In this view, the creation of the enemies list can be seen as a variation on the bureaucratic game of "papering the files." Such a view certainly informed John Dean's testimony before the Senate Watergate Committee, where Dean asserted that he resisted most of the pressure to implement punitive actions. It also lies behind Charles Colson's characterization of the list as a screening device for White House social affairs. And it forms the basis of then special assistant to the President Frederick Malek's defense of his 1972 memoranda detailing secret plans to direct millions of dollars in Federal grants to areas where they would most effectively win votes for President Nixon's re-election. This view is buttressed by the apparent resistance of some of the Federal bureaucracies to White House overtures.

On the other side of the coin are the experiences of the enemies themselves, some of which have been related in this report. The memoranda stand in mute testimony to the feverish obsession with "screwing" the enemies. There is also strong evidence that the enemies phenomenon was much larger than just the enemies project. Three anti-Nixon Republican Congressmen, John Ashbrook, Paul McCloskey and Donald Riegle, all suffered harassments during their 1972 challenges to Nixon policies, but none of them appeared on the list. Where does the enemies project leave off and the "plumbers" activities begin? Daniel Ellsberg was the target of both operations. Where does the enemies project leave off and the "dirty tricks" activities begin? The Democratic Senators who sought the 1972 Presidential nomination were the targets of both operations. Certainly the probable existence of an enemies list was working assumption for those who maintained close ties to the Nixon Administration—even if the list itself remained secret. An oil company executive, testifying before the Senate Watergate Committee on the reasoning behind his company's illegal contributions to the Nixon campaign, said he feared his company could "be on a blacklist, low man on the telephone pole" if he did not respond to the request for funds. That this was no idle fear was shown by the experience of a New York architect, whose firm had labored hard to win a large Federal contract only to learn that its bid would not even be considered after the architect rejected outright two requests for campaign funds.

Until such time as more information becomes public, the ultimate answer to the question will remain subjective. The answer will depend upon one's normative view of democratic processes. Are the experiences of the enemies and the ambience prevailing at the White House the normal and inevitable result of a bipartisan political system in which the traditional fruits of partisan victory have been patronage for the victors and discrimination against the losers? Or do they transcend the bounds of common decency? At least one thing is clear, perfectly clear—the secrecy that surrounded the enemies project is intolerable in a democratic society. To let one of the enemies have the last word, former Senator Charles Goodell has written that "the critical ingredient of a police state is paranoia, and the key to paranoia is secrecy."

Committee Report—The Privacy of Federal Income Tax Returns

(By The Committee on Civil Rights)

INTRODUCTION

The assumption that the confidential information sent by taxpayers to the Internal Revenue Service (IRS) is used solely for the purpose of collecting taxes has been seriously challenged in recent years. In two Executive Orders, E.O. 11697 and E.O. 11709, President Nixon attempted to require the Treasury Department to turn over the tax returns of 3,000,000 farmers to the Department of Agriculture, allegedly for statistical purposes. Government officials acknowledged that the orders were prototypes for future orders directed against other occupational groups.[1] The orders were later rescinded—after more than 100 mem-

[1] Cong Reg., Sept. 11, 1974, S16308, 16310; Jan. 17, 1975, S376.

bers of Congress co-sponsored bills to revoke them and the Domestic Council on Privacy[3] and then Vice President Ford made similar recommendations.[3] Other Presidents have by Executive Order made tax returns available to the Federal Trade Commission, the Department of Health, Education and Welfare, the Department of Commerce, and other agencies.[4]

During the 1974 congressional investigation leading to the Articles of Impeachment, the House Judiciary Committee made the following summary of its findings in Article II, subparagraph 2; President Nixon, "acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner." While the extent and results of these violations of confidentiality cannot be determined, the potential for abuse under present law is clear.

IRS has recognized that the attempts to make it into an instrument of political power are a serious danger to the agency and to the public. Two years ago Commissioner of Internal Revenue Donald C. Alexander asked Congress "to give the Internal Revenue Service and the taxpayer what they so badly need—protection against misuse of what should be the most confidential of records—tax returns."[5]

The constitutional rights of citizens to privacy and to due process of law, and the constitutional privilege against compulsory self-incrimination, are clearly at issue when confidential tax information obtained from the taxpayer under compulsion of law is misused. This report will analyze the statutes, judicial decisions, Executive Orders, and proposed new legislation which are relevant to these rights. We conclude that comprehensive and effective changes in the law are overdue.

I. THE PRESENT LAW

A. The Internal Revenue Code

The startling fact is that the current internal revenue statutes and regulations do not prohibit, or discourage, Government employees from rummaging through tax returns *en masse* or on a particularized basis. Under the Internal Revenue Code, 26 U.S.C. § 6103, income tax returns are "public records" open to inspection "upon order of the President and under rules and regulations prescribed by the Secretary [of the Treasury] or his delegate and approved by the President." The returns can also be furnished to tax officials of the states, to the Joint Committee on Internal Revenue Taxation, and to other congressional committees. 26 U.S.C. § 6103(b), (d). Since 1957 there have been more than 70 Executive Orders allowing inspection of tax returns by various agencies of the Government.[6] From the 72nd Congress to date, Congress has passed at least 47 resolutions authorizing committees to obtain and inspect tax returns.[7]

26 U.S.C. § 7213 makes it unlawful for any federal officer or employee to divulge "in any manner whatever not provided by law" the amount or source of income, profits, or losses shown in any income tax return, and for any person to print or publish any such information "in any manner whatever not provided by law." Violation of the statute is a misdemeanor. If the offender is a federal officer or employee, upon conviction "he shall be dismissed from office or discharged from employment."

B. Judicial Decisions on the Use of Tax Information

The courts have not, in general, tried to prevent the Government from using or divulging income tax information. The discussion of a few cases will illustrate the point. In *United States* v. *Sapp*, 371 F.Supp. 532 (S.D. Fla. 1974), the Government attached taxpayers' returns to a memorandum of law filed in support of a motion to obtain a ledger of the taxpayers' financial transactions. The court characterized the Government's conduct as "a shocking and high-handed treatment of taxpayers and a complete evasion of Congressional purpose in 26 U.S.C.

[3] The Domestic Council on Privacy, established by President Nixon, was chaired by the Vice President.
[3] Cong. Reg., Sept. 11, 1974, S16308; Jan. 17, 1975, S376.
[4] *Id.* at S16309, S377.
[5] *Id.* at E5739.
[6] See Title 26, United States Code Annotated § 1603, p. 484 and 1975 Supp., p. 135.
[7] Cong. Reg., Sept. 11, 1974, S16309; Jan. 17, 1975, S377.

§ 7213," but refused to abate the Government's investigation of the taxpayers. The court said that if the Attorney General declined to prosecute the officials responsible for the violation but "adequately explain[ed] such action to the court," the court would permit the Government to have the ledger for use in its investigation. Subsequently the court said it had received a satisfactory explanation from the Attorney General.

In *United States* v. *Tucker*, 316 F.Supp. 822 (D. Conn. 1970), the court held that the disclosure of tax records by IRS to the Federal Bureau of Investigation did not violate 26 U.S.C. § 7213. Accordingly, the defendants' motion to suppress the tax records was denied. In *Laughlin* v. *United States*, 474 F.2d 444, 453, note 12 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 941, the appellate court found that the Government's disclosure of income tax information to a grand jury was lawful under § 7213 and under a Treasury Regulation allowing IRS to furnish income tax returns to United States Attorneys for use before grand juries, or in litigation in any court if the Government is interested in the result of the litigation. Cf. *United States* v. *Fruchtman*, 421 F.2d 1019, 1022 (6th Cir. 1970), *cert. denied*, 400 U.S. 849, in which the court held that so long as an IRS investigation is within its statutory authority, "there is no prohibition against another department of government having the benefit of information developed in the IRS investigation."

It is clear that the applicable statutes, regulations, and Executive Orders provide virtually no restriction upon the power of the Executive Branch to obtain and use information contained in income tax returns. As long as the Executive Branch follows the terms of its own orders and the treasury regulations approved by the President, there is no meaningful limit upon the use or misuse of confidential income tax information.

C. Executive Orders 11805

Despite the reported excesses of the previous Administration, President Ford has expressly broadened his authority to obtain income tax returns for any purpose. Under E.O. 11805, dated September 20, 1974.[8] IRS must deliver the tax returns of any person to the President if he personally signs a written request. The President is not required by the Order to give a reason for the request, and he may designate a White House employee to inspect the returns, provided that the employee has a Presidential commission and is paid at an annual rate equal to or exceeding the basic pay of $28,000. The designated employee may disclose information in the returns to persons other than the President if he has the President's written permission to do so. Thus, the President and commissioned employees he has designated are free to obtain, inspect, and divulge information in the tax returns of any person, for any purpose, without making any disclosure to the taxpayer, to Congress, or to the courts.

In September, 1974 the President proposed legislation restricting Government agencies, but not the President or White House employees, in their efforts to obtain tax-return information. The Administration bill would have required IRS to furnish any return or other tax information to the President and to "such employees of the White House office as the President may designate."[9]

D. The Relevant Constitutional Principles

In *Olmstead* v. *United States*, 277 U.S. 438, 478 (1928) (dissenting opinion), Mr. Justice Brandeis defined the right of privacy as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man."

While the majority of the recent Supreme Court cases vindicating the individual's right of privacy have involved marital privacy and the right to control of one's own body, the Court has made it clear that the fundamental constitutional principle is not limited to protection against physical intrusions into one's home or unwarranted interference with marital or sexual matters. The Court held in *Terry* v. *Ohio*, 392 U.S. 1, 9 (1968), quoting Mr. Justice Harlan's concurring opinion in *Katz* v. *United States*, 389 U.S. 347, 361 (1967), that "wherever an individual may harbor a reasonable 'expectation of privacy' . . . he is entitled to be free from unreasonable governmental intrusion."

Information contained in tax return will often reveal the taxpayer's membership in, or contributions to, political, social or other private organizations. In *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958), and again in *Bates* v. *Little Rock*, 361 U.S. 516, 523 (1960) the Court held that preservation of the freedom

[8] 39 Fed. Reg. 34261.
[9] *The New York Times*, Sept. 11, 1974.

of association guaranteed by the First Amendment may often depend upon "inviolability of privacy in group association."

The inter-relationship between the right of privacy and the privilege against self-incrimination guaranteed by the Fifth Amendment has also been emphasized in a number of Supreme Court opinions. Mr. Justice Stewart, writing for the Court in *Tehan* v. *Shott*, 382 U.S. 406, 416 (1966), observed that the privilege against self-incrimination "stands as a protection of . . . values reflecting the concern of our society for the right of each individual to be left alone." And in *Bellis* v. *United States*, 417 U.S. 85, 88 (1974), the Court said that the constitutional privilege protects certain business records and "personal documents containing more intimate information about the individual's private life."

E. The Privacy Act of 1974

The Privacy Act became effective on December 31, 1974 (P.L. 93-579, 5 U.S.C. § 552a). Congress determined, as stated in its Findings and Statement of Purpose of the Act, that the right of privacy is, a personal and fundamental right protected by the Constitution, that the right has been violated by the compilation, use, and dissemination of personal information by Government agencies, and that Congress has the right and the duty to regulate the practices of the agencies to prevent further harm.

Briefly stated, the Privacy Act regulates the maintenance of personal information by Government agencies and prohibits disclosure of information about any individual without his or her written consent.[10] There are a number of exceptions and exemptions in the statute. Confidential information can be disclosed within the agency that has it; to another agency "for a purpose which is compatible with the purpose for which it was collected"; to the Bureau of the Census; under certain conditions, to any governmental jurisdiction "for a civil or criminal law enforcement activity" (provided, however, that if an individual is denied a federal right or benefit as a result of the maintenance of certain "investigatory material," the material must be disclosed to the individual unless it was furnished to the Government by a confidential source); to anyone showing "compelling circumstances" affecting the health or safety of an individual; to either House of Congress or any committee or subcommittee of either House; to the General Accounting Office; or pursuant to a court order. 5 U.S.C. § 552a(b), (k)(2).

The Privacy Act will undoubtedly reduce the misuse of private information by Government agencies. However, the protections afforded by the Act are not complete. There are several exceptions to its provisions and although the Executive Office of the President is subject to the Act, the President himself probably is not. Moreover, while income tax returns are not expressly excepted from the statute, certain federal agencies may take the position that tax information is not covered by the Act. According to the Senate Committee Report (S. Rep. No. 93-1183), a law enforcement agency covered by the Act need not secure an individual's permission to obtain his or her file from a non-law enforcement agency, "e.g., FBI access to a tax return."

Several bills designed to protect the confidential nature of income tax information were introduced in the second session of the 93rd Congress (September, 1974) before the Privacy Act was signed into law. Under one of the bills, S. 3935, the taxpayer would be notified of any request to IRS for information and the information could not be released without the taxpayer's prior written consent. Another bill, S. 3982, H.R. 16602, was introduced on September 11, 1974 by Senator Weicker of Connecticut and Representative Litton of Missouri. During the debates on the Privacy Act, Senator Weicker offered an amendment that would have achieved some of the objectives of the bill S. 3982 relating to tax returns. The amendment passed the Senate but was deleted in the House-Senate conference (CONG. REC., Nov. 21, 1974, S19851).

II. PROPOSED LEGISLATION

A. The Provisions of S. 199

After the Privacy Act was passed, the Weicker-Litton bill was re-introduced in virtually identical form in the 94th Congress on January 17, 1975. The bill,

---

[10] See *Government Databanks and Privacy of Individuals* (H.R. 16373 and S. 3418), Committee on Federal Legislation, 30 Record of the Association of the Bar of the City of New York 55 (1975).

The Administration opposed many provisions of the Privacy Act. Cong. Rec., Nov. 21, 1974, S19833-34.

known as S. 199 in the new Congress, now has a total of 35 co-sponsors in the Senate.[11] A subcommittee of the Senate Finance Committee will hold hearings on the bill in April and perhaps again in May, 1975. If the bill is amended in consonance with the suggestions developed later in this report and is enacted, misuse of tax-return information will be effectively curtailed.

The bill would repeal the current § 6103 of the Internal Revenue Code which, as previously noted, provides that income tax returns are public records open to inspection upon order of the President. As the sponsors of the bill have indicated, the new § 6103 would change the inherent legal character of the tax return. The President's authority to order inspection is removed. Tax returns are declared confidential records. They cannot be inspected by anyone—and the information they contain cannot be disclosed by or to anyone—except as provided in the new statute. Section 7213 of the Internal Revenue Code is amended to make unauthorized disclosure a felony rather than a misdemeanor and to add the felony of knowing receipt of unauthorized tax information.

Under the bill S. 199, the right to inspect a tax return would be restricted to the following persons:

(1) The taxpayer who filed the return or his authorized representative.

(2) Officers and employees of IRS, the Treasury Department, and "with respect to matters referred to the Department of Justice by the Commissioner [of Internal Revenue], the Department of Justice, in each case solely for purposes of the administration and enforcement of this title."

(3) Officers and employees of the Department of Justice, with respect to matters other than those referred by the Commissioner, only upon the written request of the Attorney General specifically naming the taxpoyer whose return is to be inspected and again, "solely for purposes of the administration and enforcement of this title."

(4) Officials who administer state tax laws, in certain limited circumstances.

(5) The President "upon his written request specifically naming the taxpayer whose return is to be inspected, provided that the inspection of such return is necessary in the performance of his official duties."[12]

(6) The Joint Committee on Internal Revenue Taxation, which may in turn disclose tax information to either House of Congress and their committees, but only in statistical form "without disclosing the identity of any taxpayer or of any return."

The bill provides that IRS shall, each quarter, list for the Joint Committee the returns furnished pursuant to paragraphs (3), (4) and (5) and the date of each request, and with respect to returns furnished pursuant to paragraph (4), the name and position of the individual who made the request. "The Joint Committee may make public such portions of such reports, or information derived therefrom, as it deems advisable."

The bill would allow IRS to furnish statistical information obtained from tax returns to federal agencies and state tax officials on request, but "no information so furnished shall disclose the identity of any taxpayer or of any return." Also, IRS would be required to state, upon inquiry being made, whether a particular person did or did not file an income tax return in a particular internal revenue district for a particular tax year.

B. Analysis of the Bill

S. 199 is a significant step in the right direction. The Goverment's access to income tax information is sharply restricted. The Government officials who are allowed access to tax returns (other than officials engaged in tax investigations originating with IRS) will know that their actions are subject to review by the respected Joint Committee on Internal Revenue Taxation. The President, too, can be held accountable, although it is doubtful that there is a remedy

---

[11] The co-sponsors include Senators Weicker, Humphrey, McGovern, Kennedy, Hartke, Mondale, Symington, Tunney, Percy, Baker, Javits, Buckley, Dole, Taft and Goldwater.

[12] A modification of this proposed language would be to provide that wherever possible, the President will be given a report answering narrowly drawn questions, rather than the entire return. This would facilitate response to legitimate inquiries without revelation of unnecessary confidential information.

Senator Weicker said when introducing S. 199 and its predecessor in the 93d Congress: ". . . [W]hat a President does with a taxpayer's return will be known to the Nation. Thus, his constitutional powers are not restricted, but his ability to move in secret is." (Cong. Rec., Jan. 17, 1975, S377; Sept. 11, 1974, S16307). Under the bill in its present form, the President's request for a return will be reported to the Joint Committee but the Committee need not make any further disclosure.

under the bill if he obtains a tax return for illegal purposes.[13] The bill would certainly prevent the *random* examination of returns for questionable purposes.[14] If the Justice Department or the White House want access to tax information, the Attorney General or the President must "specifically name" the taxpayers whese returns are needed.

Perhaps the most beneficial feature of the bill is that the circumstances under which tax information may be disclosed, and the persons and agencies to which disclosure may be made, are set out in a statute—not in Executive Orders and administrative regulations subject to revocation or modification at the behest of the Executive. This is consonant with the cardinal principle that our country shall have a government of laws, not of men.

If, however, the proposed statute is to provide effective protection and relief from violations, criminal penalties alone are plainly insufficient. Prosecutions for illegal disclosure or receipt of tax information will be at the discretion of the Attorney General and the various United States Attorneys, who are appointees of the President. Under federal law, the refusal of the Executive Branch to bring a prosecution is not reviewable by the courts. A federal prosecutor may even refuse to sign an indictment returned by a lawfully constituted grand jury.[15]

Congress recognized, when it adopted the Privacy Act in December, 1974, that criminal sanctions cannot assure compliance with a statute if most violations are likely to be committed by Government officials. The Privacy Act imposes criminal penalties for illegal revelation or receipt of personal information, but it also creates a right of action in any aggrieved individual to enforce the provisions of the Act in a federal civil suit. The federal courts are authorized by the Privacy Act to grant injunctive relief in appropriate cases and to impose costs and attorneys' fees against the Government if the complainants should prevail. 5 U.S.C. § 55[a](g).

The bill S. 199 should be amended to include similar provisions. Any taxpayer whose return has been illegally inspected should have a right of action in the federal courts. Damages and injunctive relief should be available against (a) the agency or individual who disclosed the return or data in the return, and (b) the agency or individual who requested and received the return or the information. A right of civil action will not be meaningful, morever, if the taxpayer is not aware that his or her return has been, or is about to be, examined. For this reason, the statute should provide that upon receipt of a request for a tax return from any person not engaged in an official tax investigation of the taxpayer, IRS must, not less than 30 days prior to complying with the request, notify the taxpayer of the identity of the person making the request and the reason therefor if one is stated, so that the taxpayer will have an opportunity to apply to the District Court for a temporary restraining order and preliminary injunction against disclosure, subject to the procedural requirements of Rule 65 of the Federal Rules of Civil Procedure.[16]

The bill in its present form requires IRS to furnish tax information to the Social Security Administration and the Railroad Retirement Board, as under present law. It is submitted that the bill should also require IRS to furnish a return to another federal agency, solely for the purpose of verifying representations made by the taxpayer when applying for federal employment, insurance, scholarship aid, or some other federal benefit, if the agency informs the taxpayer-applicant in writing, at the time of the application, that (1) the agency may

---

[13] Senator Weicker said when introducing S. 199 that the President must merely "certify that he needs the return in the performance of his official duties." (Cong. Rec., Jan. 17, 1975, S376).

[14] The bill would bar the Department of Justice from requesting tax returns in order to review them for evidence of violations unrelated to enforcement of the Internal Revenue Code. The potential for abuse or disclosure of information for political purposes, and for harassment, is accordingly reduced.

[15] *United States* v. *Cox*, 342 F.2d 167, 171 (5th Cir. 1965), *cert. denied*, 381 U.S. 935; see also *United States* v. *Berrigan*, 482 F.2d 171, 180–181 (3d Cir. 1973).

[16] The suggested amendment would relieve the Joint Committee of the burden of determining when public disclosure of requests for tax returns is advisable. The Committee would retain the authority to determine when the fact of a request should be disclosed to anyone other than the taxpayer whose return has been requested.

If the taxpayer is being considered for appointment to a federal position, the appointing authority may inquire, as noted above in Point II(A), whether the taxpayer filed a tax return for a particular year, and need not give the taxpayer notice of the inquiry. However, if the appointing authority requests the return itself, or information in the return, notice of the request must be given. One possible modification would be to shorten the notice period from 30 days to 15 days in such instances.

wish to verify the applicants' representations by inspecting his or her federal income returns, (2) the applicant is free to consent or refuse to consent to such inspection, and (3) if consent is refused or withdrawn, the agency may not deny the application for that reason unless it can show that it was not able to verify the applicant's representations by other reasonable means.

Finally, it should be made clear that the bill is not intended to enlarge or restrict judicial authority to require the production of income tax returns in litigation between private parties. That question should be left to case-by-case adjudication of the particular need for such evidence, its availability to the parties in some other form, possible prejudice to the taxpayer, and similar considerations.

CONCLUSION

The Privacy Act of 1974, although it provides significant protection to citizens, does not unequivocally prohibit misuse of tax return information. S. 199, the Weicker-Litton bill re-introduced in the 94th Congress, will meet this problem effectively if it is amended, *inter alia*, to add private enforcement rights. It is essential that the present provisions permitting disclosure of confidential tax information be brought into conformity with constitutional guarantees.

COMMITTEE ON CIVIL RIGHTS

Maria L. Marcus, Chairman

Ann Thacher Anderson
Charles R. Bergoffen
Paul H. Blaustein
Franklin S. Bonem
Constance P. Carden
Seymour Chalif
Robert J. Egan
James J. Fishman
Benjamin Ira Gertz
Joel B. Harris
George M. Hasen
David L. Katsky
Alexander A. Kolben
Larry M. Lavinsky
Joseph H. Levie
Edith Lowenstein
Bruce Rabb
Jerry Slater
Willard R. Sprowls
William Sterling, Jr.

Franklin E. White

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0416

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR MONEY DAMAGES

WALTER D. TEAGUE III, NEW YORK, N.Y.

AND

INDOCHINA SOLIDARITY COMMITTEE, NEW YORK, N.Y.
ON BEHALF OF THEMSELVES AND ALL THOSE INDIVIDUALS AND ORGANIZATIONS SIMILARLY SITUATED, PLAINTIFFS

v.

DONALD C. ALEXANDER; RANDOLPH W. THROWER; JOHNNIE M. WALTERS; PAUL H. WRIGHT, JR.; EDWARD D. HUGHES; JAMES J. MCGARTY; WILLIAM F. GIBNEY; CHARLES A. HULBERG; DONALD W. BACON; ROGER V. BARTH; HAROLD E. SNYDER; DONALD O. VIRDIN; RAYMOND F. HARLESS; FRANCIS GEIBEL; JOHN J. FLYNN; PHILLIP GRANITE; LEON GREEN; R. RICHARDS ROLAPP; JOSEPH CLARKSON; ROBERT MARDIN; EDWARD LEVI; CLARENCE M. KELLEY; THOMAS COLL; HESTON C. COLE; HAROLD R. AARON; HOWARD H. CALLOWAY; GEORGE J. KEEGAN, JR.; JOHN L. MCLUCAS; TOM CHARLES HUSTON; JOHN DOE; RICHARD ROE; AND JANE POE, DEFENDANTS

Plaintiffs, by their attorneys, upon information and belief, allege as follows:

I. JURISDICTION

1. This is a class action for declaratory and injunctive relief, and an individual action for money damages, arising under the First, Fourth, Fifth and Ninth

Amendments to the Constitution; Title 42, United States Code, section 1985; and the Internal Revenue Code. The jurisdiction of this Court is invoked under Title 28, United States Code, sections 1331(a), 1340, 1343, 1361, 2201 and 2202 and under Title 5, United States Code, sections 701–706. The matter in controversy, exclusive of interests and costs, exceeds $10,000.

II. INTRODUCTORY STATEMENT

2. The plaintiffs and the classes they represent are individuals and organizations who, because of their political activities, beliefs, and associations, have been subjected to special tax investigations and special tax enforcement actions. They were the targets of a special bureau within the Internal Revenue Service that was established for the purpose of subjecting to special scrutiny those individuals and organizations that were viewed as "dissident", "ideological, militant, subversive, or other. . . ." In the process, that bureau, first known as the Activist Organizations Committee, later the Special Service Staff, assembled information on the political activities of approximately 8000 individuals and 3000 organizations.

III. PARTIES

3. Plaintiff Walter D. Teague, III is a citizen of the United States and a resident of New York City.

4. Plaintiff Indochina Solidarity Committee is an unincorporated association consisting of individuals who have joined together for the purpose of engaging in political activity. From April 1965, when it was formed, until June 1973, it was known as the U.S. Committee to Aid the National Liberation Front of South Vietnam. The purpose of the Indochina Solidarity Committee and its predecessor organization has been to provide information to the American people regarding the Indochina war.

5. Defendant Donald C. Alexander is the present Commissioner of the Internal Revenue Service ("IRS").

6. Defendant Randolph W. Thrower was the Commissioner of IRS from July 1969 to January 1971.

7. Defendant Johnnie M. Walters was Commissioner of IRS from August 1971 to March 1973.

8. Defendant Paul H. Wright, Jr. was Chairman of the Activist Organizations Committee (later called the Special Service Staff) of IRS from August 1969 until it was disbanded in August 1973.

9. Defendants Edward D. Hughes, James J. McGarty and William F. Gibney were the permanent members of the Activist Organizations Committee. Defendant Charles A. Hulberg was a staff member of the Activist Organizations Committee of IRS or its successor organizations.

10. Defendant Donald W. Bacon was Assistant Commissioner of IRS for Compliance.

11. Defendant Roger V. Barth was a Special Assistant, and Deputy Chief Counsel, to the Commissioner of IRS.

12. Defendant Harold E. Synder was Director of the Collection Division of IRS.

13. Defendant Donald O. Virdin was Chief of the Disclosure and Liaison Branch, Collection Division of IRS.

14. Defendant Raymond F. Harless was the Deputy Commissioner of IRS.

15. Defendant Francis Geibel was Assistant Commissioner of IRS for Inspection.

16. Defendant John J. Flynn was the Regional Commissioner of IRS for the North Atlantic Region.

17. Defendant Phillip Granite was a Revenue Officer in the office of the Manhattan District Director of IRS.

18. Defendant Leon Green was Deputy Assistant Commissioner of IRS for Compliance.

19. Defendant R. Richards Rolapp was Chief of the Analysis and Evaluation Section of the Internal Security Division of the Department of Justice.

20. Defendant Joseph Clarkson was an employee of the Internal Security Division of the Department of Justice.

21. Defendant Robert Mardian was Assistant Attorney General for Internal Security.

22. Defendant Edward Levi is the Attorney General of the United States.

23. Defendant Clarence M. Kelley is the Director of the Federal Bureau of Investigation ("FBI").

24. Defendant Thomas Coll was an employee of the Army Intelligence office (OACSI).

25. Defendant Heston C. Cole, Colonel, United States Air Force, was the Chief of Counterintelligence Division, Directorate of Special Investigations.

26. Defendant Harold R. Aaron is the Assistant Chief of Staff for Army Intelligence.

27. Defendant Howard H. Calloway is the Secretary of the Army.

28. Defendant George J. Keegan, Jr. is the Assistant Chief of Staff for Air Force Intelligence.

29. Defendant John L. McLucas is the Secretary of the Air Force.

30. Defendant Tom Charles Huston was an assistant to the President of the United States.

31. Defendants John Doe, Richard Roe and Jane Poe are unknown employees of IRS, the FBI, the Internal Security Division of the Department of Justice, the Department of the Air Force, and other agencies of the federal government that provided information and assistance to, and received information from, the Activist Organization Committee and its successor organizations.

32. Each of the defendants is being sued in his or her individual and official, or former official, capacities. Each defendant held his or her stated position at times relevant to the allegations of this complaint.

Class Action Allegations

33. Plaintiffs bring this action as a class action under Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(c)(4).

34. Plaintiff Teague represents a class composed of approximately 8585 individuals who, because of their political beliefs and activities, were or continue to be subject to special tax enforcement procedures by the defendants.

35. Plaintiff Indochina Solidarity Committee represents a class composed of approximately 2873 organizations whose members and contributors, because of their affiliation with such organizations, were or continue to be subject to special tax enforcement procedures by the defendants.

36. The number of individuals in each of these classes is too large to make joinder practicable.

37. Defendants have acted on grounds generally applicable to each class, thereby making injunctive and declaratory relief appropriate with respect to each class.

38. The claims of the named plaintiffs are typical of the claims of the classes they represent.

39. There are questions of law and fact common to the members of each class in this action. The common questions of fact relate to the selection of the class members for special tax enforcement procedures because of their political beliefs and activities. The common questions of law relate to the constitutional violations that flow from the governmental imposition of burdens upon, and attempts to punish, those whose political beliefs and activities are considered suspect.

40. Plaintiffs will fairly and adequately protect the interests of each class. Plaintiffs are represented by attorneys employed by the American Civil Liberties Union and the New York Civil Liberties Union, privately-funded organizations with sufficient resources to pursue this case to a conclusion. The attorneys are experienced in the area of constitutional litigation. Plaintiffs know of no conflicts of interest among members of the classes with regard to the issues in this case.

IV. INCIDENTS AT ISSUE

Plaintiff Walter D. Teague, III

41. Plaintiff Teague has been an active opponent of United States government policies, particularly foreign policy, since 1964 and has participated in numerous demonstrations against the Vietnam war.

42. Teague was prominently associated with an anti-war organization known as the U.S. Committee to Aid the National Liberation Front of South Vietnam. Teague's activities on behalf of the U.S. Committee were well known to various agencies of the government, from, among other sources, a lawsuit filed by Teague concerning the importation of literature from North Vietnam. *Teague v. Regional Commissioner of Customs*, 404 F. 2d 441 (2d Cir. 1968), *cert. den.* 394 U.S. 977 (1969).

43. Teague's activities were reported in various news media, including a news story in which he was featured that appeared in the July 8, 1968 issue of *New York* magazine.

44. By letter dated August 8, 1973 plaintiff Teague was advised by the Manhattan District Director of IRS that he had been assessed a tax liability for the years 1961 and 1962. An attached examiner's report claimed that he had filed no returns for those years. In fact, he had filed returns for both of those years and paid whatever taxes were due. The amount claimed to be due, including penalty, was $2360.09 for 1961 and $2323.18 for 1962.

45. At Teague's request, a conference was held on November 9, 1973 with Barry H. Glass, Appellate Conferee, in the offices of the Regional Commissioner of IRS for the North Atlantic Region. On information and belief, Glass referred to a file that contained the *New York* magazine article and other information concerning Teague's political activities. At the conference, Teague produced copies of worksheets used in the preparation of his 1961 and 1962 returns as well as a check dated April 15, 1963 in the amount of $83.61 payable to the Internal Revenue Service representing the amount of tax due for that year.

46. By letter dated November 21, 1973 plaintiff Teague was advised that, regarding the years 1961 and 1962, "[n]o further action need be taken because there is no deficiency or overassessment."

47. Plaintiff Teague received another letter dated January 18, 1974 from defendant Granite of the office of the Manhattan District Director of IRS asking him to come to the IRS office to provide information concerning the years 1966 to 1972. Counsel for Teague requested a postponement of that conference. It has not yet been held nor has Teague received any further communications from IRS.

Activist Organizations Committee

48. According to a memorandum from defendant Huston to H. R. Haldeman, a former Assistant to the President of the United States, dated September 21, 1970 (Exhibit A), sometime in early 1969 President Nixon "had indicated a desire for IRS to move against leftist organizations". On July 1, 1969 defendant Huston telephoned defendant Barth to ask what IRS was doing about "ideological organizations". (Exhibit B)

49. The next day various employees of IRS, including defendant Virdin, attended a meeting to discuss "what should be done within the Service to coordinate information presently available on investigations" which concerned "ideological organizations". (Exhibit C)

50. On July 18, 1969, defendant Bacon notified various high officials within IRS, including the directors of all "Compliance" divisions, that a "Committee is being established to coordinate activities in all Compliance Divisions involving ideological, militant, subversive, radical, and similar type organizations . . . to insure that the requirements of the Internal Revenue Code concerning such organizations have been complied with". (Exhibit D) The same memorandum announced the appointment of defendant Wright as Chairman of the Committee.

51. On July 24, 1969, defendants Wright, Gibney, McGarty and Virdin, together with other employees of IRS, met to establish a special task force, the Activist Organizations Committee ("AOC"), later to be called the Special Service Group and, finally, the Special Service Staff ("SSS"). It was decided at this meeting that the Activist Organizations Committee would "assemble", "analyse" and "disseminate" information regarding individuals and organizations considered to be "ideological, militant, subversive, or other . . .". (Exhibit E–1 to E–2) Defendants Wright, Gibney and McGarty, and later defendant Hughes, were named "permanent" members of the AOC. It was also decided that ". . . although the fact that [the AOC] exists will become known, its activities should be disclosed generally to only those persons who need to know, because, . . . [should] news media . . . be alerted to what we are attempting to do or how we are operating . . . the disclosure of such information might embarrass the Administration. . . ." It was not until April 14, 1972 that the existence and activities of the Activists Organizations Committee (by then called the Special Service Staff) were made generally known within the Internal Revenue Service by reference thereto in the Internal Revenue Service by reference thereto in the Internal Revenue Manual. (Exhibit F)

52. A July 31, 1969 memorandum from defendant Virdin praised defendant Snyder's selection of Paul Wright as Chairman of the AOC. The memorandum

concluded: "I visualize the day—perhaps three years from now—when Paul and his group will be called to the White House to receive a Special Award from the President for the tremendous job they have done!" (Exhibit G)

53. An August 20, 1969 memorandum from defendant Wright to defendant Green (Exhibit H) characterized the groups on which the AOC would collect information as "predominantly dissident or extremist in nature. . . ." In addition to information gathering, defendant Wright said that the AOC would "[i]nitiate recommendations for I.R.S. field enforcement actions through the Compliance Divisions, principally Audit, Collection, Intelligence, A.T. & F. [Alcohol, Tobacco & Firearms]."

54. In a September 19, 1970 memorandum to defendant Huston, defendant Thrower stated that the "sole objective of the Special Service Group [the successor of the AOC and the predecessor of the SSS] is to provide a greater degree of assurance of maximum compliance with the Internal Revenue laws by those involved in extremist activities and those providing financial support to these activities". According to this same memorandum, the "identification of organizations and individuals" by the AOC was "directed to the notoriety of the individual or organization and the probability of publicity that might result from their activities and the likelihood that this notoriety might result in inquiries regarding their tax status. . . ." (Exhibit I)

55. A presentation made to a July 24, 1969 AOC organizational meeting (Exhibit J–1 to J–2) conceded that "from a strictly revenue standpoint, we may have little reason for establishing this Committee or expending the time and effort which may be necessary, but we must do it. We have otten too much adverse publicity about exempt organizations. . . ."

56. On August 8, 1969 defendant Bacon, acting on behalf of the AOC, wrote to Special Agent Patrick D. Putnam requesting that the FBI transmit to the AOC its list of "various organizations of predominantly dissident or extremist nature and/or people prominently identified with these organizations". (Exhibit K) The FBI provided the list and subsequently transmitted further information to the AOC on a regular basis, including the names of contributors to organizations under IRS scrutiny.

57. On October 1 and 7, 1969 defendant Hulberg met with representatives of the Department of Justice Civil Disturbance Group in order to obtain data concerning political activists and organizations. (Exhibits L and M) The Civil Disturbance Group subsequently provided that data for use by the AOC.

58. On October 7, 1969 defendant Gibney requested the Army Intelligence office to provide information concerning political activists and organizations, which information was subsequently provided defendant Gibney by defendant Coll.

59. In a November 24, 1969 memorandum to all Regional Commissioners defendant Bacon discussed the functions of the AOC and requested that information concerning certain listed organizations be sent to the committee. Among the organizations listed was the U.S. Committee to Aid the National Liberation Front of South Vietnam (now the Indochina Solidarity Committee). The memorandum sought information that "will give us an overall picture of the organization, its motives, its activities, its attitude, its size, and its impact on the general public".

60. On December 4, 1969, defendant Bacon wrote defendant Cole, then Chief of the Counterintelligence Division, Directorate of Special Investigations, United States Air Force, requesting that AOC be placed on the agency's "dissemination list" for information relating to the "funding of various organizations of predominantly dissident or extremist nature and/or people prominently identified with these organizations". Defendant Cole replied by letter dated December 17, 1969 that the requested information would be provided by William Lackey of the Counterintelligence Division. (Exhibits N and O) Such information was thereafter provided by Major Lackey and his agents.

61. At an April 10, 1970 meeting, defendant Virdin told defendant Green that the FBI requested permission to give the White House a list of contributors to a radical student group that IRS had provided for the FBI. Defendant Green authorized the release of the list to the White House.

62. By a memorandum dated August 14, 1970 defendant Huston requested a progress report on IRS activities concerning "Ideological Organizations". Defendant Thrower furnished that report on September 19, 1970.

63. At a meeting on March 25, 1971, according to a memorandum from defendant Rolapp to defendant Mardian (Exhibit P), defendant Wright and other de-

fendants in the employ of IRS requested of officials of the Internal Security Division ("ISD") of the Department of Justice, including defendant Rolapp, that the ISD provide the AOC with the names of "extremist" individuals known to the ISD. Defendant Rolapp agreed and the ISD subsequently furnished the AOC with its "civil disobedience" list, which contained the names of approximately 16,000 individuals.

64. A confidential memorandum prepared for the Biennial Meeting of Regional Commissioners at Charlottesville, Virginia, November 1 and 2, 1972 and entitled "Special Service Staff: Its Origin, Mission, and Potential" (Exhibit Q–1 to Q–3) stated: ". . . we are confronted with highly organized and well-financed groups bent on destroying our form of government and they are moving very carefully, step by step, following well-laid plans. Probably, their number one goal at this point is to erode, and eventually destroy, our entire tax system." Among the individuals and organizations on whom SSS had collected information were those who "print and distribute publications advocating revolution against the government of this country", participate in "alleged peaceful demonstrations", "destroy and burn draft cards", "participate in and organize May Day demonstrations", and "organize and attend rock festivals. . . ." The memorandum then described how this information was to be used in tax investigation and enforcement procedures.

65. The substance of that memorandum was incorporated by defendant Flynn, regional director of the North Atlantic region, in a memorandum to the district directors within his jurisdiction, dated December 18, 1972, advising them about the "mission" of the SSS (Exhibit R) and encouraging the utilization of "field personnel" to assist SSS in its mission. The district office in which plaintiff Teague filed his returns was located in defendant Flynn's jurisdiction.

66. The AOC eventually developed and maintained at least 8585 files relating to individuals and 2873 files relating to organizations, of which 144 individual files and 90 organizational files were referred to revenue agents for further action.

67. On August 9, 1973 defendant Alexander announced that the SSS would be "disbanded" because the "tasks now being performed by the Staff can be handled efficiently by other components of the Service as a part of their regular enforcement activities." (Exhibit S)

68. According to an IRS file titled "Phase-in and Phase-out Draft Materials", dated November 5, 1973, 1882 SSS files on individuals and 672 files on organizations were "selected in"; that is, retained and referred to the appropriate IRS division for continued audit or collection activities.

69. Pursuant to the policies and directives described above, the defendants and their agents, acting together, and through and in cooperation with the AOC and the SSS, have collected, maintained and disseminated information concerning the political beliefs and activities of plaintiffs and the classes they represent, which information has been and continues to be used to initiate special tax investigations and enforcement procedures against the subject individuals and organizations.

70. The activities of the defendants described above were undertaken not for legitimate tax enforcement purposes but rather for the purpose of punishing, harassing, and burdening individuals and organizations whose political beliefs, activities and associations were disapproved.

71. Defendants Thrower, Walters, Wright, Hughes, McGarty, Gibney, Hulberg, Bacon, Barth, Snyder, Virdin, Harless, Geibel, Flynn, Granite, Green, Rolapp, Clarkson, Mardian, Coll, Cole, Huston, Doe, Roe and Poe, acting together and in concert, were each personally involved in the conspiracy herein alleged, thus entitling plaintiffs to compensatory damages against the above-named defendants.

72. The defendants named in paragraph 71 acted intentionally, willfully, maliciously, in bad faith, and in knowing or reckless disregard of the plaintiffs' constitutional rights, thus entitling the plaintiffs to punitive damages against these defendants.

V. CAUSES OF ACTION

73. The defendants and their agents have violated and continue to violate the First Amendment rights of the plaintiffs and the classes they represent by subjecting them to special tax investigation and enforcement procedures because of their political beliefs, activities and associations.

74. The defendants have violated the rights of the plaintiffs and the classes they represent to due process and equal protection of the laws, guaranteed by the Fifth Amendment, by subjecting them to special and unequal tax investigation

and enforcement procedures because of their political beliefs, activities and associations.

75. The activities of the defendants violated the Fourth, Fifth, and Ninth Amendments rights of the plaintiffs and the members of the classes they represent to be free of unreasonable governmental invasions and abridgements of their personal and associational privacy.

76. The activities of the defendants constituted a conspiracy to deprive the plaintiffs and the classes they represent of the equal protection of the laws in violation of Title 42 United States Code, Section 1985.

77. The examinations and investigations of plaintiffs conducted by defendants were unnecessary to further legitimate tax purposes and therefore violated 26 U.S.C. § 7605(b).

78. Plaintiffs and the members of the classes they represent have suffered and will continue to suffer deprivation of their constitutional rights unless granted the relief prayed for in this Complaint. Plaintiffs have no plain, adequate or complete remedy at law against the policies and practices of defendants. Injunctive and declaratory relief is the only relief that will adequately protect the rights of plaintiffs and the classes they represent.

WHEREFORE, plaintiffs demand judgment as follows:

A. A declaratory judgment that the policies, practices and activities of the defendants as set forth above violated the First, Fourth, Fifth, and Ninth Amendment rights of the plaintiffs and the classes they represent and are in violation of the statutory authority of the Internal Revenue Service.

B. A permanent injunction enjoining the defendants and their agents and successors employed by the IRS from:

1. Collecting, maintaining and disseminating information that relates to the political beliefs, activities and associations of plaintiffs and the classes they represent;

2. Initiating or conducting special tax investigation or enforcement procedures against individuals or organizations because of the nature of their political beliefs or activities;

3. Continuing to conduct tax enforcement or collection actions against the "phased-in" subject of AOC files.

C. A permanent injunction enjoining those defendants and their agents and successors employed by the FBI, the Justice Department, Army Intelligence, and the Counterintelligence Division of the Department of the Air Force from transmitting to employees of IRS information that relates to the political beliefs, activities and associations of plaintiffs and the classes they represent.

D. A mandatory injunction and writ of mandamus ordering defendant Alexander to:

1. Produce before this Court all files, records, papers, tapes and reports maintained by IRS that identify the political beliefs, activities or associations of individuals or organizations and to destroy such information or data as the Court finds to be unrelated to the proper administration of the tax laws;

2. Send to all individuals and organizations that were the subject of AOC files notice of this Court's judgment and of their right to pursue appropriate legal action.

E. That plaintiff Teague be awarded compensatory damages of $15,000 against the defendants named in paragraph 71 and that such defendants be held jointly and severally liable for such damages.

F. That plaintiff Teague be awarded punitive damages of $20,000 against each of the defendants named in paragraph 71.

G. That plaintiffs have judgment for their reasonable costs and attorneys fees.

H. Such other relief as the Court shall deem just and proper under the circumstances.

Respectfully submitted.

THOMAS F. FIELD,
Of Counsel.
MELVIN L. WULF,
ALAN H. LEVINE,
THOMAS R. LITWACK,
NEW YORK CIVIL LIBERTIES UNION.
JOHN H. F. SHATTUCK,
LEON FRIEDMAN,
AMERICAN CIVIL LIBERTIES UNION.
Attorneys for Plaintiffs.

EXHIBIT A

EXHIBIT No. 42

THE WHITE HOUSE,
Washington, September 21, 1970.

Memorandum for: H. R. Haldeman.
Subject: IRS and ideological organizations.

I am attaching a copy of a report from the IRS on the activities of its "Special Service Group" which is supposed to monitor the activities of ideological organizations [e.g., Jerry Rubin Fund, Black Panthers, etc.] and take appropriate action when violations of IRS regulations turn up. You will note that the report is long on words and short on substance.

Nearly 18 months ago, the President indicated a desire for IRS to move against leftist organizations taking advantage of tax shelters. I have been pressing IRS since that time to no avail.

What we cannot do in a courtroom via criminal prosecutions to curtail the activities of some of these groups, IRS could do by administrative action. Moreover, valuable intelligence-type information could be turned up by IRS as a result of their field audits.

TOM CHARLES HUSTON.

EXHIBIT B

AUGUST 14, 1970.

Memorandum: Roger V. Barth, Assistant to the Commissioner, IRS.
Subject: Ideological organizations.

Could you give a progress report on the activities of the Compliance Divisions in reviewing the operation of Ideological Organizations?

I would be interested in knowing what progress has been made since July 1, 1969, when we first expressed our interest in this matter.

Thank you.

TOM CHARLES HUSTON.

EXHIBIT C

CP:C:D
JULY 2, 1969.

Memorandum for file:
Subject: Ideological Orangizations.

A meeting was held in the office of the Assistant Commissioner (Compliance) at 10:00 A.M. this morning to discuss this subject. Present were: Mr. Bernard L. Meehan, CP; Mr. William A. Kolar, CP:I; Mr. Gilbert F. Haley, CP:I:O; Mr. Thomas F. Casey, CP:AT:E, Mr. Donald F. Bloom, CP:A:O; and myself.

The purpose of the meeting was to discuss what should be done within the Service to coordinate information presently available on investigations being conducted by various Compliance activities of organizations which might fall within this classification. The discussion revealed that, although each Compliance activity had certain information, there was no real effort to coordinate such data. Indeed, information on one organization based in San Francisco might be detailed to a greater extent on files kept in Cincinnati.

There was general agreement that the following things should be done:

1. A National Office task force or group should be established that would collect basic information on all these organizations and would see that there was coordination between all Compliance activities, Technical, and Chief Counsel. In charge of this group would be a high grade official, perhaps someone who had been through the ID program. If necessary, someone would be brought in from the field. Each Compliance activity would have a representative and each representative would be expected to devote full time to the task force so long as was necessary.

2. The group that met today will meet again on Tuesday, July 8, at 9:30 A.M. in room 3049. At that time we will have prepared a draft of a memorandum to the field requesting information on those organizations which have been identified as belonging in this category. The memorandum will ask for information in a specific format similar to Assistant Commissioner Bacon's memorandum of March 25.

3. As information is assembled by the task force, files will be established on each organization. In addition, Data Processing will be asked to participate with a view of key-punching the information so it can be extracted by Data Processing.

4. We will attempt to prepare or obtain a definition of the term "ideological organization."

5. The chairman of the task force will establish liaison with the Assistant Attorney General, Internal Security Division, Department of Justice, and will coordinate matters with that Division in the same fashion that the Intelligence Division now coordinates OCD matters with the Criminal Division of Justice.

6. Although the term "group" or "task force" is used in this memorandum, it may require a much broader concept similar to the present Strike Force operations in the OCD activity. The task force will have central records containing a summary of information on all organizations which will be available for use in the National Office or in connection with any field investigations.

7. Since the Department of Justice Internal Security Division has a primary responsibility of determining what organizations might fall in this category, it will be necessary to determine from that Department additional information as needed. It will also be necessary to obtain that Department's approval in writing of any investigation which is not solely initiated because of possible IRS violations.

8. Initially, the task force chairman will have the responsibility of deciding which organizations are to be investigated, what type of investigation is to be made, and to determine that appropriate coordination with all field activities is effected.

9. Each Compliance division will be asked to name a representative to be permanently assigned to this task force until released. The basic use of this task force initially will be as an intelligence gathering operation and a promoter of coordination between the several field activities.

10. A meeting with Mr. Philip R. Manuel, a representative of the Senate Committee on Government Operations, relating to this type of organization, is to be held at 9:30 A.M., June 29, 1969.

D. O. VIRDIN.

EXHIBIT D

JULY 18, 1969.

Memorandum to: Assistant Commissioner (Data Processing); Assistant Commissioner (Technical); Chief Counsel; and All Compliance Division Directors.

From: Assistant Commissioner (Compliance) CP:DFC.

Subject: Activist Oranizations Committee.

A Committee is being established to coordinate activities in all Compliance Divisions involving ideological, militant, subversive, radical, and similar type organizations; to collect basic intelligence data; and to insure that the requirements of the Internal Revenue Code concerning such organizations have been complied with. It is expected that the Committee will function indefinitely.

Mr. Paul H. Wright, Jr., of the Collection Division will act as Chairman of this Committee, and an organizational meeting will be held in room 3049 at 9:30 a.m., Thursday, July 24, 1969. Please designate someone to attend. We will need permanent representatives from Audit; Collection; Alcohol, Tobacco, and Firearms; and Intelligence Division. Mr. Donald Cowles of my staff will work with the Committee and will coordinate the activities of the group with representatives from Chief Counsel, Data Processing, and Technical.

Arrangements are being made for space, secretarial, and clerical support. We hope to be in operation on a full-time basis beginning August 1, 1969.

D. W. BACON,
Assistant Commissioner (Compliance).

EXHIBIT E

DISCLOSE ON NEED-TO-KNOW BASIS ONLY

CP:C:D
JULY 24, 1969.

Memorandum for file.
Subject: Activist Organizations Committee.

In response to Assistant Commissioner Bacon's memorandum of July 18, 1969, the following persons attended the organizational meeting today:

Mr. Paul H. Wright, CP:C.
Mr. Donald F. Cowles, CP.
Mr. Charles E. Fink, D:O:P.
Mr. William F. Gibney, CP:I:O.
Mr. Richard M. Hahn, CC.
Mr. Gilbert F. Haley, CP:I:O.
Mr. Thomas W. Hines, CP:AT.
Mr. Paul L. Kane, T:MS:EO.
Mr. James J. McGarty, CP:A.
Mr. Bernard L. Meeham, CP.
Mr. Richard T. Stockton, T:I:I—P. Rep
Mr. Walter R. Stumpf, CP:AP:SA.
Mr. Donald O. Virdin, CP:C:D.
Mr. Donald F. Durkin, OIO—through McGowan.

The purpose of the meeting was to establish basic communications between the various functions of the Service and to furnish an overall picture of the purpose and sensitivity of this Committee. The following were the principal terms mentioned:

1. This is an extremely important and sensitive matter in which the highest levels of government are interested and in which at least three Congressional committees are currently conducting investigations. In addition, the Internal Security Division, Department of Justice, and the Federal Bureau of Investigation have files on many of these organizations.

2. To indicate the type of organization in which we are interested, each person attending was furnished the memorandums to all Regional Commissioners dated July 14, 1969, and March 25, 1969, from Assistant Commissioner Bacon. These lists, which identified 77 specific organizations, will give some idea of the reality and importance of this project.

3. Reports which have been received in response to these memorandums from Regional Commissioners indicate that many Compliance activities have some facts about various organizations but there has not been coordination between compliance activities or other parts of the Service to the extent that is necessary to insure that all Internal Revenue Service Laws have been complied with. Alcohol, Tobacco and Firearms Division is conducting investigations of many of these organizations; the Intelligence Division has much material on others; the Audit Division has examined or investigated several of the organizations; and the Collection Division has failure to file investigations underway on others.

4. Some organizations should have filed income tax returns but have not done so; others may be liable for payroll tax returns but have failed to file.

5. Some of these organizations may be a threat to the security of the United States and one of our principal functions will be to determine the sources of their funds, the names of the contributors, whether the contributions given to the organizations have been deducted as charitable contributions, what we can find out generally about the funds of these organizations.

6. The Federal Bureau of Investigation has prepared monographs on many of these organizations and has files on most of them. That agency will be requested to furnish data to the Committee. Also, the Senate Committee on Government Operations has much information, including charts showing the organizations' structure, membership, and some indication as to the source of funds.

7. Notwithstanding the fact that we will cooperate with and obtain information from outside sources, this Committee will not conduct joint investigations. Our principal purpose will be to coordinate the activities within the Compliance organization to insure that all information available throughout the United States is collated and made available to the appropriate compliance division conducting the investigation of the organization.

8. A review of the files assembled in the National Office on some of these organizations shows Communistic infiltration and indicates that there is a proliferation of the activities of some organizations; that is, they have many local units and may have suborganizations under other names.

The Committee plans to start functioning about August 1, 1969, and its principal actions will be:

1. To assemble the data that has been received and will be received from the regions and various National Office functions.

2. Analyze the data to determine what action should be taken.

3. Disseminate the information to the appropriate Compliance activity for appropriate field investigation, if necessary. In doing this, the Committee will not take over the function of any Compliance activity. Thus, if the principal thrust of the investigation should be by Alcohol, Tobacco and Firearms Division, that Division will be furnished the data and will be expected to take such action as may be necessary in coordination; with other Compliance activities. If the matter appears to be one for Intelligence or Audit, the Division having the principal interest in the matter will assume the primary field investigative function.

4. All parts of the Service are interested. Thus, we may have some of these organizations who claim to be political parties and we will need the Chief Counsel's guidance and advice because of the extremely delicate and sensitive nature, and the unanswered questions, as to what should be done. Data Processing may be asked to use their resources, if necessary, where filing records are needed or where it is found necessary to use their data processing capabilities in this work. The Office of International Operations is affected because some of these organizations have members or activites outside the United States. The Appellate Division already has some cases pending, and it is expected that many others may reach that level. Thus, we cannot say that any part of the Service will not be asked to participate actively in this matter.

5. It was pointed out that although the fact that this Committee exists will become known, its activities should be disclosed generally only to those persons who need to know, because of its semi-secretive nature. Indeed, action is being taken to obtain top secret clearance for the full-time Committee members. Our files will be protected with usual intelligence type security. We do not want the news media to be alerted to what we are attempting to do or how we are operating because the disclosure of such information might embarrass the Administration or adversely affect the Service operations in this area or those of other Federal agencies or Congressional committees.

6. Because of the type of organizations involved, we would expect the Exempt Organizations Branch of the Audit Division to play an active part. Also, the Income Tax Division and the Miscellaneous and Special Provisions Tax Division will also be active participants. We estimate that it will take the four Divisions represented on the Committee and their secretarial and clerical support about four months to assemble the data and to really initiate actions that we plan to take.

7. The permanent Committee will be composed of Mr. Paul H. Wright, Chairman, CP:C; Mr. William F. Gibney, CP:I:O; Mr. James G. McGarty, CP:A; and a member to be designated by Alcohol, Tobacco and Firearms Division.

8. In addition to the permanent members, each activity represented at this organizational meeting was asked to advise the Chairman as to the permanent representative who would be contacted for advice, coordination, special meetings, etc.

9. It is emphasized that this Committee will only coordinate and recommend action to be taken. Each division will still do its own work. Thus, the Committee will recommend to the functional division that it has developed certain information which appears to warrant investigation, but it is up to the division concerned to take any action deemed necessary.

10. The permanent Committee will meet in Room 3049 at 9:30 A.M. Tuesday, July 29, 1969, to discuss generally what we plan to do with Mr. Philip R. Manuel, a representative of the Senate Committee on Government Operations. Other members in attendance today may participate if they desire.

11. Because we have limited resources in money and manpower, we must make the most effective use of our information. We cannot waste our efforts; we have

to hit the high spots. The tentacles of some of these organizations are so far reaching that it would take an exorbitant amount of our resources if we did everything that could be done. Thus, the decisions concerning any field investigations or other activities must be made with this thought in mind. The type of organization in which we are interested may be ideological, militant, subversive, radical, or other, and one of our first problems will be to define and to determine what kind of organization we are interested in. We have a general idea as set forth in the lists which have been given you, but we have not made any final decision.

12. In effect, what we will attempt to do is to gather intelligence data on the organizations in which we are interested and to use a Strike Force concept whereby all Compliance divisions and all other Service functions will participate in a joint effort in our common objective.

13. As soon as permanent space has been assigned, all members will be advised promptly. Meanwhile, any questions should be referred to Mr. Paul H. Wright, Chairman, on Extension 3897, or may be sent to Room 5242.

D. O. VIRDIN.

[*Note.*—A copy of this memorandum has been delivered to each person attending the meeting.]

EXHIBIT F

INTERNAL REVENUE MANUAL

ORGANIZATION AND FUNCTIONS OF THE INTERNAL REVENUE SERVICE, APRIL 14, 1072

* * * * * * *

1113.654 Special Service Staff

As a staff activity, assists the Director, Collection Division in conducting the overall mission of the Collection Division by serving as a central information gathering facility consolidating data and making appropriate dissemination of information relevant to tax enforcement. In carrying out this basic responsibility the following functions are performed:

Accumulates information which involves indications that organizations (and their principals) may ignore or willfully violate tax or firearms statutes.

Determines, through various sources of information, financial data relative to the funding of certain activities and by analyzing the available data recommends field actions needed to review the tax filing and paying required taxes of organizations and individuals involved.

Prepares and forwards to district offices, attention Collection function, résumés of information consolidated on individuals and organizations where determinations have been made that federal tax filing and paying requirements under the jurisdiction of the Collection Division has not been met.

Refers to Director, Audit Division, résumés of information on individuals and organizations where possible tax evasion schemes may be employed by donors ducted, when Special Service Staff file analysis indicates a material difference exists between the tax listed on a field return and the correct liability.

Accumulates and analyzes data relating to contributions made to tax exempt organizations where possible tax exasion schemes may be employed by donors and donees funneling such contributions to non-exempt organizations. Initiates appropriate field actions on such matters when appropriate.

Monitors and coordinates field assignments initiated by the Special Service Staff and evaluates the effectiveness of compliance actions taken. Initiates follow-up actions when necessary.

Maintains liaison with Assistant Commissioner (Technical) reviewing files and providing supplemental information to Exempt Organizations Branch, Technical, on various organizations which have exempt status actions under consideration.

Conducts day-to-day liaison with other Internal Revenue Service components forwarding and receiving information pertinent to tax and firearms statutes enforcement actions, or any other information associated with a tax administration.

Maintains day-to-day liaison with other federal investigative and law enforcement agencies and Congressional investigative committees.

* * * * * * *

EXHIBIT G

INTERNAL REVENUE SERVICE,
July 31, 1969.

To: Mr. Snyder.
Re: Activist Organizations Committee.

Thank you for listening to my concern about getting this Committee "off the ground". Notwithstanding this morning's call from the third floor, or my earlier discussion with you, Paul is moving in the right direction. You have selected a person who will be a powerful, dedicated, and enthusiastic Chairman. He conducts meetings exceedingly well. He does nothing to upset any person present, and is very diplomatic and knowledgeable as to the conflicting personalities involved. My past meetings with him, and particularly my discussions with him today, have convinced me that, perhaps for the first time, he has a responsibility where he will really be able to use all the training and knowledge he has received. I visualize the day—perhaps three years from now—when Paul and his group will be called to the White House to receive a Special Award from the President for the tremendous job they have done!

DON VIRDIN.

EXHIBIT H

AUGUST 20, 1969.

Memorandum to: Mr. Leon Green.
From: Paul H. Wright.
Subject: Briefing Paper—Activist Organizations Committee.

The Activist Organizations Committee is a National Office task group formed to collect relevant information on organizations predominantly dissident or extremist in nature and on people prominently identified with these organizations.

Many of the organizations are controversial, all are newsworthy and a large number are known to be militant, revolutionary and subversive.

The committee's charter is to:

(1) Act as a central intelligence gathering facility to consolidate any vital data available within I.R.S. and any obtainable from other investigative or law enforcement agencies.

(2) Disseminate information relating to field actions already underway where the central file data will assist in carrying out field effort—thereby helping to conserve manpower resources by eliminating repetitious or over-lapping investigations or examinations.

(3) Initiate recommendations for I.R.S. field enforcement actions through the Compliance Divisions, principally Audit, Collection, Intelligence, A.T. & F.

(4) Attempt to determine sources of funds flowing into the organizations.

(Cursory examination of available files reveals militant and revolutionary organizations have received financial support from Federal funding (poverty programs) and many are subsidized by funds furnished by tax-exempt organizations—religious and private foundations).

The committee has been in session since August 5th, 1969. Its initial task is to assemble files on a list of 77 organizations on which requests for field information were made by the Assistant Commissioner—Compliance on March 25 and July 14, 1969.

The March 25th list represented organizations currently the subject of investigations by the Senate Committee on Government Operations.

The Activist Organizations Committee has established liaison with the FBI, the Department of Justice—(Security and Criminal Divisions), and the McClellan Committee. This liaison has established committee procedures and arrangements for obtaining file data relating to the various organizations and people identified with them as principals, leaders, etc.

Thus, existing I.R.S. information will be consolidated and substantially expanded from other sources and will over a period of time represent a massive central intelligence file for use in initiating and facilitating I.R.S. actions.

The committee is operating under "Red-Seal" security precautions in Room 3049. The committee is composed of a chairman, and one representative each from Audit, Collection, Intelligence and A.T. & F.

An organization meeting was held July 24, 1969 attended by the committee members and a representative from A.D.P., Technical and Chief Counsel. At

this meeting the purpose of the committee was announced and lines of communication established with those activities which do not have permanent representation on the committee. Minutes of the meeting were distributed the following day to all who attended under a cautionary "Disclose on Need to Know Basis Only."

The most immediate problem facing the committee is the extreme proliferation of files resulting from preliminary examination of data submitted on the 77 organizations.

Many organizations have sub, and sub-sub structures, "splinter-groups" and operate under a number of name entities. Also a typical file reveals other organizations not previously identified where there is field knowledge of extremist, military or revolutionary activity.

Many organizations are highly structured. In example the . . . has a Prime Minister, Ministers and Deputy Ministers of Defense, Information, Finance, Research, Education, Justice, Chiefs of Staff, Chairmen, Captains, Lieutenants and Area Leaders. It is also structured with a National Headquarters, a New York Region, a Bay Area Region, a New Jersey Region, etc. Approximately 500 names have been identified with these upper-structure positions. The "soldiers" apparently number into the thousands.

After only two weeks of activity the committee is now dealing with over 700 organization or individual names where there is ample evidence of activities involving arson, fire-bombing, civil disorders, accumulation of illegal firearms, stores of ammunition, printing and distribution of publications advocating revolution against the government of this country.

This is a very challenging and substantial undertaking and to be effective will require support and assistance by all activities of I.R.S.

PAUL H. WRIGHT.

EXHIBIT I

SEPTEMBER 19, 1970.

Memorandum for: Hon. Tom Charles Huston, The White House.
From: Commissioner of Internal Revenue.

In response to your memorandum dated August 14, 1970, we have prepared the attached status report on the Special Service Group. I would stress that knowledge of the existence and operations of this Group should be carefully limited.

RANDOLPH W. THROWER.

STATUS REPORT ON SPECIAL SERVICE GROUP

In August 1969 the Senate Committee on Government Operations held open hearings on several controversial organizations, including the Black Panther Party, Student National Coordinating Committee, Republic of New Africa, and Students for Democratic Society. Information developed during these hearings established that various organizations, categorized as extremists on the right or left, presented problems to the Internal Revenue Service in that the organizations and individuals involved in the organizations were not in compliance with Internal Revenue laws. Information developed in these hearings indicated that extremist organizations were receiving financial support from various sources. Some of the individuals involved in the forefront of these organizations filed tax returns reflecting very nominal income, or did not file at all, although they were obviously expending substantial amounts of funds.

Recognizing the responsibilities of the Internal Revenue Service to administer taxing statutes without regard to the social or political objectives of individuals or organizations, a decision was made to establish a method of accumulating and disseminating information on all activist groups to insure that the organizations and the leaders of the organizations are complying with Internal Revenue laws.

In the National Office of the Internal Revenue Service, functioning under the Assistant Commissioner (Compliance), a special compliance group was established to receive and analyze all available information on organizations and individuals promoting extremist views and philosophies. The identification of organizations and individuals included in the program is without regard to the philosophy of political posture involved; rather, it is directed to the notoriety of the individual or organization and the probability of publicity that might

result from their activities and the likelihood that this notoriety would lead to inquiries regarding their tax status. Another important consideration was the degree of probability that the individuals might be deliberately avoiding their tax responsibilities.

The staff responsible for this activity was first designated as the Activist Organizations Group, but it recently was changed to "Special Service Group" to avoid any erroneous impression of its objectives. The function of the Special Service Group is to obtain, consolidate and disseminate any information on individuals or organizations (including major financial sponsors of the individuals or organizations) that would have tax implications under the Internal Revenue laws. Liaison has been established with all investigative and law enforcement agencies and with Senate and House Investigating Committees. The Group also subscribes to various underground publications as a source of information on matters involving taxable income of individuals, activities or organizations having or seeking tax exempt status, and identity of individuals or exempt organizations providing financial support to activist groups.

In the case of "financial support" our interest is to be able to determine that donors do not receive tax benefit from the financial assistance where such benefit is not clearly allowable by law.

As information is accumulated on the activities or financial support of particular organizations or taxable income of individuals it is referred to the appropriate field office of the Internal Revenue Service for enforcement action. Field offices may be asked to investigate the activities of organizations which have been held to be exempt as charitable organizations; they may be asked to investigate the income tax liability of individuals who have openly expended substantial sums of money without obvious means of support or they may be asked to investigate alleged violations of the firearms statutes falling within the jurisdiction of the Alcohol, Tobacco and Firearms Division.

It is important to note that although various types of information about organizations or individuals is obtained by the Service from cooperating agencies, only that information relating to tax status is recorded and disseminated to field offices. The sole objective of the Special Service Group is to provide a greater degree of assurance of maximum compliance with the Internal Revenue laws by those involved in extremist activities and those providing financial support to these activities.

To date the efforts of the Special Service Group has been confined to manual compilation and consolidation of information on approximately 1,025 organizations and 4,300 individuals. Data on 26 organizations and 43 individuals has been referred to the field for enforcement action. While it is still too early to have completed many of the field investigations, criminal investigations are under way on 4 individuals and 1 organization. Delinquent tax returns have been obtained from 2 organizations with combined tax liability of $29,559. On the basis of information furnished by this "group" application for exempt status has been denied to 8 organizations. It is the view of officials of the Internal Revenue Service that this "intelligence" activity and field enforcement is necessary to avoid allegation that extremist organizations ignore taxing statutes with immunity.

EXHIBIT J

JULY 24, 1963.

Subject: Activist Organization Committee.

As we meet today for the purpose of organizing this Committee and establishing the rules under which we will operate, I though we should give you some of our thoughts, hopes, and plans.

First, it should be emphasized that this is an extremely important and sensitive matter in which the highest levels of Government are interested. In addition, several Congressional committees—the House Committee on Internal Security, the Senate Committee on Government Operations, and the Subcommittee on Internal Security of the Senate Committee on the Judiciary—all are interested in organizations of the ideological, militant, subversive, or radical type. One of our first problems is to define or to determine what kind of organization we are interested in. We have a general idea, but we have no fixed limits. However, the list of organizations which has been distributed to you at this meeting will give you an idea of what we plan to look into.

We have received information from Regional Commissioners on 22 of these organizations and have requested data on 55 others. This information must be analyzed, digested, and acted upon. If delinquency investigations for failure to file tax returns should be made, the Committee will make the decision and request an appropriate investigation. If there appear to be any violations which would subject the organization to criminal prosecution, the Intelligence Division will be asked to undertake such an investigation; and, of course, with the enactment of the Gun Control Act of 1968, the Alcohol, Tobacco and Firearms Division has a real interest in many of these organizations. From the data we have assembled thus far, it appears that that Division has a great amount of data.

One of our primary purposes will be to coordinate matters between Compliance divisions. For example, although the Black Panthers are headquartered in San Francisco, they have offices throughout the country. Intelligence Division has some data, but very little, while Alcohol, Tobacco and Firearms has much information. All this must be coordinated, summarized, and acted upon. As another example, we have SNCC headquarters in Atlanta. An agent has been investigating this organization for years, and only recently traveled to Washington, New York, and elsewhere to get other data. With the establishment of this Committee, it should be easier to initiate collateral investigations and to coordinate the activity throughout the country.

The FBI has much data and has prepared monographs on many of these organizations. We have asked the Intelligence Division representatives to obtain whatever information he can from the FBI on the 77 organizations presently identified.

Next Tuesday, July 29, we are to meet with a representative of the Senate Committee on Government Operations. We, of course, must be careful what we say to Congressional committees because of the disclosure statutes. However, we may be able to get valuable information from this Committee and perhaps others relating to these organizations.

As we get further into the activities of these organizations, we will be able to identify the members or principal financial backers and will ask Data Processing to run filing checks on the individuals. One of our principal functions will be to determine the sources of the funds of these operations: Where do they get their money? Who contributes it? Do the people who contribute it claim it as deductions, even though most of these organizations are not exempt from income tax? Are the organizations required to file income tax returns? Have they filed such returns? Have they filed payroll tax returns? Do they file information returns?

In another area we must be particularly careful. At least one or more of these organizations apparently consider themselves to be political organizations. This is an extremely delicate and sensitive area and the Chief Counsel will have no provide guidance. We certainly must not open the door to widespread notoriety that would embarrass the Administration or any elected officials. This is one of the reasons why we are not publicizing this Committee except as such publicity may be necessary within the Service.

In effect, what we will do is use a Strike Force concept whereby all Compliance divisions will participate in a joint effort and all other segments of the Service having an interest in the matter will give us support. We will not, however, go outside the Service in a joint venture with other agencies at this time.

We do not know how long we will be in business, but it looks like there is a long road ahead. Both the Congress and the news media have publicized the fact that only the FBI has looked into these organizations. The Senate Committee on Government Operations, which has requested under their Executive Order permission to inspect our files on some organizations, knows what we have done. From a strictly revenue standpoint, we may have little reason for establishing this Committee or for expending the time and effort which may be necessary, but we must do it. We have gotten too much adverse publicity about exempt organizations and, even though these may not be considered exempt, they are nonbusiness organizations of a completely different character. We will need all the help, all the support, and all the cooperation you can give. If you have any suggestions as to our methods of operation, please let me know. As soon as space and clerical support have been assigned, we will function as an operating committee and will then establish more definitely the detailed procedures under which we will operate.

EXHIBIT K

AUGUST 8, 1960.

Memorandum to: Director, Federal Bureau of Investigation, Department of Justice.

From: Assistant Commissioner (Compliance) CP:DFC, Internal Revenue Service.

Subject: Request to be Placed on Dissemination List—Attention: Special Agent Patrick D. Putnam.

For your information I have formed a committee of some of our Compliance people to gather data and recommend actions to be taken within the Internal Revenue Service relating to various organizations of predominantly dissident or extremist nature and/or people prominently identified with those organizations.

The group I have formed is named the Activists Organizations Committee and is now functioning with Mr. Paul H. Wright as chairman.

I will appreciate this committee being placed on your dissemination list for information which relates to the types of organizations mentioned above and people associated with them. At this time we request file data on the organizations listed on the attachment to this memorandum.

It is apparent that additional requests for information on organizations and individuals will be made as this committee proceeds with its assignment.

I will appreciate your approval of this initial request and ask that any data transmitted be delivered to the attention of Mr. Wright, Room 3506, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.

D. W. BACON,
Assistant Commissioner (Compliance).

EXHIBIT L

DEPARTMENT OF JUSTICE CIVIL DISTURBANCE GROUP

MEETING, OCTOBER 1, 1969—ROOM 6411

Meeting with Edward Burns and Jane Beller, Analysis, regarding the subject data listing. In addition to the *printout secured by Bill Gibney*, another printout is generated weekly and furnishes the date of birth or age, sex, race, and remarks in addition to the information furnished on other printout. Three 5x8 cards are also printed containing the same information as shown on the printout. The cards are filed in the following manner: one by name, one by organization, and one by city. A "Subject Data" sheet is prepared in longhand by the analyst and reviewed by a secretary for clarity and completeness. The sheet is transmitted to a keypunch operator who prepares the keypunch card. The "Subject Data" sheet is returned to the group where it is retained in a file for thirty days. The analyst checks back on the data sheet when the data listing is printed and there appears to be an error in the listing.

At the present time, an organization data listing is not being printed; however, an "Organization Data" sheet has been drafted and they hope to have a program written in the near future.

An "Incident Data" listing is also printed which is broken down by region; North, South, Midwest and West, then by state, city and then by date of the incident in the city in chronological order. The auto identification, type of incident, weapons involved, sponsor, subjects, organizations and remarks are included in the printout. A pink card is also printed called an "Incident Card" which shows the same information as the listing. This card is filed behind the "Subject Data" card of the individual or organization involved.

I requested that arrangements be made to discuss the computer program with the person who wrote the program in order to obtain a copy of the specifications which were written for programming the IBM 360 Model 30.

The subject data listing and the incident data listing are received on Monday of each week. I asked for a copy of each listing and Beller and Burns had no objection but would check it out with James Devine who is Chief of the Civil Disturbance Group.

The next meeting is scheduled for Monday, October 6, 1969.

CHARLES A. HULBERG.

EXHIBIT M

DEPARTMENT OF JUSTICE CIVIL DISTURBANCE GROUP

MEETING, OCTOBER 7, 1969—ROOM 6411

Meeting with James Devine, Chief, Information Section, Civil Disturbance Group, Code 187, Ext. 2364, and Fred Burton, Programmer, Office of Management Support, regarding the use of their proposed master file tape for the purpose of establishing our basic tape file of activists. Both indicated a willingness to cooperate however, it would be necessary to write a letter from the Commissioner to the Attorney General before they would be able to release the tape or tape format to us. They are now in the process of changing the program to use a multiple instant typewriter instead of a keypunch machine.

Discussed staffing with Jim Devine and based upon the two years experience that he has, he would recommend: Chief; Deputy Chief; 12 analysts for current work; 2 analysts for special analyses; 6 clerk-stenographers; 2 file clerks; and 2 keypunch operators.

Met with Jane Beller and Edward Burns, analysts, Code 187, Ext. 3938. Sources of information that they analyze for input to the data listing includes:

1. FBI reports by date FBI Agent made the report.
2. Bureau of Narcotics and Dangerous Drugs (BNDD).
3. Alcohol, Tobacco and Firearms (IRS).
4. Army Operation Center (AOC).
5. United States Attorney (USA).
6. Newspaper clippings from internal clipping service.
7. Publications:
   - *a.* The Guardian.
   - *b.* The Black Panther Party.
   - *c.* The Liberator.
   - *d.* Several local papers.

They had a copy of the "Subject Data" listing which was given to the committee on a loan basis. The current "Incident Data" listing had not been received. I will be contacted when I can pick up the "Incident Data" listing.

CHARLES A. HULBERG.

October 9, 1969—Went to Justice Department, Room 6411, and secured a copy of the "*Incident Data*" listing that was printed September 18, 1969.

EXHIBIT N

DECEMBER 4, 1969.

COL. HESTON C. COLE,
Counterintelligence Division, Directorate Office Special Investigations, Washington, D.C.

DEAR COLONEL COLE: A committee has been formed within the Compliance Division of the Internal Revenue service to gather data relating to the funding of various organizations of predominantly dissident or extremist nature and/or people prominently identified with these organizations.

It would be appreciated if this committee could be placed on the dissemination list for information collected by your agency which relates to the type of organizations mentioned above and individuals associated with them.

The committee is known as the Activist Organizations Committee and is now functioning with Mr. Paul H. Wright as chairman.

I would appreciate your aproval of this request and ask that any data transmitted be delivered to the attention of Mr. Wright, Room 3503, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.

Sincerely yours,

D. W. BACON,
Assistant Commissioner (Compliance).

EXHIBIT O

DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS UNITED STATES AIR FORCE,
Washington, D.C., December 17, 1969.

Subject: Funding of Dissident or Extremist Organizations.
To: Internal Revenue Service.
Attention: Mr. D. W. Bacon, Assistant Commissioner (Compliance).

1. In reply to your letter on this subject, dated 4 Dec. 69, OSI is pleased to assist you in your endeavor to collect and provide a central repository for this data.

2. Major William M. Lackey of this division has contacted Mr. Paul H. Wright at my request, and it is my understanding that the mechanics of the necessary exchange of information, as well as certain limitations upon dissemination by OSI, have been discussed to our mutual satisfaction.

HESTON C. COLE, *Colonel, USAF,*
Chief, Counterintelligence Division,
Directorate of Special Investigations (IG).

EXHIBIT P

[Department of Justice Minutes]

APRIL 1, 1971.

Memorandum to: Robert C. Mardian, Assistant Attorney General, Internal Security Division
From: R. Richards Rolapp, Chief, Analysis and Evaluation Section.
Re: Liaison, Internal Revenue Service.

On March 25, 1971, Joe Clarkson and I met with seven representatives of the Internal Revenue Service (IRS) for the purpose of establishing closer liaison between our agencies. Six of the representatives were members of the Special Services Group, IRS, which has initiated approximately 7,000 investigations concerned with the tax status of extremist groups and individuals. Mr. Paul Wright, Group Chairman, indicated that a significant percentage of these investigations have been referred to the Intelligence Division, IRS, for further investigation and possible criminal prosecution. Mr. Wright expressed an eagerness to coordinate our activities to facilitate the dissemination of available information and the discussion of common problem areas.

Following a general discussion of the respective missions and methods of operation we agreed to provide IRS with a list of individuals of immediate interest to us and to examine the feasibility of including the Special Service Group on our distribution schedule for the "subject" and "incident" printouts.

Mr. Wright and Mr. Donald Virdin, Chief, Disclosure and Liaison Branch, Collection Division, IRS, agreed, subject to the approval of the Assistant Commissioner (Compliance), to provide a listing of those individuals considered by IRS to be the most significant extremists. We requested that this list include the code section violated and the current status of the investigation. Mr. Wright also agreed to provide, on an informal basis, the guidelines utilized by IRS to investigate tax returns, investigate reports, and/or other related data the procedure currently used must be followed. Mr. Virdin further suggested our letter should include a request for authority to discuss the case with the appropriate IRS agent.

At the conclusion of these discussions, we requested that the IRS provide a Revenue Agent for the purpose of examining the financial records of JDL and JOY, currently in the possession of Assistant U.S. Attorney Seegar in New York. We were advised on March 30, 1971 that arrangements had been completed for a Revenue Agent to inventory these records on March 31, 1971 and for the Secretary of JDL/JOY to surrender these records to IRS on 4/1/71.

EXHIBIT Q

SPECIAL SERVICE STAFF: ITS ORIGIN, MISSION AND POTENTIAL

PREPARED BY ACTS:C:SS FOR BIENNIAL MEETING OF REGIONAL COMMISSIONERS AT CHARLOTTESVILLE, VIRGINIA NOVEMBER 1 AND 2, 1972

(CONFIDENTIAL)

I. Introduction

Recognizing the right to legally and peacefully protest, assemble, and petition the government is inherent in the freedom of each citizen. Any abuse of these rights reflects a chipping away at fundamental principles regarding rights, freedoms, and redress of grievances. There are those who readily condemn our present tax system and would tear it down if they could. Unreasonable demands are being presented to all levels of government as well as to private business.

Unlike the violence and riots of the sixties, the early seventies have focused on a more threatening combination of protests and problems which are sure to carry us well into the seventies—likely escalating in intensity and frequency. Well organized protest groups have turned their attention away from the winding down Vietnam War issues.

Today they are concerned with future strategies directed at the economic structure of this country with particular emphasis towards the Internal Revenue Service, i.e., methods of funneling taxes into alternative funds (telephone and income tax nonpayers feel it desirable to have a "civilian fund", a "peace fund" or "alternative fund" into which people could place their held-back tax monies; how to react to IRS procedures (breakdown the federal tax collection machinery and earnestly solicit others to join in the effort); and, endorsing legislation which would legalize "conscientious tax objector status."

It takes considerable naivete not to recognize that we are confronted with highly organized and well financed groups bent on destroying our form of government and they are moving very carefully, step by step, following well laid plans.

Probably, their number one goal at this point is to erode, and eventually destroy, our entire tax system.

II. Background on formation and mission of Special Service Staff

Information developed during the hearings of the Senate Committee on Government Operations during August 1969 established that various controversial organizations presented problems to the Internal Revenue Service. These organizations categorized as extremists on the right or left were not in compliance with Internal Revenue laws. Information was also developed that individuals in the forefront of these organizations filed tax returns reflecting nominal income, or did not file at all, although they were obviously expending substantial amounts of funds.

These hearings clearly indicated a need for the Internal Revenue Service to actively enter into a compliance program directed toward these extremist groups and their principals, who, by thir stated attitudes and actions, could be expected to ignore or willfully violate Federal tax statutes.

Functioning under the Assistant Commissioner (Compliance), a special compliance group was established in August 1969 to receive and analyze all available information on organizations and individuals promoting extremist views and philosophies. The identification of organizations and individuals included in the program was without regard to the philosophy or political posture involved: rather, it was directed to the notoriety of the individual or organization and the probability that publicity might result from their activities and the likelihood that this notoriety would lead to inquiries regarding their tax status. Another important consideration was the degree of probability that the individuals might deliberately avoid their tax responsibilities.

Liaison was established with Federal investigative and law enforcement agencies such as FBI, Secret Service, Army, Navy, Military Intelligence, and

Department of Justice) and with Senate and House Investigating Committees. By use of pseudonyms and "drop" boxes, radical, subversive, and extremist publications were subscribed to and organizations joined as a source of securing information on matters involving taxable income of individuals, activities of organizations having or seeking tax exempt status, and identity of individuals or exempt organizations providing financial support to activist groups.

As another major part of its activity, files are reviewed and information furnished on organizations and their principals where exempt organization actions are pending. Liaison with Technical helps to ensure that no erroneous technical advice or rulings are issued due to lack of information.

Liaison was also established to receive and/or disseminate information with Firearms, Intelligence, Internal Security, Service Centers, Office of International Operations, National Computer Center, Public Information, and the Audit and Collection functions.

Starting with 77 files, identified by the Congressional Committee, within less than one year after this Compliance Group was established, information had been manually compiled and consolidated into 1025 organizational and 4300 individual files. Currently, the Group (now known as: Special Service Staff, ACTS:C:SS) has 11,000 files (8,000 individuals and 3,000 organizations). In the composition of these files are 12,000 classified documents. In addition to established files the Staff has availability to a computerized printout furnished by another agency. This listing of names of individuals and groups who pose a threat to the security of this country currently identifies another 16,000 entities where tax violations would appear probable.

Until the Special Service Staff was formalized February 11, 1972, its activity was considered semi-secret and apparently our people in the field were not knowledgeable of its mission and objectives. Investigative personnel particularly should be more familiar with this Staff's activity and mission as outlined in IRM 1113.654. Also, there is a need to increase field awareness of the importance of the investigative information furnished by the staff to district offices.

Plans are in the mill to implement certain recommendations of a recent computerization feasibility study. Some degree of mechanization appears necessary to cope with the accumulation and quantity of data received by the Staff from sources within and outside the Service.

The Staff acting as a central intelligence gathering facility consolidates data available within IRS and any obtainable from other investigative or law enforcement agencies. Accumulated data in the files suggests there are two major categories of organizations and individuals identified as likely to be violating Federal statutes including the tax filing and paying requirements of the IRC.

These organizations and individuals can be generally categorized as (1) Violent Groups—those who advocate and practice arson, fire-bombing and destruction of property; use coercive threads for funds through U.S. Postal Service; make threats against public officials; plan and organize prison riots; engage in activities involving illegal accumulation of firearms and ammunition; have been identified as planning and carrying out skyjacking; and, those who print and distribute publications advocating revolution against the government of this country. In category (2) there is ample evidence of activities involving so-called Non-Violent Groups, who by alleged peaceful demonstrations oftentimes deliberately initiate violence and destruction. Included are those who publicly destroy and burn draft cards, destroy Selective Service office records, participate in an organize May Day demonstrations, organize and attend rock festivals which attract youth and narcotics, aid in funding sale of firearms to Irish Republican Army, Arab Terrorists, etc., travel to Cuba, Algeria and North Vietnam in defiance of existing statutes (relating to seditious acts), inciting commotion and resistance to authority by encouraging defectors in the Armed Forces to enter into alliances to subvert this nation, and there is evidence from classified documents that transfers of large amounts of money to and from the USA are being used to establish and organize groups with the view of overthrow of this government.

III. Current procedures employed by the Special Service Group

Currently, as information is received, it is reviewed for indications of noncompliance, such as erroneous exemptions, contributions to unqualified organizations, the channeling of funds by exempt organizations to non-exempt organizations, or items of unreported income; operations outside of its charter by tax

exempt organizations; and the failure to file and/or pay income, gift, and employment taxes. Publications and documents are reviewed for information of tax strike or resistance movements.

When any of the above indications are present, file searches, where possible, are initiated to see if returns are filed and taxes paid. In appropriate cases, Social Security checks are made for possible unreported sources of wages and earnings.

If the review and evaluation so warrants, pertinent financial and tax data is transmitted to the District Audit, Intelligence, or Collection Division. Since much of the information is classified, it cannot be reproduced or transmtited in the form received, and, of necessity, must be excerpted and capsulized. These referrals may relate to specific individuals, organizations, or groups of individuals.

Should other agencies desire information relative to tax returns or investigations, they must request it through official channels observing the disclosure procedures.

In addition, information and trends on tax strike and resistance movements is sent to districts affected. Under present procedures, the receiving districts determines to what extent the information is used.

The Staff also informs the National Office Protective Programs Branch of Facilities Management and the National Office Coordinator in the Intelligence Division when there are indications of protests or demonstrations which would be a threat to Internal Revenue premises.

Examples of several types of Special Service Staff referrals have been condensed and included as exhibits in a package of attachments. These show the revenue possibilities that exist in both the audit and collection fields, including income, gift and employment taxes. (Exhibit 12).

The packet also contains samples of materials published and circulated by members of the tax strike and resistance movements. To show the degree of sophistication these movements have reached, the first exhibit in this package is a reproduced FBI report on a national convention of activists recently held in August at Kansas City with Internal Revenue Service as their focal point of attention.

IV. Potential usage and availability of Special Service staff

The files of the Special Service Staff contain vast amounts of information pertaining to types of individuals and organizations described. This material is received on a day-by-day basis and it has been impossible for the Staff to keep pace with this growth. As a result, although files have been established, there is a great deal of material which has not been evaluated, and consequently has not been referred to field offices.

This material is available to revenue agents, special agents, and revenue officers working on individuals or organizations involved on these left or right wing movements. One of the problems has been that examining personnel are not aware of the Staff, its mission or operation. As stated before, the time has now come when field personnel should be fully informed of the existence of the Staff and the type of information available.

Should an agent or revenue officer be assigned a case falling into one of the categories discussed, he should feel free to direct an inquiry to the Special Service Staff to see if there is any information on file or that could be obtained that would aid in their investigation. The file could contain financial information to assist in an audit or it could possibly be a current address to assist in closing a TDA of TDI. Inquires can either be by mail or telephone and directed to the address or telephone number shown on the transmittal letter (See Exhibit #4 in attachment).

Many of the files are extremely voluminous containing detailed financial information. In such instances it ma ybe preferable to have field personnel come in and extract pertinent data from the case file. However, due to the classified nature of the files, it would be necessary to obtain a secret security clearance for each employee desiring to make such an inspection. Since some of the files are Top Secret and the degree of clearances should be kept at a minimum, Staff members with Top Secret clearance can extract and capsulize any pertinent data of this nature if needed.

While the Special Service Staff is essentially an information gathering and dissemination operation, it should not be considered a one-way street. Field personnel should be advised to be alert for information and data concerning

these organizations and individuals indicating they willfully ignore or violate tax statutes. This added resource would open an effective two-way communication channel which can do much to improve any Internal Revenue Service actions required. This is especially important where such information would cross district or regional lines permitting coordination with other offices.

Further, field personnel should also be alert to criminal violations other than those involving the tax statutes. This could include any indication of acts of violence, falsification of official documents, threats against Government officials or officers, etc. Such information should also be channeled to the Staff so they can coordinate with the appropriate agency.

P. Conclusion and discussion

It has now been discussed in some detail how this Special Service Staff activity functions, what its purpose is, and how effectively the leads and cases it generates are utilized by the Service. The magnitude and potential of this facility is impressive. A recent internal audit of the Special Service Staff fully supports the conclusion that this function offers high potential as a deterrent in coping with widespread tax violations sponsored by activist groups.

Certainly Internal Revenue Service officers and agents can only do so much on their own in trying to collect from, investigate or examine these organizations and individuals, who through insidious methods have collaborated to form a revolutionary force, which if allowed to develop gradually will become well established before becoming apparent.

Perhaps the only way to combat a tax rebellion growth or movement in our society is for the Internal Revenue Service, which now has this Special Service Staff access to reliable intelligence information, to expose the hard core leaders and fringe element in our nation who advocate tearing down our present system.

This presentation should give you some additional insight into the formation and potential for a central intelligence gathering facility of this nature. Hopefully, it has also encouraged you to think about "what is to be done?"

Among the alternatives to be considered and discussed:

Using the Special Service Staff as a nucleus, would it be practical to develop a multi-agency approach using strike force concepts with special emphasis on criminal code prosecutions under Title 18 in correlation with Title 26.

EXHIBIT R

DECEMBER 18, 1972.

Memorandum to: All Directors
From: Regional Commissioner North-Atlantic Region
Subject: Special Services Staff (ACTS:C:SS)

Some of you are well aware of the Special Services Staff (ACTS:C:SS) in the National Office, but I thought I would take this opportunity to give you some background on its formation and its mission, how it operates and how we as line managers can assist in its operation, as well as utilize its files to our benefit.

A special compliance group was established in 1969 to receive and analyze all available information on organizations and individuals promoting extremists' views or philosophies. The identification of those included in the program was without regard to the philosophy or political posture involved: rather it was directed to the notoriety of the individual or organization, the probability that publicity might result from their activities and the likelihood that this notoriety would lead to inquiries regarding their tax status.

Liaison was established with Federal Investigative and law enforcement agencies to provide additional information on matters involving taxable income of individuals, activities of organizations having, or seeking, tax exempt status and the identity of individuals or exempt organizations providing financial support to activist groups.

On February 11, 1972, the group was formalized as the Special Services Staff. Currently, this Staff has 11,000 files (8,000 individual and 3,000 organizations). The composition of these files includes 12,000 classified documents. In addition, they have available a listing of 16,000 entities who fall into the category of posing a threat and probability of tax violation.

The Staff acts as a central intelligence-gathering facility for data from within IRS and from other investigative or law enforcement agencies. Accumulated data suggests there are two major categories of organizations and individuals

identified as likely to be violating Federal Tax Statutes: (1) Violent Groups—those who advocate and practice arson, fire-bombing and destruction of property; use coercive threats for funds through U.S. Postal Service; make threats against public officials; plan and organize prison riots; engage in activities involving illegal accumulation of firearms and ammunition; have been identified as planning and carrying out skyjacking; and, those who print and distribute publications advocating revolution against the Government of this country. In category (2) there is ample evidence of activities involving so-called Non-Violent Groups, who by alleged peaceful demonstrations oftentimes deliberately initiate violence and destruction. Included are those who publicly destroy and burn draft cards, destroy Selective Service Office records, participate in and organize May Day demonstrations, organize and attend rock festivals which attract youth and narcotics, aid in funding sale of firearms to the Irish Republican Army, Arab Terrorists, etc., travel to Cuba, Algeria and North Vietnam in defiance of existing statutes (relating to seditious acts), inciting commotion and resistance to authority by encouraging defectors in the Armed Forces to enter alliances to subvert this nation, and there is evidence from classified documents that transfers of large amounts of money to and from the USA are being used to establish and organize groups with the view of overthrow of this Government.

Currently, when information is received, it is reviewed for indication of noncompliance. When indications are present, file searches, if possible, are made to determine if returns are filed and taxes paid.

If the review so warrants, pertinent data is referred to the District, Audit, Intelligence or Collection and Taxpayer Service Divisions. These referrals may relate to specific individuals, organizations or groups of individuals. In addition, information and trends on the various movements are sent to the Districts affected. The Districts determine to what extent the information is used.

The Special Service Staff files contain a great deal of material which has not been evaluated and, consequently, has not been referred to the field. This material is available to Revenue Agents, Special Agents and Revenue Officers working on organizations or individuals involved. Should an Agent or Revenue Officer be assigned a case falling into one of the categories, he should feel free to direct an inquiry to the Special Service Staff to see if there is any information on file or that can be obtained that would aid in their investigation. Inquiries can either be by mail or telephone to the following:

Mr. Paul H. Wright
P.O. Box 14197
Benjamin Franklin Station
Washington, D.C. 20044
Area Code: 202-964-4326

Many of the files contain detailed financial information. In such instances it may be preferable to have field personnel come in and extract data. But, due to the classified nature of the files, it would be necessary to obtain secret security clearance for each employee making such an inspection. Although some of the files are top secret, Special Services Staff members with this clearance can extract data of this nature if needed.

While the Special Services Staff is essentially an information-gathering and dissemination operation, it should not be considered a one-way street. Field personnel should be alert and refer information concerning these organizations and individuals indicating they willfully ignore or violate Tax Statutes. This added input will establish an effective two-way communication channel, greatly improving required Internal Revenue action. This is especially true where such information should cross district or regional lines, permitting coordination with other offices. Field personnel should be alert to criminal violations other than those involving the *Tax Statutes*. This includes any indication of acts of violence, falsification of official documents and threats against Government officials or offices. Such information should also be channeled to the Staff so that they can coordinate with the appropriate agency.

The magnitude and potential of this facility is unlimited: a recent audit supports the conclusion that this function offers high potential as a deterrent to widespread tax violation sponsored by activist groups.

If you are aware of any individuals or organizations in your District that would fall into these categories, please furnish this information to the ARC (ACTS) for referral to the National Office.

JOHN J. FLYNN.

EXHIBIT S

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Washington, D.C., August 9, 1973.

IRS NEWS RELEASE (IR-1323)

WASHINGTON, D.C.—The Special Services Staff within the Internal Revenue Service will be disbanded, Commissioner of the Internal Revenue Donald C. Alexander announced today.

"The tasks now being performed by the Staff," Mr. Alexander said, "can be handled efficiently by other components of the Service as a part of their regular enforcement activities."

The decision was reached after a two-month study ordered by Mr. Alexander immediately after he entered office. The study showed that the function performed by the Staff could be carried out by other units of the IRS having responsibilities for enforcement and administration of the tax laws.

The Staff was originally formed in 1969 as a result of inquiries made of IRS by the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. At that time, in the wake of civil disruptions and demonstrations by "extremist" organizations, the Subcommittee raised questions concerning the financial resources available to these organizations. There was evidence that some of the organizations which enjoyed tax exempt status were not complying with the tax laws. The assignment of the Staff was to gather information on the sources of funding of these organizations and to check the income tax status of the organizations and their principals.

The data-gathering work of the group is presently confined to tax resistance organizations and those individuals who publicly advocate noncompliance with the tax laws. "The IRS will continue to pay close attention to tax rebels," Mr. Alexander said, "but political or social views, 'extremist' or otherwise, are irrelevant to taxation; the work of the Staff as a separate unit will be phased out."

Senator HASKELL. Our next witnesses are from the National Association of Tax Administrators.

We have William H. Forst of Virginia, Daniel G. Smith of Wisconsin, Joseph F. Dolan of Colorado, and Owen L. Clarke of Massachusetts.

STATEMENT OF A PANEL REPRESENTING THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, INCLUDING WILLIAM H. FORST, STATE TAX COMMISSIONER OF VIRGINIA, AND PRESIDENT, NATIONAL ASSOCIATION OF TAX ADMINISTRATORS; DANIEL G. SMITH, ADMINISTRATOR, INCOME, SALES, INHERITANCE, AND EXCISE TAX, WISCONSIN DEPARTMENT OF REVENUE; JOSEPH F. DOLAN, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REVENUE; AND OWEN L. CLARKE, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORPORATIONS AND TAXATION

Senator HASKELL. Gentlemen, it is a pleasure to have you here today.

Are there just four of you?

Could you identify yourselves for the reporter, please?

Mr. FORST. I am William H. Forst. Mr. Smith, Mr. Dolan, and Mr. Clarke will follow in that order.

Senator HASKELL. I understand you are the president of the National Association of Tax Administrators.

Mr. FORST. Yes, sir.

It is my pleasure to appear before the subcommittee with my associates this morning in my capacity both as State Tax Commissioner of the Commonwealth of Virginia, and as president of the National Association of Tax Administrators.

The National Association of Tax Administrators has submitted for the record a statement on the State revenue departments' position with respect to their continued access to Federal tax return information for use in State tax administration.

The State tax administrators who make up this panel join in that statement.

Senator HASKELL. That statement will be included in the record as reproduced.

Mr. FORST. Thank you, sir.

I have introduced the members of the panel, but I would like to give you more information on them, Mr. Chairman.

Mr. Daniel G. Smith, administrator, Income, Sales, Inheritance, and Excise Tax, Wisconsin Department of Revenue.

Mr. Smith is secretary of the National Association of Tax Administrators and he is chairman of NATA's Committee on State-Federal Legislative and Administrative Matters.

Mr. Joseph F. Dolan, executive director, Colorado Department of Revenue; and a member of the NATA committee just mentioned. He is a former Assistant Deputy U.S. Attorney General. I think you are aware of that.

Mr. Owen L. Clarke, commissioner, Massachusetts Department of Corporations and Taxation. Mr. Clarke is chairman of the board of trustees of the Federation of Tax Administrators and vice president of the National Association of Tax Administrators.

He is also a member of the NATA committee which Mr. Smith chairs.

We also have with us Leon Rothenberg, executive director of our organization, and Byron L. Dorgan, tax commissioner, State of North Dakota.

Before making our presentations, this panel would like to submit for the record a comprehensive report on the subject of the Federal-State exchange program prepared by the Federation of Tax Administrators.

The federation is an organization of the revenue departments of the 50 States and the District of Columbia. The National Association of Tax Administrators is a component part of the federation.

Senator HASKELL. Would it be satisfactory to you if that were put in the committee files,[1] or do you want it to be made part of the hearing record?

Mr. FORST. I believe, sir, it will be satisfactory to have it in the files rather than as part of the hearing record.

Senator HASKELL. Is that satisfactory, Senator Fannin?

Senator FANNIN. Yes.

[1] The document was made a part of the official files of the committee.

Mr. FORST. In my brief presentation, I will stress the following points:

One: The State revenue departments have unanimously taken a position in support of the continuance of the Federal-State exchange program in its present form.

Two: The States' use of Federal tax return information dates back a half century, and embodies the historic view of the Congress, the Internal Revenue Service, and the State governments on the desirability of coordination of Federal and State tax enforcements, and

Three: The Federal-State exchange program has been an outstanding example of intergovernmental fiscal cooperation in that it has operated harmoniously and effectively through the years with important benefits to the States, the Federal Government and taxpayers.

The National Association of Tax Administrators respectfully requests that in any legislation which Congress will enact with regard to the confidentiality of tax returns, the States' access to Federal tax return information be continued in its present form.

A resolution to this effect was adopted unanimously by the National Association of Tax Administrators at its annual meeting in June 1975 and at the annual meetings of regional associations of tax administrators—the Southeastern Association of Tax Administrators, the Midwestern Association of State Tax Administrators, and the Western Association of State Tax Administrators.

The States' use of Federal tax return information dates back, as I said before, a full half century. The States were authorized to inspect Federal tax returns in the Revenue Act of 1926, through a provision which corresponds to section 6103 in the present Internal Revenue Code.

The 1926 act was passed at a time when a growing number of States were adopting income taxes and it reflects Congress recognition that the States' capacity to administer these new taxes would be enhanced by access to Federal tax returns and audit adjustments.

In the 1930's, Congress took even more explicit action in this regard when it passed the Costigan amendment which, for several years required Federal income taxpayers to file a duplicate return in order to facilitate State inspection procedures.

Federal tax return information soon became an integral part of the State tax enforcement process. The present provision of the Internal Revenue Code relating to State inspection were passed in May 1935.

At the present time, State inspection of Federal tax return information is conducted under the Federal-State agreements on tax coordination, which came into existence in the latter 1950's, and now in effect in all but two States: Nevada and Texas, neither of which have an income tax law.

The State of Texas is currently negotiating such an agreement with IRS. The functioning of these agreements will be described by other members of this panel.

The agreements have worked extremely well. They have provided the stimulus for a major expansion in the State use of Federal tax return information and for the IRS's use of State tax return information on a continuing basis.

There have been several revisions in the agreements since they were first negotiated, and each revision has given increasing importance to protecting the confidentiality of the tax return information used.

A timely example of the expanded use of Federal information was contained in the 1976–78 budget of Virginia Governor Mills E. Godwin, Jr. The Governor recommended an additional 104 employees in the department of taxation to expand the use of Federal information and thus produce $3.25 million a year from an estimated 233,000 taxpayer contacts. The total program is estimated to produce $17 million annually at a cost of only $932,000.

In closing, I should like to note that the Internal Revenue Service and the Advisory Commission on Intergovernmental Relations have consistently supported the Federal-State exchange program. The following two comments exemplify this support.

The first is taken from the Annual Report of the Commissioner of Internal Revenue, 1969:

> Many years ago the Service adopted a policy of cooperating with State and Local tax administrators to the fullest extent permitted by law.
>
> Over the years, this policy has been augmented with the signing of formal tax coordination agreements establishing procedures for the exchange of tax return information and providing for reciprocal action by state and Federal tax officials to improve the administration of the tax laws of their respective jurisdictions.
>
> The existence of the cooperative exchange program, coupled with increasing knowledge of its operation by the public inevitably leads to improved taxpayer compliance—the most important benefit of the program.

The second comment concerns a resolution adopted by the Advisory Commission on Intergovernmental Relations in November 1975:

> The Advisory Commission on Intergovernmental Relations views the Federal-State Tax Exchange Program as one of the most important elements of federal-state intergovernmental cooperation.
>
> The Commission is convinced that the cessation of the Federal-State information exchange program could seriously undermine the effective enforcement of many State personal income tax laws.
>
> Therefore, the Commission urges Federal and State policy makers to continue this program under effective safeguard conditions that will assure that the information exchanged is used solely for tax compliance and enforcement activities.

Mr. Chairman, at this time I would like to have Mr. Smith speak to you about the subject I referred to earlier.

Senator HASKELL. We welcome that, and if it is all right with Senator Fannin, we will hear from our four gentlemen and then ask questions.

Senator FANNIN. Yes.

Senator HASKELL. Go ahead.

Mr. SMITH. The purpose of my participation in this panel discussion this morning is to discuss with you the ways in which the various sharing agreements work between the States and the Federal Government.

In any review of the operating provisions of the Federal-State tax information exchange program, including those measures take to preserve the confidentiality of taxpayer files, it is essential to point out the nature and extent of State records already available for tax administrative purposes.

It has been alleged that maintaining the private nature of information a taxpayer reveals on his Federal return may be frustrated by continuing to give so much Federal tax data to the States.

With very few exceptions, most State income tax returns require similar detail as to income, deductions and exemptions, as is found on Federal returns.

Some States, Wisconsin being one of them, by law require that complete copies of Federal returns be attached to the State returns.

In those jurisdictions that call for fewer facts on their short form returns, such as those who use an IBM punchcard format, as in the State of Ohio and others, additional data from taxpayers is available on demand.

Thus, in one form or another, State tax administrators have as much information at their disposal from State sources as do their Internal Revenue Service counterparts.

Information about such matters as deductions for interest expense, gains or losses on dispositions of capital assets, computation of taxable retirement income, details on dividends received, and so forth, is obtainable from a review of State records.

So, when we talk about Federal information shared with the States, it must be understood that this information supplements—in a special way and for a particular purpose—the substantial body of knowledge about taxpayers already acquired by the States through their own efforts.

What the States get in the way of new information from this source is what they should have received initially from the taxpayer but did not, for example, either a correctly computed tax or a timely filed return.

The States do receive summaries of Federal audit reports. They also receive computer tape lists of Federal return filers within a State. And, on occasion and by specific request, they can examine copies of Federal tax returns.

However, information from these sources is restricted as to its use, that being solely for the purpose of tax administration.

Importantly, unlike other uses to which Federal tax information may be or has been used, the information received by State tax agencies from IRS is not stored away in a data bank for future, unknown or unbecoming purposes.

State tax administrators proceed pell-mell to let taxpayers know what information they have received, from whom it was obtained, and what are the consequences for them of its use.

FEDERAL-STATE AGREEMENTS ON COORDINATION

Recognizing that mutual benefits are to be derived through coordination of tax programs to secure returns, to determine tax liability and to effect tax collection, the IRS and the States have entered into formal agreements which specify the extent of information to be exchanged and detail the procedures to be followed.

Although slight variations exist in the several agreements, they all provide authorization for designated State tax personnel to inspect Federal tax returns, and to receive tax return information.

It is understood that State and IRS officials furnish each other with information as to the whereabouts of persons, sources of income, employers, or property owned by those whose tax accounts are delinquent. Also, the identification of persons who fail to file returns is shared.

The agreements further direct that State and IRS officials, in accordance with mutually agreed upon routines, furnish each other information on audit adjustments.

The more recent agreements have encouraged the exchange of data by electronic and mechanical means.

As Mr. Forst has indicated, beginning in approximately 1967, the States have received individual master file (IMF) computer tapes with tax information summarized from the returns of individuals with mailing addresses within a particular State.

Provisions for additional data exchange, such as evaluations of closely held corporations necessary for death tax determinations, and suggestions for cooperative procedures such as jointly staffed taxpayer assistance programs, are also covered in these agreements.

All but two States (Texas and Nevada) have entered into formal agreements with the IRS at this time for the mutual exchange of tax returns and tax return information.

REVENUE AGENTS REPORTS

At the present time, essentially all States imposing an individual income tax, and there are 40 of them, use completed reports of taxpayer audits, known as revenue agent reports (RAR's) or abstracts thereof on a continuous basis.

Under the agreements, most States receive abstracts of the RAR's automatically from IRS. Several States obtain some complete audit reports from IRS district offices, while others are copied by State employees from IRS files under IRS supervision.

In other States, the taxpayer is asked to submit his copy of Federal audit report to the State tax department.

In Wisconsin, after the abstracts are logged in, auditors correspond with the taxpayers, advising them that an abstract has been received from the IRS, request a copy of the audit report, and question the taxpayers whether they agree that the same adjustments should be made to their State tax returns.

After the audit abstracts have served their purpose, they are destroyed. The taxpayer's copy of the audit report is returned. These documents do not become a part of the permanent State tax file of the taxpayers.

INDIVIDUAL MASTER FILE TAPES

In the fall of each year, in response to a special invitation from the national office of IRS, each State under agreement may elect to receive a computer tape listing, known as the individual master file—IMF.

This includes the name and address, gross income and adjusted gross income, deductions, and tax liability of all individuals who filed a Federal return from that State.

There is a restriction that the information on taxpayers' filing from that State can be shared only with that State. For example, Wisconsin cannot share information about individuals living in neighboring States.

It is restricted. A similar record, prepared from data taken from State returns, is compared with the IMF record and differences are noted.

The States have several purposes for matching State and Federal tapes. The most common reason for comparing tapes—in 37 States—is to detect nonfilers. Taxpayers whose names and identifying numbers appear on a Federal tape but do not appear on a Wisconsin tape compiled for the same year are questioned why and instructed to file a Wisconsin return. In the event the taxpayer ignores this demand, an estimated assessment is prepared in which the income data on the Federal tape is used as the basis for establishing an estimated tax liability.

Most of the States make tape comparisons to detect nonfilers every year; a few States do this biennially, and two States—including Wisconsin—do so on a triennial basis.

Twenty-two States, in addition to matching for nonfilers, compare amounts reported for adjusted gross income on State returns with that reflected on the IMF tape. Sixteen States compare exemptions reported on the Federal and State returns by this means.

USE OF FEDERAL TAX RETURNS

While nearly all States request copies of Federal tax returns for tax administration purposes, all but a few do so infrequently and only in connection with certain enforcement needs.

In a majority of the States, specific Federal returns are requested fewer than 100 times a year, and, in many States much less frequently.

Only two States report that they use Federal tax returns for specific taxpayers extensively.

In these two, Connecticut and Florida, the use of specific Federal returns is in connection with the administration of selected taxes for which the needed information is not available on IMF tapes.

I believe in Florida this is used for the administration of their intangibles tax and in Connecticut for the administration of their capital gains and dividends tax.

In Wisconsin, the flow of requests to inspect tax returns is in the other direction. During a recent 7-month test period, Wisconsin requested fewer than 15 Federal tax returns for inspection. During that same period, IRS agents inspected and received photocopies of over 2,400 Wisconsin income tax returns.

Wisconsin returns are filed differently than are Federal returns at the IRS service centers, and they are quickly available to the agents.

Among the various purposes for which specific Federal income tax returns are used by those States which ask for them infrequently are the following: When nonfilers do not respond to requests for needed tax information; for use in tax fraud investigations and in criminal prosecution of willful nonfilers; and when there is evidence to indicate that a taxpayer has income from out-of-State sources which he has not reported.

There has been some consideration in the bills introduced in Congress for the sharing of information with local governments.

LOCAL GOVERNMENT USE OF FEDERAL TAX INFORMATION

Based on reports received by the Federation of Tax Administrators, local governments have access to Federal tax return information in in only 4 of the 10 States in which local income taxes are in effect.

Under terms of the Federal-State exchange agreements, local governments may obtain such information only through State tax agencies.

The Governor of the State must make a written request in order that Federal data so obtained be furnished to local governments. That information must be used only for the administration of local tax laws.

Of the four States in which State tax agencies transmit Federal tax return information to local governments, in only two of these—Ohio and Pennsylvania—is this procedure prevalent.

I believe in Ohio there are 44 local governments that have individual income taxes, and in Pennsylvania there are 11 jurisdictions that receive this kind of information.

DIFFERENT EFFECTS OF COORDINATION AGREEMENTS

Federal tax return information constitutes an important source of enforcement revenue for the States. For those States with well established audit systems, this supplements enforcement operations, eliminates duplicate auditing by both jurisdictions, and minimizes costs.

In these States, benefits flow to the Internal Revenue Service as well. For example, last year, Wisconsin received 6,800 Federal RAR's, while returning 8,500 State individual income tax audit adjustments to the IRS.

The State collected about $1 million additional taxes from these RAR's, and it is estimated that the IRS collected about $4.5 million from Wisconsin's audit reports.

For the smaller States or those with limited audit operations, the use of Federal tax return information may constitute the predominant part of their income tax enforcement efforts.

Internal Revenue Service provides this help at relatively little cost or inconvenience. Another ply in a packet of audit forms is all that is necessary to transmit RAR data; a reproduction of tax information on computer tape by State, for which a modest change is made, creates the very helpful IMF tapes for State use.

Now, Mr. Dolan will succeed me. We hope we have told you how the system works, and Mr. Dolan's remarks will concern how beneficial this is for the Federal Government and the States and for taxpayers under both jurisdictions.

Senator HASKELL. Mr. Dolan.

Mr. DOLAN. Reference was made earlier to my association with the U.S. Department of Justice. I state that I am a former staff employee of the U.S. Senate as well.

I would assure you that Colorado's Governor Lamm and I are both very much in agreement with the general aims of this committee and with the protection of the privacy of Federal tax information.

Colorado law has long provided for the confidentiality of State tax information and we certainly understand the need for adequate se-

curity in the handling of State and Federal tax returns and information.

My remarks as a member of this panel will be addressed to the benefits that have accrued from the exchange of tax return information.

The Federal-State exchange program has worked well for State governments, the Federal Government, and taxpayers. The States collect important amounts of added tax revenue each year as a result of the program.

The Federal Government uses State tax return information on a continuous basis and to a substantial degree. Taxpayers have benefited because their compliance burden has been simplified due to a reduction in the number of duplicate Federal and State audits and the increased conformity that has occurred in tax statutes and administrative procedures as a result of Federal-State tax cooperation.

All of this has been accomplished without any sacrifice of taxpayer confidentiality. The confidentiality safeguards which the State revenue departments have instituted, and which have been operating most effectively, will be discussed by the next speaker.

It is important to note also, however, that if State revenue departments did not have access to Federal tax return information, they would have to obtain this information directly from the taxpayer through audits or requests for information.

The result would be an added burden to the taxpayer and a much less efficient operation to the State revenue department.

About three-fifths of the States maintain their accounts in such a form so as to permit them to report the amounts of added revenue derived from Federal tax return information.

For the latest year for which such data are available, the Federation of Tax Administrators' study, referred to by Mr. Forst, reports that, for this group of States, added tax collections derived from individual and corporate income tax revenue agents' reports audit adjustments and from the use of IMF tapes, amounted to $175 million.

Moreover, this amount is only a fraction of the added State tax collections attributable to Federal tax return information because each year there are cumulative permanent gains—particularly from the IMF tape matching program—which thereafter are reflected in the annual tax collections received with filed returns.

Once on the tax rolls, taxpayers discovered through tape matching programs customarily become permanent taxpayers and file their returns annually. Thus, year after year, Federal tax return information has contributed to a permanent expansion in the State tax base.

If the State of Colorado were unable to obtain the information which it presently receives from the Internal Revenue Service, it would cost the State millions of dollars in uncollected State revenue.

Office audit assessments resulting from the Federal revenue agents' reports amounted to $1,476,000 in 1973–74 and $695,680 in 1974–75.

During the fiscal year 1974–75, the Colorado field audit section made $2,295,000 in assessments as a result of revenue agents' reports; $103,560 of these adjustments were directly related to the RAR's, and $2,200,000 resulted from other adjustments triggered by receipt of the RAR's.

Colorado taxes have also been assessed as a result of information furnished under IRS' discriminate function selection system and through the matching of magnetic tapes, but exact statistics on the income from these sources were not kept in the past.

We presently are developing new programs using the matching magnetic tapes to discover State nonfilers. Federal tax return information is also used with respect to other taxes.

Notably, if Colorado did not have Federal information on the Federal adjusted gross income of corporations, it would take 100 times as many hours to audit a corporation.

Perhaps the importance of Federal tax return information can be demonstrated most clearly by describing the effects on tax administration that would result if either RAR audit adjustments or IMF tapes were not available to the States.

Without Federal revenue agents' reports, the States would either have to accept a substantial reduction in enforcement revenue, or they would have to seek a substantial increase in legislative appropriations for revenue department operations.

The latter course would necessitate a restructuring of audit programs, the employment and training of new auditors, and a duplication of State and Federal audits.

Many smaller States depend upon Federal tax return information predominantly for their enforcement revenue. For these States, the absence of Federal tax return information would mean an almost complete recasting of the audit effort.

For States with well-established audit programs, the impact would be less drastic, but an important loss of enforcement revenue would result if existing audit programs were not expanded, and this would necessarily duplicate at least part of the IRS' audit program.

If the States were deprived of the IMF tapes, they would have to rely entirely on copies of the Federal tax return filed by the taxpayer for such information. This procedure would be far less adequate than the States' present use of IMF tapes, for several reasons.

The taxpayer would not be under the same compulsion to file an accurate Federal tax return with the State revenue department if he knew that such information could not be obtained directly from the IRS.

Also, the States, in receiving copies of Federal tax returns from the taxpayer, would have to duplicate operations now performed by the IRS service centers.

They would have to record the Federal tax returns on magnetic tape. They would have to process, examine, and correct the Federal tax return copies. All of this would be duplicated effort, because the IMF tapes now received by the States contain the results of IRS service center processing.

In closing, there is one more point I should like to stress. The ability of the States to compensate for any loss of Federal tax return information through their own resources would depend upon the willingness of the State legislatures to appropriate added amounts for tax administration.

As we know, many States are now confronted by budgetary difficulties and there is a widespread reluctance on the part of State legislatures to increase appropriations, even when these added funds can produce additional revenues.

Without increased financing, the States could not hope to expand their audit operations sufficiently to compensate for any loss of Federal tax return information.

Even with increased financing, it would be a span of years at best, before the enforcement efficiency attained with the use of the Federal data could be regained, and, during that period, there would be a loss in State revenue and a detrimental effect on taxpayer compliance.

Senator HASKELL. Thank you, Mr. Dolan.

Mr. Clarke?

Mr. CLARKE. Mr. Chairman, Chairman Long and Senator Fannin, my part of this panel presentation is to discuss the safeguards which are the important elements here, the safeguards employed by State revenue departments in protecting the confidentiality of Federal tax return information, which is currently used in State tax administration.

The report of the States in this area is exceedingly impressive. During the half century that State revenue departments have used Federal tax return information, there has been only one known case where a State employee violated the aspect of confidentiality.

That instance occurred in 1968 in California where a tax department employee was apprehended selling Federal tax return information.

That employee was indicted, tried, and convicted for that violation.

That is the only instance that is known.

This impressive record may be attributed to the measures which the State revenue departments have taken—individually, and in cooperation with the Internal Revenue Service—to prevent the unauthorized disclosure of Federal and State tax information.

I will briefly try to describe to you in the time available what those safeguards are, as they are in existence in the various State tax departments throughout the country.

First, the Federal and State governments have universally entered into agreements, written, signed agreements, with the Internal Revenue Service with respect to the exchange of information.

As was reported earlier by this panel, such agreements are in effect in every one of the States which has a personal income tax, and confidentiality, the keystone of this whole question, confidentiality is a very prominent and important and well reasoned feature of these agreements, and it has been given special emphasis in even the latest model agreement which is currently being drawn up to be signed by the States anew.

Under the 1975 IRS-State model agreements, State or Federal officials are required to maintain a secure area or place in which the return information is stored.

They must restrict access to such information only to those officials and employees whose duties require such access, and they must provide such other safeguards as are deemed necessary.

These written agreements also provide that the IRS magnetic tapes, which, as you know, are the new way of supplying the exchange of information, may be processed only under the supervision and controls of authorized State employees and that the Federal return information is to be destroyed after it is used.

These agreements specify that unauthorized use or inadequate safeguards constitute grounds for the termination of the agreement and an ending of the exchange of information.

PENALTIES FOR UNAUTHORIZED DISCLOSURE

With respect to criminal penalties for unauthorized disclosure, section 7213(a)(2) of the code specifically provides—the code provision in existence now—that the State employee who so misuses Federal tax return information is subject to the same penalties imposed on Federal employees for such an act, namely, a fine of $1,000, imprisonment up to a year, or both.

That is the Federal provision.

In addition to this Federal provision, a compilation by the Legislative Analysis Division of IRS in September of 1975, a very recent compilation, shows that every State imposing an income tax as a law has a State law making it unlawful to disclose information from a tax return, and in fact, an analysis of that survey will show that in very, very many instances the penalities under State law are much more severe than are the penalities provided under the Code for Federal employees.

PHYSICAL AND PROCEDURAL SAFEGUARDS

The physical and procedural safeguards employed by the State revenue departments are listed in the NATA statement which we have submitted for the record.

What are some of these safeguards?

First, we have locked and separate facilities for the IMF magnetic tapes and the revenue agents' reports. They are separated in an isolated area away from the regular flow of material within the State tax departments.

We have restricted access to such facilities—not everybody in the tax department can walk in and out of these areas.

The premise on which return information is maintained is secured. In many instances it is locked. Entry is accorded only by those wearing sufficient badge identification and a certification in the log entered as to why are you coming into the Federal area, what is your purpose, who is the supervisor that sent you there, and what are you taking, if you are taking anything, from that area.

They sign for it before it gets out.

We require that the State employees sign a statement attesting to the fact that they are aware of the penalties for violating confidentiality, and we use written instructions to an employee with respect to confidentiality safeguards and the violations for misuse, and you will find that annually every employee section that is involved in Federal return information exchange holds seminars with respect to the criminal and civil penalities for violation of confidentiality.

Every new employee coming into a State tax department goes through the instructive course of what the penalty consequences are for failure to observe the requirements of confidentiality.

INTERNAL REVENUE SERVICE AUDIT OF STATE SAFEGUARDS

State revenue departments have worked closely with the Internal Revenue Service in maintaining and improving confidentiality standards. Beginning in mid-1974, the Internal Revenue Service, through its inspection service and its district offices, came around and visited State tax departments for the purpose of an onsite eyeball inspection of how the Federal tax return information was being guarded.

From the information received by NATA, the national organization, such eyeball inspections have now been conducted in more than four-fifths of the States. The principal IRS findings, as reported by the States to NATA, can be summarized as follows:

There was no misuse of Federal tax return information found in any State.

The IRS inspectors approved the State revenue departments' confidentiality safeguard systems, either in their existing forms or with essentially minor corrections.

In every case where the IRS inspectors recommended changes, the changes involved technical and procedural details. They did not deal with any kind of substantive requirement to increase safeguards.

They dealt with such matters as "put a second lock on the file in addition to the one that is there," or "change the grammatical syntax of a notice going out to the taxpayers."

In my State, for example, the only correction they asked us to make was put a period where we had a comma in a series of sentences notifying the taxpayers that we had obtained this information from the IRS.

They said, "Well, if you put a period instead of a comma, this information was obtained under such and such a section of the Internal Revenue Code."

That was the only correction made.

Finally, and most importantly, the cooperative nature of these audits and the mutual concern over tax return confidentiality are reflected in the fact that every recommendation which was made by the IRS inspectors in these examinations was complied with directly and almost immediately by every single State tax department.

In Massachusetts, we went through this and I would like to read you an open letter that was sent by the IRS Director of the Boston, Mass. district, to the Governor of the Commonwealth, as follows:

DEAR GOVERNOR DUKAKIS: As you know, the Internal Revenue Service is responsible for preserving confidentiality of tax returns. When we supply tax return information to States, we are also responsible to insure that the State take measures to protect the confidentiality of the information supplied.

In December 1974 our district people, and more recently people from our national office, reviewed the measures taken by the Commonwealth of Massachusetts to effect this objective.

Our visitors were impressed with the sense of urgency and responsibility existing with those involved in safeguarding the information supplied.

The procedures set up by the Commonwealth are in fact exemplary.

Now, that letter is not an unusual letter. That is the kind of letter that has been sent practically to every single tax administrator following the investigations made, on-site investigations of the safeguards which State tax departments now maintain and have maintained for years with respect to the information which we have received from the Internal Revenue Service.

Senator HASKELL. Thank you, sir, very much indeed.

Gentlemen, let's start out with the assumption that additional revenues and efficiencies are derived by the exchange program, and that you don't want to duplicate efforts at the Federal and State levels.

Another assumption is that we want to safeguard the tax return privacy.

Also, let's assume that Wisconsin, Colorado, Virginia, Massachusetts, Louisiana, and Arizona all have proper procedures. Now, nevertheless, we have had reports of tax returns showing up in the hands of collection agencies.

In one case a whole slug of tax returns from the local assessors' office were involved, and in another case they were in the hands of divorce lawyers.

So, it appears to me, anyway, that perhaps something ought to be done, and the exchange program, in my view, should continue.

I have a couple of questions. First, the Federal statute says that anybody who violates privacy is guilty of a misdemeanor and can be fined not more than $1,000 and the prison sentence, which I assume is rarely imposed, is not more than 1 year.

Do you think—and let me ask this of you—that statute is an adequate stick?

Mr. CLARKE. Well, Senator, the feeling of the State tax administrators on this whole subject matter is if the Congress feels the present sanctions, which are within either the code or in the State law, are to be increased, the administrators are not opposed to increasing the sanctions.

We feel that State administrators are required to protect the confidentiality of the return. The whole system of collection of taxes in America, State and local, is based upon voluntary disclosure, and unless we retain the respect of the taxpayers in that regard, then we are not going to get the voluntary disclosure.

All of the compliance effort combined of State and IRS tax administrators doesn't affect more than 5 percent of the total revenue collected.

All of the rest of it comes from voluntary compliance. It is only if we earn the respect of the taxpayers of America that what we are doing is correct and right and honorable and decent.

It is only then that the taxpayers of America are going to continue to comply on a voluntary basis.

If it is necessary to enhance the respect for our Internal Revenue Service or for State tax administrations to increase the sanctions in these areas, we don't oppose the increase in the sanctions.

Mr. DOLAN. In Colorado, that is supplemented by State law, which provides for a fine and discharge from the office; you can lose your job.

Senator HASKELL. This is the kind of perhaps increased penalty that should be put into the law.

Let me ask any one of you gentlemen: Suppose this statute were changed to be more rigorous, and suppose you went one step further and said that taxpayer information would be available to only those States which either had a comparable or stronger statute.

What would be the attitude of the State tax administrator on such a point?

Mr. CLARKE. I think you will find the level of the present sanctions in the code is a level that every State is willing to go to, and if it is the sense of Congress to increase that level, every State will go along with the increase as well.

Senator HASKELL. I thank you, gentlemen. It is a serious problem, and as I indicated to Mr. Clarke, it is very important to keep it the way you have, confidential.

We have received reports, for example, that certain States—and I don't know whether this is so, but it does come from the IRS—that State tax agencies are not under the direct supervision of a State officer, but instead they have used private organizations which contract with such States.

I received this information from the IRS. This would seem to me to be an inappropriate way to go about collecting taxes.

I would like to have your views on that.

Mr. SMITH. Senator, the State of Indiana at one time relied upon a private contractor to perform ADP processing operations on Indiana tax returns.

Based upon a telephone conversation with Frank Klinkose, Director of Income Tax for the Indiana Department of Revenue, I have learned that Indiana does in fact employ a private contractor to data process their State income tax returns. Prior to 1970, some of the records received by that State did leave the premises of the revenue department and were processed in the offices of the private contractor. At no time, however, were Federal returns or data subject to inspection or used by the private firm.

Since approximately 1972, Indiana has employed a private company to manage its data-processing activities. According to Klinkose, the machinery to perform these functions is privately owned but located in buildings housing Indiana's Department of Revenue. The employees who work for this private contractor perform their tasks only on the premises, in the presence of and under the direct supervision and control of Indiana revenue employees. These privately employed individuals are subject to the same statutory requirements regarding confidential tax data, as are State employees. It is my understanding that these procedures and this arrangement have been under continuous review and inspection by the IRS, without known criticism.

Senator HASKELL. I am glad to hear that, and I assume, Mr. Smith, you would agree with me that that is an inappropriate way to do it?

Mr. SMITH. Very much so.

Mr. FORST. When you subscribe to the IRS tapes, the information you receive from the IRS Service, the first constraint on that information is that it not be handled by a contractor. It must be handled by au-

thorized State employees only. So, it a constraint that is in the instructions that you receive from IRS.

Mr. CLARKE. In addition to that, too, Senator, in that one instance, what that State was doing was using the original State-filed information as the input for the computer operation. In other words, they were getting their State returns filed, and then they were hiring a firm for input of those returns.

It is not the Federal information at all that was being involved in that situation.

Senator HASKELL. I just have one more question. I think all you gentlemen were in the room when Mrs. Eastman testified. She made the suggestion that perhaps there should be a civil penalty against an IRS employee, or assuming the State adopted a similar statute, against the State employee, who, for instance, might give my tax return to some unauthorized person. I wonder what your reaction is to her suggestion? Do I make myself clear?

Mr. CLARKE. Yes. Speaking for the State of Massachusetts, and I am sure speaking for the State administrator generally, we are in favor of severe sanctions against any State administrator or tax department employee who violates the principle of using the tax returns for tax return purposes only. If the tax return is used for credit or criminal investigation not related to tax administration, for divorce proceedings, for tort actions, or something, if a State administrator uses that, and if he does it for a State return, and IRS is not involved in it at all, if he uses that, he ought to suffer severe penalties, because that is an attack upon the voluntary compliance.

Senator HASKELL. Thank you, Mr. Clarke.

Senator Fannin?

Senator FANNIN. Thank you, Mr. Chairman. May I commend you gentlemen for very impressive testimony. As a former State official, I certainly agree with the tremendous value of this program that you have been discussing.

Now, it is really impressive, Mr. Clarke, that you found only one known instance of a State employee misusing such information.

I am not critical, but does that imply that these stories we hear that the information has been disclosed came from other States?

Mr. CLARKE. Yes, sir. We have never heard the actual certification of fact in those rumored stories. We would like to get the evidence.

Senator FANNIN. That is a tremendously impressive record. It is almost unbelievable that it could have happened, but I accept your explanation. I do trust that you will investigate some of the reports that happened. You have probably seen some of them in the press, because I think it is essential that if you are going to stand by a statement such as you made here, that you do have the information to back it up.

Mr. CLARKE. We have sought that information from those who have been issuing it, for the purpose of making such inquiries, and we haven't got any facts upon which to pursue it.

Mr. DOLAN. Senator, none of the instances cited by the ACLU witnesses were State instances.

Senator FANNIN. Yes, sir.

Mr. SMITH. Senator, there has been a research into this matter by the IRS, and provided in the form of a report to Representative Litton

of Missouri. Some of that information has been shared with us. The IRS has been asked to identify, go back into history, and identify those known cases where there has been unauthorized revelation or misuse of Federal tax return information, and in that report by the Internal Revenue Service, there is a citation or listing of Federal employees who have so misused.

But again, as Mr. Clarke has pointed out, the only cases from IRS files themselves, the information they have shared with Representative Litton, is the one case of the employee in California in 1968, none of us are aware of any others.

Senator FANNIN. Thank you very much. I am not examining you at all. I am very much amazed that you have had that splendid record. When you talk of penalties, we can look at that, and if more severe penalties would be helpful in the future, they certainly should be provided.

What kind of policy is in effect to make sure such information is not made for partisan political use within the State.

Mr. CLARKE. Not only for political purposes, but for any kind of purposes.

Senator FANNIN. You don't feel there is anything further needed in that regard?

Mr. CLARKE. No, but political activity, commercial, industrial, or any other kind of activity is barred. The only thing we are interested in is a good, joint administration of tax laws.

Senator FANNIN. As far as physical security, you feel that that is certainly adequate, according to your statement, that is programs guarded more carefully than just ordinary State records. Is that right?

Mr. CLARKE. That is right. There is full segregation.

Senator FANNIN. One question I have is this: I just want to get a little more information on this. The uniformity of, for instance, schedules for appreciation and things of that nature, has that come about by this interrelationship?

Mr. CLARKE. Not necessarily, no, but there is a tremendous trend for a good many years now, Senator, for State tax laws, whether corporate or individual, to go the route of the Internal Revenue Code.

Senator FANNIN. There is more uniformity?

Mr. CLARKE. Yes.

Senator FANNIN. I ask that question because I remember one of the complaints we had in my State of Arizona was the variation between depreciation schedules of the Federal Government and the depreciation schedules of the State. Now, I am not saying that you gentlemen should be for the idea of complete uniformity, but sometimes, some of these States, the natural resources and everything involved, it is very difficult to have the agreement which you may want. But I wonder about what has been done.

Mr. CLARKE. The trend has been to go as far as we can in the areas of depreciation. Administratively, even though the tax laws in a specific State may not so particularly state, you will find that administratively the State income tax laws are going down the road of as much conformity with respect to deductions made under section 62 as they can.

Senator FANNIN. I was very impressed by your testimony and I commend you for what has been done. We wish you well, and we

hope that if there are any ways in which the Federal Government can be of assistance that you bring them out.

Today, you seem to be fairly well satisfied with what is in effect at the present.

Mr. CLARKE. Well, let's not cut it off.

Mr. FORST. May I make one observation? In the booklet you are going to put in the files, the last schedule shows all the State penalties and fines—some of these are felony offenses—but it will give you an idea of what the State laws contain today in the area of legislative provisions.

Senator HASKELL. Thank you, Mr. Forst, very much, indeed.

It is in the yellow booklet.

Mr. FORST. Yes.

Senator HASKELL. I have a couple of other questions, Mr. Clarke. Do you have a problem with respect to the continued use of Federal tax information because of certain restrictions in the Privacy Act concerning the use of social security?

Mr. CLARKE. Yes. There is a problem which has arisen as a result of the Privacy Act which says, in effect, that if a State has a specific statutory provision or a regulation in effect before January 1, 1975, that the State cannot thereafter require the use of a social security number.

Now, it isn't precise and clear and exact. It says we cannot deny the rights and privileges accorded to a taxpayer by his failure to supply.

Now, there are about a half dozen States, Senator, which as of January 1, 1975, did within their State statutes have a provision for the use of the social security number specifically, or had a regulation specifically, and, therefore, they qualify under that provision of the Privacy Act to continue to use and require the use of social security numbers on the State returns.

Other States, many of them, the great bulk of them, maintain that they qualify because they have the general statute which in effect says that the State Tax Commissioner shall make up the tax return form which the taxpayer shall execute and return, and on that form they have set forth the requirement of entering the social security number.

In connection with that return, of course, they supply the very detailed instructions for making out the tax return, and in the instructions, they set forth the specific instructions to enter your social security number, and the spouse's but we think that it is necessary to clarify that element, that sentence, in the Privacy Act to say that States shall be allowed to use the social security number in the administration of their tax laws only for tax administration purposes, and that the January 1, 1975 date should be changed.

Senator HASKELL. Well, would be your suggestion, then, to extend the date?

Mr. CLARKE. Right.

Senator HASKELL. So that States would have the time to comply.

Mr. CLARKE. That is right.

Senator HASKELL. All right, sir.

Maybe Mr. Smith, there is a question I should ask you. Can you describe generally what information is made available to a State by the IRS when the tapes are provided?

Mr. SMITH. Yes. The information is the taxpayer's name, address, and social security number, his total income, his adjusted gross income, a summarization of his deductions from adjusted gross income to get that in taxable income, and the exemptions claimed.

Senator HASKELL. You know, we have heard, and it has been in the public press, that 60 million or so Federal tax returns are made available to States annually. Would you interpret that that figure is in reference to this summarization?

Mr. SMITH. I would think so, rather than the returns, the social security number.

Senator HASKELL. Is that regulation sufficient under the Privacy Act?

Mr. CLARKE. It is our position, Senator, that there is a doubt, and the doubt ought to be resolved. The doubt is, is this a sufficient indication of having in existence subsequent, or, rather, prior to 1975, a regulation requiring the use of the social security number, or does this preclude those States which may say by some extreme interpretation of the rule, you might say of them, "Well, you didn't have a specific rule or statute, so you can't require the use of social security numbers now."

The use of the social security number is required under the Internal Revenue Service in order to process the return. My return and your return is identified on the computers by number. State tax computers operate the same way. We are willing in the State tax administration to support the congressional attitude that social security numbers should not be used for researching criminal records, for credit purposes, for divorce actions or anything else, but we also maintain, Senator, that this question of the social security number is also a part and parcel of the exchange of information, and that we are required under this law, which we hope you will enact, to give the same confidentiality as you do toward the use of the social security number as we give to any other piece of information that we have, record documents themselves. I think this return information in a summary form is made available to those States in these tapes.

I think one important point, Senator, needs to be emphasized here, and that is that we do have, yes, access, and we do take a look at printouts after the Federal and State tapes are compared, but here we only look at, and here I have to hedge, because I cannot speak for all States, but I know in my State and the people here with us, that we only look at the exceptions. We are looking for those persons who have filed a Federal return who have not filed a Wisconsin, or Colorado, and so forth, return. So, their tapes are compared, and only those who appear on tape A and not on tape B, that information is printed out and made available for further enforcement activity.

There is no real reason to transcribe this information on magnetic tape and a hard copy documents, because you really have the same information in your own file, and this would be a wasteful procedure.

Mr. DOLAN. Senator, as far as Colorado is concerned, in the 6 months to date in this fiscal year, we have received zero tax returns.

Senator HASKELL. The statement has been made that 60 million of the Federal tax returns go to the States. I strongly expect that when that statement is made, they are referring to the summarization on the tape, and I wanted to find out if you felt that same way.

Mr. DOLAN. Yes.

Mr. CLARKE. Mr. Chairman, the statement can be made that an equal number go to the Federal Government, because what we are doing is matching tapes.

Senator HASKELL. Senator Fannin?

Senator FANNIN. Thank you.

Gentlemen, you are highly qualified, and it has been referred to that some States with declining revenues have started looking for new sources, and now some of them, where they have large power generation plants within the State, are charging a tax on the power that they export.

I don't know whether you gentlemen have run into this or not, and they charge differently than what they charge their own residents within the State.

This could result in quite a problem throughout the country, because the next State may start charging for the importation of the power. What are your thoughts with respect to that?

Mr. CLARKE. We had an interesting case just decided by the U.S. Supreme Court on this, not necessarily importation, but a tax on a person outside the State and a person inside the State not being taxed. New Hampshire had a commuter tax, and they imposed it on residents of Maine, Massachusetts, and Vermont who were working in the State of New Hampshire, and charged those residents out-of-State the tax rate of the State that they came from, and the residents of the State of New Hampshire were taxed zero.

We challenged that, and the U.S. Supreme Court upheld us and struck down this unconstitutional New Hampshire tax.

Senator FANNIN. I think this is a very serious problem that we could face, because this is the United States of America, and we are supposed to be operating on that basis, but the State tax, there is a charge made to the local residents and the local companies that use the power, the users of the power, but then that is refunded, but the tax on the power that is exported, there is no refund available to them. There is no way that they claim the refund. So it is a subterfuge to try to say that, "Well, we are not charging any differently within the State than we are outside the State."

I have legislation introduced to make it unlawful for this to be done. I would like for you to give it some thought, because I think it is a very serious matter, and it could be of great consequence around the country.

New Mexico is the State that has just adopted this.

Mr. FORST. Sir, I can respond, in Virginia, Vepco reports energy, and they are not subject to the State's corporation tax on electricity exported. They are taxed on a gross receipts basis, which applies to any electricity, exported or not.

Senator FANNIN. Yes. But they are not charging differently for the power that is exported and what is distributed within the State.

Mr. FORST. That is correct.

Mr. CLARKE. What you are speaking of is the value added tax, and that is a new type of tax approach that has come from the Common Market countries. There are a couple of States which have entered into a type of value added tax, particularly the State of Michigan. The State of West Virginia enacted it in both Houses, but the Governor failed to sign the bill. But there is a trend toward value added tax.

Senator FANNIN. Yes, and this is a very serious problem, and I hope we can have a solution to it. I think it would be very unfair, especially in some of the States, where my particular State would benefit if we did that, because we would be exporters. But I don't think it is equitable, and I would certainly oppose it.

Thank you, gentlemen.

Senator HASKELL. Just one final question for Mr. Smith.

It is my understanding that if a State wants my actual taxes, not the summarization on tape, that formal request must be made or a State agent must go to an IRS service center. Is my understanding correct? The Governors of the various States sign the agreements, and one part of the agreement on exchange of information is the listing of the State employees who are authorized to receive Federal tax information.

Mr. SMITH. In Wisconsin, if you move to Wisconsin and we want to take a look at your return, we have to make a specific request to this return, and we would have to appear in Milwaukee at the Office of the Internal Revenue Service and there make a transcription of it.

Senator HASKELL. Thank you, gentlemen, very much, indeed. We appreciate it.

Mr. SMITH. Thank you.

[The prepared statement of the National Association of Tax Administrators follows:]

STATEMENT SUBMITTED BY THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS[1]

The National Association of Tax Administrators, an organization of the revenue departments of the 50 states and the District of Columbia, respectfully recommends that in any legislation which Congress enacts with respect to the confidentiality of tax returns, the states' access to federal tax return information be continued in its present form.

The NATA submits this recommendation for the following reasons:

The state revenue deparments have unanimously taken a position in support of the continuance of the Federal-State Exchange Program in its present form;

The states' use of federal tax information dates back a half century, and embodies the historic view of Congress, the Internal Revenue Service, and the state governments on the desirability of coordination of federal and state tax enforcement;

IRS audit adjustments and Individual Master File tapes are used as an integral part of tax administration by nearly every income tax state, and by non-income tax states for occupational and estate tax purposes;

The state revenue departments have achieved an outstanding record in protecting the confidentiality of federal tax return information. The Federal-State Coordination of Tax Administration Agreements, the present basis of states' use of federal tax return information, give principal emphasis to the protection of confidentiality and to the maintenance of necessary safeguards. The states have developed many physical and procedural safeguards in the 50 years they have used such information and, in that time, there has been only one instance of a state employee's misue of federal tax return information;

[1] This statement is based on the report, Federal-State Exchange of Tax Information, 1975, by the Federation of Tax Administrators, Chicago, Ill. (December 1975), submitted for the record.

The use of federal tax return information accounts for an important source of state tax enforcement revenue. For the larger states, such use supplements state enforcement operations to a significant degree. For smaller states with limited audit operations, the use of federal tax return information often constitutes the predominant part of the income tax enforcement effort;

If the states were deprived of federal audit adjustments and/or the IRS Individual Master File tapes, they would have to recast and expand their audit programs significantly, and, even with this expansion—particularly with respect to the use of the IMF tapes—it is unlikely they could compensate for the loss completely. Their ability to compenate for any part of the loss would depend upon the willingness of state legislatures to increase appropriations for tax administration considerably;

The Federal-State Exchange Program which includes continuous use of state tax return information by the Internal Revenue Service, has contributed importantly to simplified taxpayer-compliance by its encouragement of federal-state tax conformity and its reduction in the number of federal-state duplicate audits; and

The Federal-State Exchange Program has been described as an outstanding example of intergovernmental fiscal cooperation. It has operated harmoniously and effectively through the years with important benefits to the states, the federal government, and taxpayers.

The remainder of this statement is concerned with an extension of the preceding remarks.

TAX ADMINISTRATORS' SUPPORT FOR THE FEDERAL-STATE EXCHANGE PROGRAM

The National Association of Tax Administrators, at its Forty-third Annual Meeting, held in St. Louis, Missouri on June 22-26, 1975, adopted a resolution expressing its support for the continuance and strengthening of the Federal-State Exchange Program and its support for IRS and state programs to assure complete confidentiality of tax information in every phase of the exchange program. A copy of the resolution is attached to this statement.

Identical or similar resolutions were adopted at the 1975 annual meetings of the following regional associations of tax administrators:

The Southeastern Association of Tax Administrators at its Twenty-fifth Annual Conference held in Louisville, Kentucky on July 13–16,

The Midwestern States Association of Tax Administrators at its Sixteenth Annual Conference held in Minneapolis, Minnesota on August 10–12, and

The Western States Association of Tax Administrators at its Twenty-fourth Annual Conference held in Billings, Montana on September 21–25.

HISTORICAL DEVELOPMENT OF FEDERAL-STATE TAX COOPERATION

State use of federal tax return information dates back to the early 1920's. In 1926, Congress formalized this use, in the Revenue Act of 1926, by authorizing the states to inspect federal tax returns through a provision which corresponds to the authority provided in Section 6103 of the present Internal Revenue Code. The 1926 act was passed at a time when a growing number of states were adopting income taxes, and it reflected Congress' recognition that the states' capacity to administer the new taxes would be enhanced by access to federal tax returns and audit adjustments.

In 1935, Congress took even more explicit action in this regard when it passed the Costigan Amendment which, for several years, required federal income taxpayers to file a duplicate return in order to facilitate state inspection procedures. Federal tax return information soon became an integral part of the state tax enforcement process. The present provisions of the Internal Revenue Code relating to state inspection were passed in 1938.

The first federal-state exchange of tax information dates back to 1950 when the Internal Revenue Service initiated a test project with the states of Wisconsin and North Carolina for the routine exchange of abstracts of audit information, so that state tax return information could be used in federal tax administration. In 1957, a new phase of federal-state tax coordination was initiated when IRS entered into a formal agreement with the state of Minnesota designed to encourage a greater exchange between the states and the federal government.

The agreements have spread until now they are in effect in all but two states—Nevada and Texas, neither of which have income taxes. Texas is currently negotiating such an agreement with IRS. Also, in the course of the years, the agreements have changed in form, and there have now been three generations of coordination agreements providing for the exchange of tax information. The agreements have changed in form for three principal reasons: (1) to provide for greater uniformity of procedures among the states in the exchange of tax return information, (2) to provide greater protection of tax return confidentiality, and (3) to reflect new developments in tax administration.

The first generation of agreements required IRS and state tax officials to establish mutually agreeable programs for the sharing of information that would promote the basic objectives of the exchange program. These objectives, as described in the agreements, were to insure the filing of returns, to improve enforcement efforts, to determine correct tax liability, and to collect all revenue from persons subject to taxes under federal and state tax laws. The first generation agreements were designed to be "open ended" so that they could be revised to reflect new developments in tax administration. These agreements, while basically similar, varied somewhat from state to state, reflecting differences in state tax structures and in the working relationships between IRS district offices and state revenue departments.

The second generation was instituted in 1969 when IRS approved a model coordination agreement for use as a guide in the revision of existing agreements and the drafting of new ones. The 1969 model included provisions for the maximum use of electronic and mechanical equipment in the exchange of information and for the confidentiality of tax returns and penalities for unauthorized disclosure. The third generation of agreements, instituted in 1975, includes additional specific language relating to the confidentiality and the safeguarding of data supplied by IRS to the states.

STATE USE OF FEDERAL AUDIT ADJUSTMENTS AND INDIVIDUAL MASTER FILE TAPES

The principal sources of federal tax return information used by the states are audit adjustments from federal revenue agents' reports (RAR's) and the Internal Revenue Service's Individual Master File (IMF) tapes. Both of these sources are used extensively by the states and constitute the basis of the Federal-State Exchange Program.

Currently, every state imposing an individual income tax, except Pennsylvania, uses RAR audit adjustments on a continuous basis. Pennsylvania, under its individual income tax law, allows neither exemptions nor deductions and, as a consequence, finds federal tax return information to be of limited value. Through agreement, most of the states receive RAR's automatically from IRS district offices, but some states have arrangements whereby their employees copy some or all of RAR information under federal supervision. The federal audit adjustments have been used by the states since the 1920's.

The Individual Master File tape program was first instituted in 1967 and, since then, on special invitation, the tapes have been made available to the states annually. The IMF tapes include the taxpayer's name and address, gross income and adjusted gross income, deductions, and federal tax liability. State revenue departments match the IMF tapes against state tapes containing similar data from state returns.

Before 1967, states matched hard-copy state and federal returns. The use of magnetic tapes facilitated the matching process tremendously and caused the programs to spread rapidly. All but three of the 40 states imposing individual income taxes use magnetic tapes or have used them. In addition, New Hampshire and Tennessee use them in administering taxes on income from interest and dividends, and Florida uses them for purposes of its intangible property tax.

The principal purpose of the tape matching programs—in 37 states—is to discover non-filers. Twenty-two states, in addition to matching for non-filers, compare amounts reported for adjusted gross income. Sixteen states compare exemptions reported on the federal and state tax returns.

USE OF SPECIFIC TAXPAYER RETURNS

Nearly all states request specific federal returns under certain circumstances for tax administration purposes; however, all but a few states do so infrequently and only in connection with special enforcement needs. In a large majority of

the reporting states, specific federal returns are requested fewer than 100 times a year and, in many states, much less frequently. Only two states report that they use federal returns for specific taxpayers extensively, and only two others do so in sizable numbers.

The two states reporting extensive use of specific federal returns—Connecticut and Florida—do not impose broad-based income taxes. Connecticut imposes a tax on capital gains and dividend income, and it copies relevant information from federal tax return schedules which it matches against state taxpayer returns. Florida, which has an intangible personal property tax, compares information on income from intangibles on federal returns with state intangible personal property tax returns.

California and North Carolina, both of which reported requesting some 5,000 federal returns in the latest year, use such returns for individual income tax purposes. The California Franchise Tax Board reports that it uses specific federal returns for two purposes: (1) it must request a copy of the federal tax return in order to obtain copies of federal revenue agents' reports for taxpayers with an address in another state, and (2) such returns are used in its delinquency program and in determining the correct tax when it has had to estimate a taxpaper's income. Similarly, North Carolina reports that it requsets specific federal income tax returns in order to prepare state individual income tax assessments for certain delinquent taxpayers.

Among the various purposes for which specific federal income tax returns are used by those states which request them infrequently are the following: when non-filers do not respond to departmental requests for federal information; for use in fraud investigations and in the criminal prosecution of willful non-filers; when there is evidence to indicate that a taxpayer has income from out-of-state sources which he has not reported; when information on federal tax returns schedules is needed in a delinquency investigation; and to ascertain income sources which have been questioned on the state tax return.

STATE TAX RETURN INFORMATION COMPARED WITH FEDERAL TAX RETURN INFORMATION

Preponderantly, the federad tax information inspected by the states is already available to the states on returns filed by state taxpayers. Most state income tax laws correspond closely to federal income tax laws, and the income tax returns of most states require the reporting of the same, or nearly the same, information reported on the federal income tax returns. Some states with income tax laws which define state taxable income by reference to federal law, require the taxpayer to report only his federal adjusted gross income as the starting point in computing has state income tax liability. However, in such states, the data comprising federal adjusted gross income may be obtained from the taxpayer on demand. Thus, the only additional information the states receive in the form of federal tax return data is information they should have received initially from the taxpayer, but did not—either a return he failed to file, income he failed to report, or an error in his tax computation.

There is another built-in feature in the taxing process which serves to protect the privacy of the federal tax return information the states receive. There is no secret accumulation of information concerning any taxpayer, since the taxpayer is either already aware of the federal tax return information inspected by the state, or soon becomes so. Either the federal information corresponds to that reported on the taxpayer's state return or, if it involves income which should have been reported but was not, the taxpayer is notified of this fact promptly by an assessment for added state taxes.

LOCAL GOVERNMENT USE OF FEDERAL TAX RETURN INFORMATION

The states report that local governments receive federal tax returns in only four of the ten states in which local income taxes are in effect. In three other states—Indiana, Maryland, and New York—local income taxes are wholly administered and collected by the state tax agencies. Three other states—Alabama, Delaware, and Kentucky—in which one or more local governments tax income and administer their own taxes, report that no federal tax return information is transmitted by the state to the local taxing officials.

The states in which the state tax agency transmits federal tax return information are Michigan, Missouri, Ohio, and Pennsylvania. Of these states, Missouri furnishes one city with information on the taxpayer's federal adjusted gross

income for use in administering the city's earnings tax. Michigan transmitted federal tax return information to three cities in the latest tax year. For each city, the information was furnished only on infrequent occasions in response to cities' enforcement needs in specific compliance cases.

Of the two remaining states, Ohio reported that it transmitted federal tax return information directly to 44 cities, and Pennsylvania reported sending such information to 11 cities.

Local governments do not have direct access to federal tax return information but may obtain such information only through state tax agencies. Under Section 6103(b) of the Internal Revenue Code, federal income tax returns are open to inspection by state officials charged with the administration of any state tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities. The governor of the state must make a written request in order that the information so obtained be furnished to local governments. The information so furnished may be used only for the administration of local tax laws.

STATE TAX RETURN INFORMATION FURNISHED THE INTERNAL REVENUE SERVICE

While the states derive the principal revenue benefit from the Federal-State Exchange Program, IRS has made considerable use of state tax return information in a range of tax fields. Mainly, the state revenue departments report a continuing relationship with the IRS district offices in transmitting state tax return information or in giving IRS officials access to state records. In some states, there is no regular flow of state tax information to IRS, but IRS officials request and receive state tax returns whenever they are needed.

Individual income taxes and motor fuel taxes are the two principal areas of state tax return information used by IRS. However, IRS also makes frequent recourse to information developed by the states with respect to inheritance and estate taxation and, in some states, it makes regular or periodic use of sales tax materials and of tax returns or audit findings for other taxes.

In addition to the Internal Revenue Service's direct use of state tax return information, at least a dozen states have participated with IRS in a cooperative audit program. As described by IRS, the cooperative audit program provides state authorities with abstracts concerning individual and estate tax returns, and current year returns, which appear to have a good audit potential but which, because of manpower restrictions, will not be selected by IRS.

Indicative of the revenue potential of this program, the New York Department of Taxation and Finance has estimated that over a five-year period, the federal government has derived $49 million in added revenue from New York's participation in the federal-state cooperative audit program, and an additional $4 million from diesel fuel tax information provided by the state to IRS. Of the five-year income tax total, $20 million was derived from New York's substantiation audit of federal returns selected by IRS, and $29 million from New York-selected cases given to IRS.

PROTECTING THE CONFIDENTIALITY OF FEDERAL TAX RETURN INFORMATION

The states have had an impressive record in protecting the confidentiality of federal tax return information. During the half century that state revenue departments have used federal tax return information, there has been only one known instance of a state employee's misuse of such information. That occurred in 1968 in California, where a tax department employee was apprehended selling federal tax return information. The employee was indicted, tried, and convicted for this violation.

This impressive record may be attributed to the measures the state revenue departments have taken—individually, and in cooperation with the Internal Revenue Service—to prevent the unauthorized disclosure of federal and state tax return information. The measures include specific confidentiality provisions in the federal-state tax coordination agreements, the imposition of federal and state penalties for the unauthorized disclosure of tax return information, physical and procedural safeguards, and the audit of state safeguards.

FEDERAL-STATE AGREEMENTS ON THE COORDINATION OF TAX ADMINISTRATION

The federal-state agreements on the coordination of tax administration provide specifically for the protection of the confidentiality of federal tax return information. As was reported earlier by this panel, such agreements are in effect in all of the income tax states. Confidentiality provisions have been a prominent feature of these agreements, and they have been given special emphasis in the latest model agreement, which was drawn up last year and is being adopted rapidly by the states.

Under the 1975 IRS-state model agreements, state or federal officials are required to maintain a secure area or place in which the return information is stored. They must restrict access to such information only to those officials and employees whose duties require such access, and they must provide such other safeguards as are deemed necessary. The agreements also provide that IRS magnetic tapes may be processed only under the supervision and control of authorized state employees and that the federal return information is to be destroyed after use. The agreements specify that unauthorized use or inadequate safeguards constitute grounds for the termination of the agreement and the exchange of information.

PENALTIES FOR UNAUTHORIZED DISCLOSURE

With respect to criminal penalties for unauthorized disclosure, Section 7213 (a)(2) of the Internal Revenue Code provides specifically that state employees who so misuse federal tax return information are subject to the same penalties imposed on federal employees for such an act, namely a fine of $1,000, imprisonment up to a year, or both.

In addition to this federal provision, a compilation by the Legislative Analysis Division of the Internal Revenue Service, in September 1975, shows that every state imposing an income tax has a law making it unlawful to disclose information from a tax return. In some states, the penalties provided are more severe than those provided under federal law.

PHYSICAL AND PROCEDURAL SAFEGUARDS

The physical and procedural safeguards used by state revenue departments are listed in the Federation of Tax Administrators' study (see footnote, p. 1). Some of these safeguards are the following: locked and separate facilities for IMF magnetic tapes and revenue agents' reports; restricted access to such facilities; a requirement that badges be worn by persons entering the premises on which federal return information is maintained; the recording of such entries in a log; the destruction of federal tax return materials after use through shredding or burning; a requirement that state employees sign statements attesting to their awareness of federal and state criminal penalties for unauthorized disclosure; and the use of written instructions to employees with respect to confidentiality safeguards and the violations for misuse.

INTERNAL REVENUE SERVICE AUDIT OF STATE SAFEGUARDS

The state revenue departments have worked closely with the Internal Revenue Service in maintaining and improving confidentiality safeguards. Beginning in mid-1974, the Internal Revenue Service, through its inspection service and its district offices, audited the confidentiality safeguards used by the state revenue departments. From the information received by NATA, such audits have now been conducted in more than four-fifths of the states. The principal IRS findings, as reported by the states to NATA, may be summarized as follows:

No misuse of Federal tax return information was found in any state;

The IRS inspectors approved the state revenue departments' confidentiality safeguard systems, either in their existing forms, or with essentially minor corrections; and

In every case where the IRS inspectors recommended changes, the changes involved technical and procedural details. They dealt with such matters as added locks and cabinets, the stationing of tax department employees in state data processing centers, the preparation of written instrutions to state employees, and the notification to taxpayers that added assessments were based on federal tax return data.

Most importantly, the cooperative nature of these audits and the mutual concern over tax return confidentiality are reflected in the fact that every recommendation made by the Internal Revenue Service inspectors was complied with directly by the state revenue departments.

BENEFITS FROM FEDERAL-STATE EXCHANGE PROGRAM

The Federal-State Exchange Program has worked well for state governments, the federal government, and taxpayers. The states collect important amounts of added tax revenue each year as a result of the program. The federal government uses state tax return information on a continuous basis and to a substantial degree. Taxpayers have benefited because their compliance burden has been simplified due to a reduction in the number of duplicate federal and state audits and the increased conformity that has occurred in tax statutes and administrative procedures as a result of federal-state tax cooperation.

All of this has been accomplished without any sacrifice of taxpayer confidentiality. The confidentiality safeguards which the state revenue departments have instituted, and which have operated most effectively, will be discussed later in the text. It is important to note also, however, that if state revenue departments did no have access to federal tax return information, they would have to obtain this information directly from the taxpayer through audits or requests for information. The result would be an added burden to the taxpayer and a much less efficient operation to the state revenue department.

About three-fifths of the states maintain their accounts in such a form so as to permit them to report the amounts of added revenue derived from federal tax return information. For the latest year for which such data are available, the Federation of Tax Administrators' study, on which this statement is based, reports that, for this group of states, added tax collections derived from individual and corporate income tax revenue agents' reports audit adjustments and from the use of IMF tapes, amounted to $175 million. Of this amount, 68 million came from the use of IMF tapes, $51 million from the use of individual income tax RAR audit adjustments, and $56 million from corporate income tax RAR audit adjustments.

Moreover, the $175 million is only a fraction of the added state tax collections attributable to federal tax return information because each year there are cumulative permanent gains—particularly from the IMF tape matching program—which thereafter are reflected in the annual tax collections received with filed returns. Once on the tax rolls, taxpayers discovered through tape matching programs customarily become permanent taxpayers and file their returns annually. Thus, year after year, federal tax return information has contributed to a permanent expansion in the state tax base.

The Federation of Tax Administrators' report, previously referred to, for a sampling of states shows that added state tax collections resulting from the use of federal tax return information account for a significant proportion of the total yield from a state's total audit program. For each of the 13 states maintaining accounts on this basis, added taxes derived from federal records were 15 percent or more of the total audit yield. In 10 of the states, the percentage was 20 percent of the total. In five of the states, it exceeded 39 percent, and in three states it exceeded 65 percent.

IMPACT ON STATE TAX ADMINISTRATION IF RAR AUDIT ADJUSTMENTS AND TAPES WERE NOT AVAILABLE TO THE STATES

Perhaps the importance of federal tax return information can be demonstrated most clearly by describing the effects on tax administration that would result if either RAR audit adjustments or IMF tapes were not available to the states. Without federal revenue agents' reports, the states would either have to accept a substantial reduction in enforcement revenue, or they would have a seek a substantial increase in legislative appropriations for revenue department operations. The latter course would necessitate a restructuring of audit programs, the employment and training of new auditors, and a duplication of state and federal audits.

Many smaller states depend upon federal tax return information predominantly for their enforcement revenue. For these states, the absence of federal tax return information would mean an almost complete recasting of the audit effort. For states with well-established audit programs, the impact would be less

drastic, but an important loss of enforcement revenue would result if existing audit programs were not expanded, and this would necessarily duplicate at least part of IRS audit program.

If the states were deprived of the IMF tapes, they would have to rely entirely on copies of the federal tax return filed by the taxpayer for such information. This procedure would be far less adequate than the states' present use of IMF tapes, for several reasons.

The taxpayer would not be under the same compulsion to file an accurate federal tax return with the state revenue department if he knew that such information could not be obtained directly from IRS. Also, the states, in receiving copies of federal tax returns from the taxpayer, would have to duplicate operations now performed by the IRS service centers. They would have to record the federal tax returns on magnetic tape. They would have to process, examine, and correct the federal tax return copies. All of this would be duplicated effort, because the IMF tapes now received by the states contain the results of IRS service center processing.

One more point should be stressed in this regard. The ability of the states to compensate for any loss of federal tax return information through their own resources would depend upon the willingness of state legislatures to appropriate added amounts for tax administration. As we know, many states are now confronted by budgetary difficulties and there is a widespread reluctance on the part of state legislatures to increase appropriations, even when these added funds can produce additional revenues.

Without increased financing, the states could not hope to expand their audit operations sufficiently to compensate for any loss of federal tax return information. Even with increased financing, it would be a span of years, at best, before the enforcement efficiency attained with the use of the federal audit adjustments could be regained and, during that period, there would be a loss in state revenue and a detrimental effect on taxpayer compliance. With respect to the revenue derived from discovering non-filers through the use of IMF tapes, it is questionable whether any expansion in the state enforcement program could compensate for such a loss.

FEDERAL-STATE EXCHANGE PROGRAM AS AN ACHIEVEMENT IN INTERGOVERNMENTAL COOPERATION

The Federal-State Exchange Program has been described as an outstanding example of intergovernmental cooperation. Throughout its history, it has been characterized by a close and harmonious relationship between the Internal Revenue Service and the state revenue departments. The program has operated smoothly and effectively, and without criticism.

The benefits which have accrued to the states and to the federal government have been outlined in this statement. The program has had taxpayer approval because of the contributions it has made toward federal-state tax conformity and the simplification of taxpayer compliance. It has received consistent and wholehearted support from the Internal Revenue Service and the Advisory Commission on Intergovernmental Relations, two bodies closely concerned with the results of the program. With respect to the latter, two pertinent comments follow. The first is taken from the Annual Report of the Commissioner of Internal Revenue, 1969:

"Many years ago the Service adopted a policy of cooperating with State and Local tax administrators to the fullest extent permitted by law. Over the years, this policy has been augmented with the signing of formal tax coordination agreements establishing procedures for the exchange of tax return information and providing for reciprocal action by State and Federal tax officials to improve the administration of the tax laws of their respective jurisdictions. The existence of the cooperative exchange program, coupled with increasing knowledge of its operation by the general public inevitably leads to improved taxpayer compliance—the most important benefit of the program."

The second is a resolution adopted by the Advisory Commission on Intergovernmental Relations in November 1975:

"The Advisory Commission on Intergovernmental Relations views the Federal-State Tax Exchange Program as one of the most important elements of federal-state intergovernmental cooperation. The Commission is convinced that the cessation of the Federal-State Information Exchange Program could seriously un-

dermine the effective enforcement of many state personal income tax laws. Therefore, the Commission urges federal and state policy makers to continue this program under effective safeguard conditions that will assure that the information exchanged is used solely for tax compliance and enforcement activities."

RESOLUTION UNANIMOUSLY ADOPTED AT THE FORTY-THIRD ANNUAL MEETING OF THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, HELD IN ST. LOUIS, MO., JUNE 22–26, 1975

Whereas the IRS-state tax information exchange has been in effect for many years to the mutual benefit of state and federal tax systems, and

Whereas state tax enforcement procedures have been greatly enhanced by the availability of the exchange agreements, so that the exchange has become an intrinsic part of the state enforcement effort, and

Whereas duplicate audits and administrative costs have been reduced as a result of these agreements, and

Whereas voluntary compliance under both federal and state systems have benefited from the exchanges, now therefore, be it

Resolved, That the National Association of Tax Administrators express its full support for the continuance and improvement of this exchange and commits itself to the furtherance of this objective, and, be it further

Resolved, That NATA, in recognition of the essential importance of confidentiality of tax information exchanged under the federal-state agreements gives its full support to IRS and state programs to assure complete confidentiality of tax information in every phase of the exchange program.

Senator HASKELL. Our next witness is Byron L. Dorgan, tax commissioner of the State of North Dakota.

Mr. Dorgan, I understand you have the distinction of being the only elected tax administrator in the United States.

STATEMENT OF BYRON L. DORGAN, TAX COMMISSIONER OF THE STATE OF NORTH DAKOTA

Mr. DORGAN. I am elected.

Mr. Chairman, and members of the committee, I don't want to be redundant, and since the previous panel covered the subject quite well, I would like to make just a couple of comments to buttress several of things that they have said.

No. 1, I think your committee hearings are timely and important because there have been threats to the privacy of tax information in this country; there have been alleged abuses and reported abuses, and for that reason, I think Mr. Owen Clarke's suggestion that threats to privacy in the minds of the taxpayers can undermine the very foundation of our tax system, so I think your hearing is right on point, and it is timely.

However, there is no evidence that I know of in any State that the threats to the privacy of the citizens' tax information has come about as a result of exchange of tax information agreements between the States and the Federal Government. I think that is an important point.

There is no evidence that I know of that that has occurred. The attorney who appeared on behalf of the ACLU this morning indicated the importance of the right of privacy. I share those sentiments, but I don't think the right of privacy and the exchange agreements we have between Federal and State governments are necessarily mutually exclusive.

These agreements have been carried on for years between the States and the Federal Government without evidence of abuse of the confidentiality of the information on the tax returns.

We do have stringent criminal penalties at the State level, and they are enforced and would be enforced in North Dakota, were we to find evidence of abuse.

The bottom line then, is, that in my opinion, with respect to the exchange agreement, nothing additional need be done to safeguard the privacy of tax information.

Tax laws are created, and regulated by the political process, and the political process isn't perfect, and neither are the tax laws. Citizens know that, and I think citizens would support your attempts to tighten as tightly as you can the confidentiality, the right of privacy on tax returns. But since there is no evidence of abuse between State and Federal exchange agreements, I would urge you strongly not to tighten these laws so tight as to choke the ability of the States and the Federal Government to effectively exchange that information.

We have a system of dual sovereignty in this country. The Constitution establishes the authorities of the Federal Government and the State governments. Taxpayers foot the bill for both, and intergovernmental cooperation and communication is important.

In this form of Federal, State tax exchange information agreements, this intergovernmental cooperation works very, very well. That would be the extent of my testimony.

Senator HASKELL. Thank you, Mr. Dorgan, and your full statement will be included in the record. I appreciate your summarizing.

Senator Fannin?

Senator FANNIN. We will read your full statement, but I agree with what I have heard. You say the money all comes out of one pot, and if anything can be done to alleviate the duplication, it should be done, and I hope that we can be helpful in accomplishing some of these objectives. I am pleased with the testimony I have heard this morning, and thank you for your appearance.

Senator HASKELL. Thank you, sir, very much.

Mr. DORGAN. Thank you.

[The prepared statement of Mr. Dorgan follows:]

STATEMENT PREPARED BY BYRON L. DORGAN, STATE TAX COMMISSIONER, STATE OF NORTH DAKOTA

The recent disclosures that some politicians have attempted to use the Internal Revenue Service as a political tool to intimidate and harass those who would disagree with them is shocking and deplorable. This Committee is acting responsibly in reviewing the confidentiality of federal tax information in light of these recent disclosures. Therefore, I support your inquiry and your attempts to be sure that the taxpayers are given the guarantee of privacy of their federal tax information.

However, I want to urge you to proceed with caution. Overreaction to the events of the past few years could injure the very tax system you are trying to improve.

I am here to discuss the federal-state exchange of tax information program. In that regard I want to make three brief points.

1. The tax laws are conceived by and will be regulated by the political process. We all know that the political system is not perfect and it follows that the tax system created by it will not be perfect either. People do not expect perfection from the system. A perfect method of safeguarding taxpayer confidential infor-

mation cannot be accomplished through legislation exclusively. Effective administration is the key to safeguarding that information. There are legislative steps that can be taken to give Congress some warning signals on the potential abuse of tax files such as those proposed in the bill submitted by Senator Dole. This approach leaves open the federal-state exchanges of information agreements which are so effective for both levels of government. I am worried that some legislators would overreact and tie this system for privacy tighter and tighter until it chokes off the effective agreements between the state and federal governments who share this information.

2. We have a governing system in this country that is established by the principle of dual sovereignty. Our Constitution provides for a federal government and state governments and spells out the powers of each. The same taxpayers foot the bill for the operation of both levels of government and they can and should expect that both levels of government operate as effectively and efficiently as possible. It would be a waste of taxpayers' dollars for both levels of government to separately administer and enforce income taxes without any mutual cooperation. Effective government means that federal and state governments will share information in assisting each other to enforce and administer their tax laws. This sharing is not a one-way street. The North Dakota State Government receives income tax information and estate tax information from the Federal Government under a formal agreement. In turn we provide the Federal Government with income tax, sales tax, estate tax, and property tax information upon request. This program does not jeopardize the privacy of tax information since tax information is only shared when it is protected at both the federal and state level by stringent criminal penalties for unauthorized disclosures.

3. We have a voluntary tax system at both the federal and state levels. No amount of enforcement activity could close the floodgates in any given year if millions of Americans decided to refuse to make tax payments. If ever taxpayers as a group feel strongly enough that either the tax system is so fundamentally unfair or that the privacy of their tax information is not guaranteed, then our voluntary tax system could well be destroyed by taxpayer resistance.

Taxpayers have seen tax evasion, tax avoidance, and fraud occurring at the highest levels of the Federal Government. This, coupled with some evidence of authorized disclosure of tax information at the federal level, has stretched the American taxpayers' sense of fairness and heightened their sense of despair about our tax system. The danger that these activities have posed to our voluntary tax system has not yet passed and that is why I believe your hearings on safeguarding the privacy of tax information is timely and necessary, and I support it.

In concluding, let me state that there has been no evidence of abuse of the confidentiality of tax information by state governments involved in the exchange agreement. The abuses came from the very top levels of the federal governments, and had nothing to do with the federal-state exchange of tax information agreement. Yet, many of the bills introduced in Congress seem to penalize state government for the actions of a handful of persons in the Executive Branch of the Federal Government.

In drafting legislation on the privacy of income tax information, I urge you to legislate in a way that will protect the confidentiality of people's sensitive financial information, but not destroy the effectiveness of the federal and state government taxing authorities to efficiently administer their tax programs through careful exchange of information.

Senator HASKELL. Our last witness is Will S. Myers, Senior Analyst, Advisory Commission on Intergovernmental Relations.

STATEMENT OF WILL S. MYERS, SENIOR ANALYST, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Mr. MYERS. Thank you very much for the opportunity to present the Advisory Commission's views on confidentiality of Federal tax return information as it relates to intergovernmental relations.

I have a statement, and I can make it shorter by summarizing three points.

Senator HASKELL. Fine.

Mr. MYERS. The benefit of the tax information exchange programs flow in both directions, as the experts you heard here have indicated. Therefore, the Commission took the view that the Federal-State tax information exchange program is one of the more exemplary types of Federal-State cooperation.

The second point is that the information exchange program helps assure full and complete compliance with Federal and State tax laws. It helps tax administrators at both levels and helps the taxpayers. It insures the integrity of our self-assessment system.

Therefore, the Commission is convinced that the cessation of the Federal-State tax information exchange program could seriously undermine the enforcement of many State income tax laws.

Finally, the experts have testified that there is only one known instance of a person in a State tax department violating the confidentiality requirement for tax return information. In that instance, the miscreant was tried and convicted. Apparently there are safeguards observed by State tax officials. Therefore, the Commission urges Federal and State policymakers to continue this program under effective safgeuard conditions. We apparently now have most of the conditions that assure that the information exchanged will be solely for compliance and enforcement activities. The resolution is appended to my statement, as is a list of Commission members, Mr. Chairman.

Thank you very much.

Senator HASKELL. Thank you, Mr. Myers, very much. Your statement will be put in the record in full.

Senator Fannin?

Senator FANNIN. Thank you. I have no questions. Thank you very much.

[The prepared statement of Mr. Myers follows:]

TESTIMONY OF WILL S. MYERS, SENIOR ANALYST, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS [1]

Thank you for the opportunity to lay before this subcommittee ACIR's views on the confidentiality of Federal tax return information as it relates to intergovernmental relations. I want to make three basic points.

1. The Commission views the Federal State tax information exchange program as one of the most important elements of Federal-State intergovernmental cooperation. The States have been permitted access to Federal tax reurn information for the past fifty years. The information program in its present form has been going on for twenty-five years under negotiated IRS-state cooperative agreements. IRS audit adjustments and the Individual Master File tapes are used by nearly every income tax state to assure accurate taxpayer reporting and maximum taxpayer compliance. The Federal government for its part has benefitted from the activities of State tax departments, albeit perhaps to a lesser extent than the States. A study prepared by the Federation of Tax Administrators reported that the benefits to the Federal government from activities by New York and Wisconsin state tax departments, for examples, are not inconsiderable.

[1] ACIR is a permanent bi-partisan body established by Congress to give continuing attention to Federal-State-local relations. It is comprised of 26 members, mainly elected officials, including Senators Muskie, Hollings, and Roth. Among the purposes Congress gave the Commission is to: "Recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers."

2. The Commission is convinced that the cessation of the Federal-State tax information exchange program could seriously undermine the effective enforcement of many State personal income tax laws. The indirect benefit of the exchange program—that is, its contribution to fostering and maintaining accurate and prompt taxpayer compliance and reporting—may well outweigh the direct financial benefits to either the Federal or State governments from the information exchange. Under a self assessment tax system, such as most States and the Federal government have, the margin between success and failure of tax administration can be quite narrow. Federal and State tax administrators have sought ways to achieve steady improvement in the quality of voluntary taxpayer reporting. The tax information exchange program has made a notable contribution in this regard. Moreover, it has operated with a noteworthy absence of friction between Federal and State officials over its 50 year history. One would be hard put to identify any other area of Federal-State cooperation that has been as free of controversy and as successful as this program.

3. The Commission, therefore, urges Federal and State policymakers to continue this program under effective safeguard conditions that will assure that the information exchange is used solely for tax compliance and enforcement activities. The Commission understands that there is only one known instance of a person in a State tax department violating the confidentiality requirements for tax return information. In that instance the miscreant was tried and convicted. This suggests that State tax administrators already take seriously the requirements regarding confidentiality in the Internal Revenue Code and in their own State tax laws. The Commission, nevertheless, recognizes that additional safeguards may be deemed necessary by Congress and State legislatures. It is for this reason that the Commission included the words "under effective safeguard conditions" in the resolution which it adopted on this subject at its November, 1975 meeting. Safeguards might include (a) establishment of a secure area for storage of returns and (b) restriction of access to those whose duties require the use of such returns and information.

The Commission's resolution is appended to this testimony.

Resolution on the Federal-State Tax Information Exchange Program Adopted by the Advisory Commission on Intergovernmental Relations November 18, 1975.

The Commission views the Federal-State tax exchange program as one of the most important elements of Federal-State intergovernmental cooperation. The Commission is convinced that the cessation of the Federal-State information exchange program could seriously undermine the effective enforcement of many State personal income tax laws. Therefore, the Commission urges Federal and State policymakers to continue this program under effective safeguard conditions that will assure that the information exchanged is used solely for tax compliance and enforcement activities.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, NOVEMBER 18, 1975

Private Citizens

Robert E. Merriam, Chairman, Chicago, Illinois.
John H. Altorfer, Peoria, Illinois.
Robert H. Finch, Los Angeles, California.

Members of the U.S. Senate

Ernest F. Hollings, South Carolina.
Edmund S. Muskie, Maine.
William V. Roth, Delaware.

Members of the U.S. House of Representatives

Clarence J. Brown, Jr., Ohio.
James C. Corman, California.
L. H. Fountain, North Carolina.

Officers of the Executive Branch, Federal Government

James T. Lynn, Director, Office of Management and Budget.
James M. Cannon, Executive Director, The Domestic Council.
Carla A. Hills, Secretary, Department of Housing and Urban Development.

Governors

Daniel J. Evans, Washington.
Richard F. Kneip, South Dakota.
Philip W. Noel, Rhode Island.
Robert D. Ray, Iowa.

Mayors

Richard G. Lugar, Vice Chairman, Indianapolis, Indiana.
Jack D. Maltester, San Leandro, California.
John H. Poelker, St. Louis, Missouri.
Harry E. Kinney, Albuquerque, New Mexico.

Members of State Legislative Bodies

John H. Briscoe, Speaker, Maryland House of Delegates.
Robert P. Knowles, Senator, Wisconsin.
Charles F. Kurfess, Minority Leader, Ohio House of Representatives.

Elected County Officials

John H. Brewer, Kent County, Michigan.
Conrad M. Fowler, Shelby County, Alabama.
William E. Dunn, Commissioner, Salt Lake County, Utah.

Communications Received by the Committee Expressing an Interest in These Hearings

STATEMENT OF W. A. GROFF, DIRECTOR, STATE OF MONTANA, DEPARTMENT OF REVENUE

The state of Montana, Department of Revenue, wishes to express its support for efforts to continue the tax sharing agreements between the Internal Revenue Service and the state Income Tax authorities which currently allow the exchange of tax information between those two entities. We believe there is no need to enact legislation that would impair the existing cooperative audit effort, and that to do would be very detrimental to state Income Tax administration.

In any discussion of this matter, naturally the rights of privacy of the individual taxpayers are paramount. We wish to point out that in the state of Montana these rights are assiduously protected not only by statute, but by the physical protection afforded federal and state income tax information within the state of Montana. In the several years of the existence of the tax sharing agreement between the Internal Revenue Service and the state of Montana, there have been no reported or known instances of the violation of any individual's right to privacy as regards his personal income tax information. In addition, we know of only one instance (the state of California) where the Federal Income Tax information has been illegally disclosed, and in that instance the violator was successfully prosecuted under applicable federal law. In our own case, only rarely do we receive from the Internal Revenue Service a copy of a particular taxpayer's return. In general, our cooperative efforts with the Internal Revenue Service amount to comparison of filing data wherein the comparison will indicate the fact of filing or non-filing with the state of Montana. All Federal Income Tax return information we do receive is used exclusively for administration of Montana's Income Tax laws, and only specifically authorized individuals have access to such information. To the best of our knowledge, the Internal Revenue Service is satisfied with our procedures to protect the secrecy of Federal return information. In addition to the rare instance of use of a particular taxpayer's Federal return, we also afford complete protection in the form of a strict statutory mandate for privacy of tax returns and complete physical protection within the Department of Revenue organization.

Under existing federal law, all states imposing an income tax exchange audit information with the Internal Revenue Service. In the case of Montana, the additional tax assessed on the basis of federal audit changes has averaged 47% of the total additional tax assessed. Other states participating in this program also have realized substantial amounts of revenue from this source. We recognize, however, that the additional source of income cannot be the justifying factor where the rights of privacy of an individual are concerned. We again point out that the right of privacy is comprehensively protected in the state of Montana as regards personal income tax information whether from the federal-state cooperative sharing agreement or personal state income tax information. Moreover, the Internal Revenue Service benefits from the receipt of state audit adjustments and from the ability to readily secure information from the states. In addition to the confidence we have in our protection of personal income tax information within the Department of Revenue we are also confident of the protection afforded the individual income tax information received the Internal Revenue Service.

For several years, Montana and many other states have been receiving from the Internal Revenue Service on a cost reimbursable basis, magnetic tapes listing basic federal return data for each taxpayer who filed a federal return from the particular state participating in the program. This listing is invaluable in detecting delinquencies in filing and in determining tax liability in such cases. Indeed, Montana annually detects no less than 5,000 cases of failure to file returns simply by matching our listings against the federal listings. Again, not only is the right to privacy of the individual protected by the paucity of information contained

on these listings but, in addition we again cite the specific, strict nature of our confidentiality statute and the physical protection afforded personal income tax information within the Department of Revenue.

As you can see, the federal-state exchange of information program is vitally important to administration of income taxes in Montana. We can only point out that the tax exchange program is perhaps more valuable to other larger income tax states and of course the Internal Revenue Service. Without the exchange of information program, the states, and possibly the Internal Revenue Service, would have to greatly expand their enforcement capabilities. As I am sure you are aware the budgetary flexibility of the states is severely limited. Without this flexibility to expand the increased enforcement capabilities, and without the exchange of information program, these states would necessarily face a severely reduced tax collection program. Even if the state enforcement capabilities were to be expanded it could only be done at the cost of tremendously increased administrative costs and it would be a grossly wasteful duplication of enforcement activity resulting in considerable harassment to the taxpaying public. The state of Montana prides itself on its approach to the tax enforcement problem. We maintain an excellent rapport with our taxpaying public. This can only be done through the assiduous efforts on the part of the Department of Revenue to protect the rights of the taxpayer and yet at the same time enforce the taxing statutes to the best of its ability.

An alternative to this dilemma has been suggested from some quarters. This alternative is to allow federal government to collect state income taxes under Title II, of the Revenue Sharing Act. Such a solution is totally unacceptable to the State of Montana and indeed to other states and for the following and other reasons:

1. The Internal Revenue Service is not adequately staffed to enforce the federal income tax law, let alone to assume responsibility for administering state taxes.
2. The existing combination of separately conducted but coordinated state and federal audit programs gives much more extensive and effective audit coverage.
3. The federal judicial system is already overburdened. To assume the added burden of adjudicating state tax cases would create a chaotic situation.
4. The states would lose every vested control over their own tax laws, except for establishment of tax rates.
5. Congressional changes in federal income tax law can seriously affect state revenue long before the states can adjust their tax rate to compensate therefor.

In sum, the Department of Revenue, the state of Montana, earnestly request that the current tax sharing programs between the state of Montana and the Internal Revenue Service continue in effect. We can readily show the extensive and effective methods which we utilize to totally protect the rights of privacy of any individual taxpayer involved in this sharing program. The protection of any individuals right to privacy is of course paramount. In addition, the state of Montana, the Department of Revenue would like to point out the effects of a curtailment of this sharing program; expanded enforcement costs, lesser enforcement capacity, lesser tax collections, etc. The alternative of federal collection of state income taxes is, indeed, an ineffective and unacceptable solution to the states. We believe the current information sharing program achieves the most judicious meld of service to both the states and Internal Revenue Service while assiduously protecting the right to privacy of the individual taxpayer.

A Statement of Position by the Florida Department of Revenue

The State of Florida recognizes that the right of privacy is a personal and fundamental right of individuals protected by the Constitution and laws of the United States. Similar guaranties are provided in Florida's Constitution and laws.

In order to protect the privacy of those individuals identified in tax returns and related information under its jurisdiction the Florida Department of Revenue has established procedures for handling, maintaining and disseminating such information which ensures that it is used exclusively for the administration of the tax laws of this state by only those persons whose duties require access to this information and when it is no longer required is destroyed by means which safeguard such information from disclosure.

Florida's tax administrators have been permitted to inspect Federal income tax returns filed with the Internal Revenue Service by individual and corporate taxpayers domiciled in Florida since August 15, 1947. The information obtained from these inspections has been used in administering Florida's intangible personal property tax imposed by Chapter 199 of the Florida Statutes.

Florida uses an individual's social security number and a corporation's Federal employer identification number as its primary means for identifying those subject to the intangible personal property tax and the corporation income tax. Our continued use of this means of identification is necessary in order to maintain a common link for matching Federal and state master files of taxpayers for updating the state's mailing list and dealing more effectively with delinquent taxpayers.

The Florida Legislature adopted the principle of self-assessment for administering its intangible personal property and corporation income taxes. This was done to minimize the expense and difficulty of administering the law and to ease the burden of compliance for the taxpayer.

An inherent weakness in the self-assessment system is its almost total reliance upon the willingness of the majority of its citizens to support their government, its institutions and its programs during hard times as well as good. The temptation to withhold support is particularly great during periods of inflationary pressures and among the mobile elements of the population entering or leaving the state during the year.

We understand that Congress is concerned whether granting access to and sharing of Federal tax returns and tax information with state tax administrators will have an adverse effect on voluntary compliance with Federal taxing statutes. We do not think so for the state's power to lay and collect taxes includes the authority to require individuals subject to its jurisdiction to furnish such information about their financial affairs as will enable its tax administrator to determine the amount of tax properly due. In this matter it can be argued that, in respect to those persons subject to their respective jurisdictions, the state tax administrator's right and need for invading the privacy of individuals, to the extent of furnishing information about their financial affairs, is as compelling as the Federal tax administrators and his burden of protecting that confidence is likewise as great.

The Florida Department of Revenue would like to retain the same level of interchange of information with the Internal Revenue Service as present laws permit and urges that no statutory restraints be enacted which would adversely affect that relationship. Depriving the state of access to Federal tax information would increase the cost of collecting taxes and, in the long run, noncompliance might reduce the revenue raised from "selfassessed" taxes to the point where the state has no alternative to imposing more burdensome direct taxes on its citizens.

STATEMENT OF LOUIS L. GOLDSTEIN, COMPTROLLER OF THE STATE OF MARYLAND

The State of Maryland has been receiving information from federal income tax returns since 1947.

Since 1968 Maryland has been receiving computer tape lists of individuals who filed federal income tax returns using Maryland addresses.

The information received has been used in the administration of the Maryland income tax law and has become an integral part of both our audit and compliance programs.

In addition to the computer tapes, we receive transcripts of audit adjustments made by the Internal Revenue Service. In so doing, the Maryland law

permits us to apply the same adjustment to the Maryland State income tax return, when applicable, thus avoiding a second audit of a taxpayer by State auditors.

Because of the exchange of information with the Internal Revenue Service, the Maryland legislature simplified the Maryland income tax law by making reference to the Internal Revenue Code for the Maryland definitions of gross income and deductions. A Maryland income taxpayer need list only the sum total of the itemized deductions reported on his federal income tax return. If we have reason to suspect that the taxpayer may have reported different itemized deduction totals on his Maryland income tax return from those reported on his federal income tax return, we now have the ability to request a copy of the federal tax return from the Internal Revenue Service to verify the deductions reported. Taxpayers know that we have this ability and are consequently reluctant to report incorrectly on their Maryland tax returns. Attached is a complete Maryland Income Tax Packet for 1975 with these details.[1]

We use the computer tape listings to insure that individuals required to file Maryland income tax returns are complying with the law.

For fiscal year 1975, we collected over 1.5 million dollars as a direct result of the information we received from the Internal Revenue Service. The psychological benefit to the State, because taxpayers are aware that the State receives such information, is worth millions of dollars in State income tax revenue.

The information which we receive is used solely for tax administration purposes.

The Maryland income tax law makes it a misdemeanor punishable by fine and/or imprisonment for anyone to divulge or make known any particulars of any tax return except in accordance with the law, codified as Article 81, Section 300, of the Annotated Code of Maryland.

The Internal Revenue Code provides that the information received from the Internal Revenue Service must be used for tax administration purposes only and to do otherwise or make such information known to anyone not authorized by law is considered a misdemeanor subject to fine and/or imprisonment. I believe, therefore, that there are ample safeguards in both the Maryland and federal law to protect the use of the federal information.

Our methods and procedures for using the federal information were audited by the Internal Revenue Service approximately one year ago. Although we have received no written communication from the Internal Revenue Service concerning the audit, we did receive verbal communication that we were in compliance with both the law and our agreement with the Internal Revenue Service.

We have an internal auditor constantly auditing our computer systems and programs to prevent any unlawful use of income tax data.

As of the chief fiscal officer for the State of Maryland, responsible under the Maryland Constitution for the collection of taxes and the superintendence of the fiscal affairs of the State, it is my hope that you will see fit to continue to permit the exchange of information between the states and the Internal Revenue Service as is now possible. In my opinion, it would be most unfortunate if the Federal-State exchange program should be curtailed or rescinded. The real losers would be the taxpayers of the State of Maryland who would have to make up the short fall in revenue which obviously would develop or would have to finance the obvious duplication of effort which is now avoided by the exchange.

Thank you very much for your consideration on this most important matter.

Respectfully submitted,

LOUIS L. GOLDSTEIN.

January 23, 1976.

---

[1] The document was made a part of the official files of the committee.

99

FORM **502** RESIDENT

MARYLAND TAX RETURN

Or Fiscal Year Beginning ..... 1975, Ending ..... 19....

1975

• Attach Label

• First Name and Initial (If joint return, use first names and middle initials of both) | Last Name | DO NOT WRITE IN THIS SPACE SERIAL No. $$

PRESENT Address (Number and Street or Rural Route) | Your Social Security Number

Post Office | State | Zip Code | Spouse's Social Security Number

Enter name of COUNTY in which you were a resident on the last day of the taxable period. (See page 11 of Instructions) ▶ County

If you lived in an INCORPORATED city, town or special taxing area on the last day of the taxable period, enter its name, also. ▶ City, Town, or Taxing Area $ .....

IMPORTANT (These Sections Must be Completed)

A. YOUR FILING STATUS — check only one:

1. ☐ Single
2. ☐ Married filing joint return or spouse had no income
3. ☐ Married filing combined separate returns on this form
4. ☐ Married filing separately (Separate Federal return filed by spouse — Enter here name and social security number under which spouse's separate return is being filed.)

.....

5. ☐ Student or Child with unearned income

B. CHANGE OF RESIDENT STATUS

1. Did you establish or abandon legal residence in Maryland in 1975? ☐ Yes ☐ No
2. If Yes, give dates of Maryland Residency and see instructions

FROM ____ TO ____

EXEMPTIONS

	REGULAR	65 OR OVER	BLIND
YOURSELF	☐	☐	☐
SPOUSE	☐	☐	☐

ENTER NUMBER CHECKED . . (A)

FIRST NAMES OF DEPENDENT CHILDREN

ENTER NUMBER . . . . (B)

OTHER EXEMPTIONS ALLOWED BY MARYLAND

NAME	RELATIONSHIP	REGULAR	65 OR OVER
		☐	☐
		☐	☐

ENTER NUMBER CHECKED ____ (C)

TOTAL EXEMPTIONS (Add A, B and C) ☐ ◀

In combined separate returns, number of exemptions claimed by Husband ☐, Wife ☐

If Combined Separate Filing is elected, use Col. A for Husband and Col. B for Wife, otherwise use Col. B only.

		COLUMN A	COLUMN B
INCOME	1. Total Income (From Line 11 Schedule A Page 2) ▶		
	2. Additions (From Line 5 Schedule C Page 2) ▶		
	3. Total (Add Lines 1 and 2)		
	4. Subtractions (From Line 5 Schedule D Page 2) ▶		
	5. Total Maryland Income (Line 3 Less Line 4)		
TAX COMPUTATION (Attach Withholding Statements here • Line 6 or Lines 7 thru 11)	6. TAX TABLE — Use the Tax Tables on Page 2 of Form 503. Check here and Enter Tax on Line 12a ☐		
	7. If you Elect to Use the Standard Deduction, Check here and Enter 10% of Line 5 not to exceed $500 (If Joint Return, See Instructions on Page 13) ☐ ▶		
	8. If you Itemize Deductions, Check here and Enter Total Deductions (Line 13, Schedule D Page 2) ☐		
	9. Net Income (Line 5 less Line 7 or Line 8)		
	10. Number of Exemptions X $800 (Prorate according to number of months covered by the return)		
	11. Taxable Net Income (Line 9 less Line 10) Figure Tax on These Amounts. Use Rate Schedule		
	12a. Maryland Tax (From Table or as computed by instruction schedule when lines 7 through 11 used)		
	12b. Local Income Tax (From Rate Schedule, Page 14 of Instructions) Enter ___% of Line 12a		
FUND	13. FAIR CAMPAIGN FINANCING FUND — If you wish to contribute to this fund, add $2, or $4 if joint return and spouse also wishes to contribute ($2 each if combined separate return). Contribution to this fund is voluntary and is not a tax; nor is it an endorsement of any party or candidate. (See Instructions, Page 14) ▶		
	14. Total Maryland and Local Income Tax, Plus CONTRIBUTION, If Any. (Add Lines 12a, 12b, and 13)		
PAYMENTS	15. Total Maryland Tax Withheld (Attach Withholding Statements) ▶		
	16. 1975 Estimated Tax Payments — Account No. ▶		
	17. Credit for Income Tax Paid another State (From Form 502 CR) ▶		
	18. Credit for Maryland (State Only) Personal Property Tax Paid (From Form 502 CR) ▶		
	19. Total Payments and Credits (Add Lines 16 Through 18)		
BALANCE	20. Balance Due (If Line 14 Exceeds Line 19) . . . . . Pay in Full With This Return		◀
	21. Overpayment (If Line 14 is Less Than Line 19)		
	22. Combined Balance Due . . . . . Pay in Full With This Return ▶		
	23. Combined Overpayment		
	24. Amount of Line 21 or Line 23 to be Refunded to You ▶		◀
	25. Amount of Overpayment to be Credited to 1976 Estimated Tax ▶		◀

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Make checks payable to and mail to: COMPTROLLER OF THE TREASURY INCOME TAX DIVISION ANNAPOLIS, MARYLAND 21401

SIGN HERE

..... Your Signature and Date

..... Spouse's Signature and Date (If filing jointly, or combined separate, BOTH must sign)

..... Signature of Preparer Other Than Taxpayer ..... Address ..... Date

1975 MARYLAND FORM 502

SCHEDULES

All taxpayers must complete Schedule A. Taxpayers electing to itemize deductions must complete Schedule B. Taxpayers with modifications to Federal adjusted gross income must complete Schedule C and/or D as applicable See instructions, Page 15.

COLUMNS

All taxpayers must complete Column (C) entering the items as they appear on their Federal return.
Married individuals who filed a joint Federal return, but who elect to file separate Maryland returns, must complete Columns (A) and (B), reconciling their separate income, deductions and modifications with the amounts reported jointly for Federal purposes. Columns (A) and (B) must also be completed to segregate joint and separate income of husband and wife for purposes of computing their respective Standard Deduction.

SCHEDULE A — INCOME AND ADJUSTMENTS FROM FEDERAL RETURN

	COLUMN (A)	COLUMN (B)	COLUMN (C)
1. Wages, Salaries, Tips, etc.			
2. Dividends			
3. Interest			
4. Business Income			
5. Sale or Exchange of Property			
6. Pensions and Annuities, Rents and Royalties, Partnerships, Estates or Trusts, etc.			
7. Farm Income			
8. Miscellaneous Sources			
9. Total (Add Lines 1 Through 8)			
10. Adjustments (Such as "Sick Pay", Moving Expenses, etc.)			
11. Total Income (Enter on Page 1, Line 1)			

SCHEDULE B — ITEMIZED DEDUCTIONS FROM FEDERAL RETURN WITH ADJUSTMENTS
(Only if Deductions Were Itemized on Federal Return)

1. Medical and Dental Expense			
2. Taxes			
3. Interest			
4. Contributions			
5. Casualty or Theft Losses			
6. Miscellaneous			
7. Total (Add Lines 1 Through 6)			
8. State Deduction: Preservation of Historic Property (Attached Schedule 502-H)			
9. Total Deductions (Add Lines 7 and 8)			
10. Subtract State and Local Income Taxes Included on Line 2			
11. Total (Line 9 Less Line 10)			
12. Less Deductions During Period of Non-Resident Status			
13. Total Maryland Deductions (Line 11 Less Line 12) (Enter on Page 1, Line 8)			

MODIFICATIONS TO FEDERAL ADJUSTED GROSS INCOME

SCHEDULE C — ADDITIONS

1. Interest on State and Local Obligations Other Than Maryland			
2. Dividend Exclusion (From Federal Return)			
3. Current Year Distributions of Subchapter S Prior Year Earnings			
4. Taxable Tax Preference Items (Attach Form 502 TP)			
5. Other (Specify) (See Instructions)			
6. Total (Add Lines 1 Through 5) (Enter on Page 1, Line 2)			

SCHEDULE D — SUBTRACTIONS

1. Interest on U.S. Obligations			
2. Pension Exclusion (Complete Schedule Below)			
3. Undistributed Current Year Subchapter S Income			
4. Other (Specify) (See Instructions)			
5. Total (Add Lines 1 Through 4) (Enter on Page 1, Line 4)			

PENSION EXCLUSION COMPUTATION (For use only if 65 or over, or totally disabled — See Instructions)

1. Net Taxable Pension and Retirement Annuity Included as Income in Federal Return		$
2. Tentative Exclusion	$ 2,600. 00	
Less: Benefits Received Under the Social Security Act and/or the Railroad Retirement Act	$	
3. Modification (Subtraction) to Federal Adjusted Gross Income (Line 1 or Line 2 Whichever is Less) Show Amount on Line 2 Above		

TAX RATE SCHEDULE	If amount on Page 1, Line 11 is		Amount of Tax (Enter on Line 12a)
	Over $ 0	But not Over $1,000	2% of amount on Line 11
	1,000	2,000	$20 plus 3% of excess over $1,000
	2,000	3,000	$50 plus 4% of excess over $2,000
	3,000	—	$90 plus 5% of excess over $3,000

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., January 26, 1976.

Hon. FLOYD HASKELL,
Chairman, Subcommittee on the Administration of the Internal Revenue Code, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is our understanding that your Committee is giving consideration to the question of the role of the Internal Revenue Service in dealing with the taxpaying public.

At our recent Annual Meeting in St. Louis, voting delegates representing member State Farm Bureaus adopted the following policy statement:

"We support legislation that preserves the confidentiality of all federal income tax returns, and prohibits access thereto, and the use of information therefrom, for any purpose by any federal, state, or local governmental agency, department

or board, unless the same is based upon a court order of the proper court having jurisdiction thereof or is directed by executive order of the President of the United States in connection with criminal activities, fraud, or conspiracy.

"Governmental agencies, particularly the Internal Revenue Service, have a moral responsibility to respect the individual rights of the citizen. Agency activities should be conducted in such a manner as to assure that individuals are made aware of their rights and are notified of proposed actions of the agency prior to any act which would infringe on any right.

"If a taxpayer is wronged by any government agency, including the IRS, proper restitution should be made to the taxpayer. Such restitution should be at least on the same basis that a taxpayer is penalized if he makes a mistake."

We appreciate this opportunity to make Farm Bureau policy a part of your hearing record on this matter.

Sincerely,

JOHN C. DATT,
Director, Washington Office.

STATE OF ARKANSAS,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
Little Rock, January 16, 1976.

Senator FLOYD K. HASKELL,
Chairman, Subcommittee on Administration of the Internal Revenue Code, Dirksen Senate Office Building, Washington, D.C.
(Attention of Michael Stern).

DEAR SENATOR HASKELL: In connection with your subcommittee's hearings on the privacy of Federal tax returns and tax information, I wish to submit the following comments for your consideration and inclusion in the record.

Arkansas, along with other states, may find a major part of its tax enforcement program endangered due to Federal Legislation. The Privacy Act of 1974, as enacted by Congress, places the Federal-State Tax Information Exchange Program in imminent jeopardy.

Arkansas has benefitted greatly from the exchange of federal and state tax information. Few intergovernmental programs have received as much acclaim and wholehearted support, and as little criticism, as the Federal-State Exchange Program.

A significant part of our tax revenues is attributable to this program, not only through current collections, but also through the program's effect of reducing tax evasion. This revenue would be lost if the program were to go out of existence. Our audit cost would have to increase greatly if the federal information were not available.

Our use of federal income tax records is a disciplined, responsible, important process in our enforcement program. The federal tax return information is held absolutely confidential and closely guarded. Its availability is limited to designated, responsible persons. Periodic checks are made by local and district Internal Revenue Service personnel to assure this.

Section 7 of the Federal Privacy Act makes it unlawful for a state to require an individual to disclose his social security number unless the state has maintained a system of records in existence and operating before January 1, 1975. Our tax administration would have been protected had the sentence ended there, but the following phrase was added: . . . "If such disclosure was required under statute or regulation adopted prior to such date to verify the identity of the individual". It may be that we will be forced into litigation to determine if our regulations meet that requirement.

The second disturbing feature of the Privacy Act is the requirement that when government records pertaining to an individual have been released, the individual, on his request, must be notified as to whom and for what purpose his records were given. Since the IRS supplies tax information on millions of taxpayers to state taxing authorities the burden of this requirement is intolerable.

In addition to the measure already enacted, numerous propositions now before Congress would restrict IRS's authority to disclose tax return information. Many of them are identical or nearly so, and the large number of co-sponsors indicate the strong support these bills have.

I certainly share the concern of the Congress over tax information disclosures. As a Tax Administrator I feel strongly that individual tax returns should retain their confidential character. But it seems clear to me that there is a great difference between the IRS revealing information to State Tax Administrators to

assist in assuring that everyone pays his or her fair share of the taxes and revelation of the same information to a non-tax related agency.

While individual privacy is certainly a laudable goal, a fair, equitable and efficient tax collecting system is of equal importance in the preservation of our society.

I sincerely hope you will be able to take some action to exempt the exchange of tax information between the IRS and state tax departments from the provisions of these Acts and, if possible, amend the Privacy Act of 1974 to conform to that principle.

Sincerely,

RICHARD R. HEATH.

STATE OF MAINE,
BUREAU OF TAXATION,
Augusta, Maine, January 8, 1976.

Subject: Statement for the Record.

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE,
Dirksen Senate Office Building,
Washington, D.C.

GENTLEMEN: Recent proposals to restrict our present program of exchange of information with the Internal Revenue Service prompts me to write, requesting that you not support any action that would change the Federal-State exchange program.

If this exchange program were to be discontinued or restricted, it would hamper the efforts of this office and reduce existing revenue.

The Maine Income Tax Division depends, almost wholly, on this exchange program to identify and locate delinquent taxpayers. It also serves to keep the State employee level at a minimum since it is currently not necessary to duplicate audit functions. The taxpayer benefits as well, since his tax records are now normally audited by only one agency, rather than both Federal and State, which would be necessary if this exchange program were eliminated or curtailed.

Any inquiries on this subject may be directed to me at the address shown on the letterhead.

Very truly yours,

R. L. HALPERIN,
State Tax Assessor.

STATEMENT BY COMMISSIONER JAMES H. TULLY, JR., NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE

New York State is desperately concerned about any proposals to curtail the ambit of the Federal-State cooperation program, which provides for the exchange of information, for tax administration purposes only, between the U.S. Internal Revenue Service and the N.Y.S. Department of Taxation and Finance.

We helped prepare and fully support, two legislative proposals by the National Association of Tax Administrators, dealing with (1) use of Social Security numbers, and (2) continuation of the federal-state cooperation program with more explicit provisions on secrecy. Our memoranda on those two proposals follow, providing an explanation why they are so important to New York State in this period of financial crisis.

I respectfully request that these proposals, as modified by the Congress after full hearings and extensive debate, be enacted into law.

Memorandum in Support of an Act to Amend Section 6109 of the Internal Revenue Code of 1954, with respect to use of taxpayer identifying numbers by states

This bill would add a new subsection (d), "Use of taxpayer identifying numbers by states", to Internal Revenue Code section 6109, which deals generally with "Identifying numbers." It simply provides that the provisions of the Privacy Act of 1974, section 7, shall not preclude the required use of social security or employer identification numbers, for tax administration purposes, by a state or local governmental tax agency.

The Privacy Act, section 7(a)(1) makes it unlawful for a governmental agency to deny any right to an individual who refuses to disclose his social

security number. Section 7(a)(2) provides exceptions to 7(a)(1). Section 7(b) requires government agencies to inform individuals whether a requested disclosure is mandatory, the statutory authority, and how the number will be used.

We believe that New York State's use of social security numbers for tax administration purposes is consistent with the Privacy Act. Also, its legislative history suggests no Congressional intent to restrict such use (This is confirmed by the recent 25-page "Confidentiality of Tax Returns," a House Ways and Means Committee print).

Yet, state and local officials are troubled. We appreciate the clear Congressional desire to protect privacy in general. The U.S. Office of Management and Budget rescinded OMB Circular A–38, dealing with information returns about servicemen, supposedly because of the Privacy Act. Yet, the Defense Department continues to furnish the information, and disagreed with the interpretation of the Act. Officials of IRS have suggested that there may be further restrictions on use of social security numbers for state and local purposes. This problem was noted in the 11/1/75 Newsletter of the Municipal Finance Officers Association. The executive committee of the National Association of Tax Administrators (in Houston; 11/4/75), favored a statutory provision to ensure continuing use of taxpayer numbers for purposes of state tax administration." Instead of bureaucratic "stonewalling", on such an important issue, we are forthrightly asking the Congress to specifically authorize the use of social security numbers for state *and* local tax purposes. *And* we are asking the Congress to reject any legislative proposals that would restrict the use of social security numbers for tax administration purposes. Social security numbers are used for state personal income tax, sales tax, estate tax and gift tax. Not only does it affect tax collection, but also refunds.

Our present identification, delinquency, filing and collection systems for personal income and sales tax would be useless if we could not use social security numbers. Our ability to operate an efficient field collection operation would be eliminated if we could no longer associate multi-year and multi-tax liabilities for a single taxpayer through this system. You cannot use names (too many people have the same name), or addresses (too many people move too often). The only other alternative, assignment of a special New York State taxpayer number, would be expensive to establish, difficult to maintain, and annoying to the public.

The elimination of Social Security numbers from our collection records would seriously jeopardize collections of local sales tax revenues in all parts of New York State, as well as handicapping the New York City income tax system for collection and delinquency follow-up.

Most important we could not effectively use information on Federal changes in tax liability for New Yorkers, which now provides New York State with an additional $30 million annually for income tax alone. We would be unable to provide the IRS with usable data on New York State audits which generate at least $10 million annually in Federal revenues.

We understand that Congress wishes to prevent repetition of events where federal tax agencies, and federal tax information, were used improperly. But, in all the "Watergate fallout," there has not been any example of a state or local tax agency improperly using social security numbers.

MEMORANDUM IN SUPPORT OF AN ACT TO AMEND SECTION 6103 OF THE INTERNAL REVENUE CODE OF 1954, WITH RESPECT TO FEDERAL-STATE EXCHANGE OF TAX INFORMATION

At present, Internal Revenue Code section 6103 deals with "Publicity of returns and disclosure of information as to persons filing income tax returns." Subsection b, which is fairly short, deals with "Inspection by states." This provision, substantially unchanged, goes back to 1939. This bill would replace existing subsection b, with a new subsection b, "Disclosure to state tax officials", with four subdivisions.

Subdivision 1 generally authorizes the exchange of most federal tax information with state tax officials for the purpose of state tax administration.

Subdivision 2 provides for safeguarding the information.

Subdivision 3 deals with unauthorized disclosures.

Subdivision 4 provides definitions.

It should not be assumed that proposed subsection b identifies all the procedural safeguards. Federal tax information in the past has been made available

to states only after approval of a detailed "Coordination Agreement" between the U.S. Commissioner of Internal Revenue and the State's Governor. For example, New York State's present agreement, approved in December 1974, is 10 pages long. Although such an agreement is not required by the proposed legislation, we feel it is a logical and feasible type of administrative safeguard for the IRS to impose and for state and local governments to comply with. Also, the procedure manuals of the N.Y.S. Department of Taxation and Finance have a detailed section which identifies how federal information is to be requested and processed. The internal audit function of our agency and of the IRS can assure that we are making only appropriate use and authorized disclosure of Federal tax information.

Many bills have been introduced in the Congress which would eliminate, impede or otherwise make more difficult the exchange of tax information. We understand that Congress wishes to prevent repetition of events where federal tax agencies, and federal tax information, was used improperly. But, these events did not involve improper use of tax information exchanged via federal-state cooperation agreements. Although New York State has received federal tax information for four decades, our personnel have an unblemished record in the guardianship of this information. We have been advised that there is a record that one employee, in another state, was apprehended for misusing federal tax information—he was tried and convicted. This bill proposes a proper resolution of disclosure and privacy issues as they affect State tax administration.

In June, 1975, the Executive Committee of the National Association of Tax Administrators resolved to support the continuance of federal-state tax exchange agreements. This was a response to suggestions from IRS that there was a real threat to such cooperation in some legislative proposals. In a few of the earlier bills, the record-keeping requirement alone would have seriously affected the program—not to enhance security or limit access--but merely to keep records on what was exchanged. At a recent meeting (Houston; 11/4/75) the Executive Committee of the National Association of Tax Administrators decided to prepare, introduce and support legislation in the Congress which would provide additional safeguards while continuing the essential elements of the exchange program.

The New York State personal income tax program will collect about $4 billion in 1976. No tax is entirely fair. Income tax is more often proportional than progressive. But most other taxes are regressive. To the extent that State income tax fails to generate revenue, it is necessary to collect more money from taxes which weigh more heavily on those less able to pay.

The federal-state exchange program allows us to discover enterprises or individuals who have failed to comply with the tax laws; thereby enjoying a competitive advantage over honest businesses; or a life-style more luxurious than those with the same income. This program helps us collect $30 million each year in an efficient, equitable manner; with minimum inconvenience to honest taxpayers.

But cooperation also assists other governments. New York State audits of state personal income and motor fuel taxes, with adjustments made known to IRS, have an estimated Federal tax value of about $10 million a year. And that does not include the value of general enforcement and deterrent efforts. We regularly identify cases with potential Federal assessment value, and advise IRS. Also, we audit certain audit-worthy cases that are selected by the IRS computer, but for which they do not have enough auditors. New York State provides information to New York City on personal income tax, which is worth $6 million a year. A story in the New York News, (1/13/74, p. 20), entitled "City Crackdown on Tax Cheats," included:

"The crackdown will be implemented by tax computer tapes supplied by the state government, Lewisohn said. The tapes will be matched with city tax records," and: "Lewisohn said, "with the federal and state governments now willing to give us additional help through the miracle of electronic computers, we are going to close up the gaps. . ."

Also, federal corporation tax information helps us collect about $3 million in state franchise (corporation) taxes; and federal gift and estate tax information helps us collect $.3 million annually in comparable state taxes.

In some cases, we ask IRS for copies of federal tax returns. In others, we get extracts of data. For example, a list of people filing federal tax returns from addresses in New York State is compared with the list of people filing state tax returns. This identifies those who may have failed to report state tax liability.

When IRS advises us that they have disallowed $1,000 of claimed charitable deductions, meaning an increase in federal tax, we don't have to bother the taxpayer with a separate audit, or spend money on one. We send a computer-computed billing notice, based upon and citing the federal adjustment, for additional state tax.

Eighty per cent of the tax collections, which arise from the information exchange program, represent dollars which would be lost to both federal and state governments. And much of the remaining 20% would also be lost when taxpayers realized that the State did not receive notice of Federal adjustments, making it safe for them to "forget" the resulting adjustment in State tax liability.

Thus, we ask Congress to support this bill—and to reject proposals which would reduce the authority for the federal cooperation program, or its usefulness by imposing administrative paperwork. We have no objections to improvements in security provisions for the program, or increased penalties for those who illegally disclose tax information.

Summary of Federal-State Exchange of Tax Information 1975

HISTORICAL DEVELOPMENT

The states' use of federal income tax return information dates back to the 1920's when Congress opened such information to them through the Revenue Act of 1926. The Federal-State Exchange Program, in its present form, was established in the late 1950's with the negotiation of IRS-state cooperative agreements providing for the exchange of tax return information among the parties.

STATES' USE OF FEDERAL TAX RETURN INFORMATION

IRS audit adjustments and its Individual Master File tapes are used by nearly every income tax state. Federal tax return information constitutes an important source of enforcement revenue for each of these states. For the larger states with well established audit systems, they supplement enforcement operations to a significant degree. For smaller states with limited audit operations, the use of federal tax return information may constitute the predominant part of the income tax enforcement effort.

USE OF SPECIFIC FEDERAL TAX RETURNS

With only a few exceptions, the income tax states request the returns of specific taxpayers infrequently and only in respect to special enforcement requirements. Most states request fewer than 100 such returns in a year, and many states request a much smaller number.

LOCAL GOVERNMENTS' USE OF FEDERAL TAX RETURN INFORMATION

Local governments have used federal tax return information in only five states (the number will be cut to four when New York State assumes the administration of the New York City income tax on January 1, 1976). Local government use has been substantial in only two of the states.

CONFIDENTIALITY SAFEGUARDS

Section 7213(a)(2) of the Internal Revenue Code specifically applies penalties to state employees for the unauthorized disclosure of federal tax return information. In addition, state income tax laws have disclosure provisions applicable to tax return information which impose penalties for violation. There has been only one known instance of a state employee's misuse of federal tax return information since the states first began to use federal tax return information and this resulted in trial and conviction. The states report the use of many physical and procedural safeguards to protect the confidentiality of federal tax return information. They also report that recent IRS inspection service audits have confirmed the adequacy of these safeguards. Where IRS made recommendations for changes, these have been technical, essentially minor in nature, and have been complied with by the states immediately.

STATE OF MICHIGAN,
DEPARTMENT OF TREASURY,
Lansing, Mich., January 9, 1976.

Mr. MICHAEL STERN,
Staff Director, Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: The Michigan Department of Treasury which has the responsibility of administering Michigan's tax statutes goes on record as opposing any legislation which would restrict the right of states to inspect federal tax returns.

I understand hearings will be held in Washington on January 23, 1976 on legislation pertaining to the privacy of federal tax returns and tax information. Michigan is one of those states that has had an agreement with the Internal Revenue Service for the coordination of tax administration for many years. Our department also serves a few Michigan cities with local income taxes with federal tax information. This is done only for the purpose of administering local income tax ordinances.

Under the Cooperative Agreement with the Internal Revenue Service we receive abstracts of federal audits, magnetic tapes of federal accounts, estate tax closing letters and information from individual income tax returns. We also receive excellent cooperation from the Detroit District of the Internal Revenue Service in collection matters. Our statutes have appropriate safeguards on confidentiality and at no time have we ever requested information from the Internal Revenue Service which was used for nontax purposes.

The District Director in Detroit, through his representatives, have inspected our facilities and approved our procedures for maintaining file integrity. None of our employees have ever been accused of violating federal and state laws in this respect. We have never had unwarranted disclosure of federal tax by state personnel nor any city personnel who have access to federal tax information.

The Michigan Department of Treasury does support the necessity for protection of individuals against the invasion of their right of privacy but we also feel that the Federal Government should not restrict states in attempting to administer their tax laws.

We have been relying on the use of federal tax information obtained under our Federal-State Agreement for many years. It has not only turned up many delinquent taxpayers each year who fail to file state tax returns but has also caused an increase in state tax revenues of hundreds of thousands of dollars each year by means of the audit abstract exchange. If the Federal Government restricts our right to this federal tax information it would cause havoc with our compliance program and we would have a great loss in state tax revenues which would seriously affect our state's fiscal program.

As stated, we do understand the necessity for legislation providing adequate protection to individuals against the invasion of their right of privacy but we hope that this will not overshadow a state tax administrator's right to information which is necessary for the administration of state tax laws.

Very truly yours,

SYDNEY D. GOODMAN,
Revenue Commissioner.

STATEMENT OF MR. LLOYD M. PRICE, COMMISSIONER OF REVENUE ADMINISTRATION, STATE OF NEW HAMPSHIRE

The State of New Hampshire has been exchanging tax information under a Federal-State Mutual Assistance Tax Agreement dated May 13, 1964 and amended on September 22, 1970 to cover the obtaining of data by both state and federal tax officials resulting from the enactment in 1970 of New Hampshire's Business Profits Tax Law. At this date a 1975 Model Agreement is i nthe process of final negotiation. The State of New Hampshire, in its handling of tax information, has consistently adhered to the features of the 1969 Internal Revenue Service approved model coordination agreement.

As a result of IMF tape information received, New Hampshire realizes approximately $35,000 annually in additional receipts from our tax on unearned income. The additional revenue accruing to New Hampshire from the use of

Revenue Agent Reports totals approximately $240,000 annually in additional Business Profits Tax collections. We, in turn, have submitted to Internal Revenue Service information generated through Department of Revenue Administration audits of New Hampshire taxpayers.

Since my appointment as Commissioner of Revenue Administration on September 1, 1973, we instituted a vigorous program by continually updating precautions regarding physical protection, restricted access, destruction procedures and employee instructions relating to the confidentiality of Federal tax return information. The Department has received minimal adverse comment as a result of a federal inspection of the safeguards employed by the New Hampshire Department of Revenue Administration and in those areas where changes were recommended, we complied fully with the recommendations.

The New Hampshire Department of Revenue Administration has had and continues to have a harmonious relationship with the Internal Revenue Service officials in the Portsmouth, New Hampshire district responsible for the administration of the Federal-State Exchange Program. Both the Federal and State governments have derived benefit from the exchange of tax information. New Hampshire would lose nearly $275,000 in tax revenues each year if this program was discontinued.

In light of the foregoing, I strongly recommend that the Committee give positive consideration to the retention of this existing program.

LLOYD M. PRICE.

TESTIMONY OF DONALD H. CLARK, COMMISSIONER, INDIANA DEPARTMENT OF REVENUE

I appreciate the opportunity to present the views of the Indiana Department of Revenue on this important matter.

The current co-operative exchange agreement between this Department and the Internal Revenue Service has significantly increased the enforcement capabilities of this Department, particularly with respect to the income tax laws of this state.

Indiana utilizes Revenue Agents Reports which result from federal audit adjustments. The information provided the Department via this method of exchanged information result in increased assessments for an estimated 4,000 taxpayers annually—at an average increased annual assessments of $350,000. Copies of the Revenue Agents Reports are received in the offices of the Indiana Department of Revenue in accordance with Indiana's exchange agreement with the Internal Revenue Service. The Revenue Agents Reports are handled with extreme caution, and they are treated in the same manner with respect to confidentiality as are federal tax returns.

Undoubtedly the most information from IRS to the Indiana Department of Revenue comes via the use of Individual Master File tapes. Indiana has begun an annual matching via a cross check of magnetic tape of those taxpayers who filed federal tax returns using Indiana addresses with those who filed Indiana returns. This cross check resulted in 89,355 billings generating $1.2 million in collections for Indiana for the 1972 tax year, the last year for which such data are available (the 1973 cross check program is still in progress). In addition to the increased collection gained via the matching program, the additive effect to the number of taxpayers on the state "rolls" increases over the years as new taxpayers who had not been paying previously are added.

Indiana maintains the "federal tapes" in a locked vault with extremely limited employee access. The tape comparisons are run on a computer within the Revenue Department—the State's central computer operation is not used.

This Department's computer operation is maintained by a facility management company. The company is contracturally bound to maintain the standards of confidentiality established by state law. Each employee of the contractor is notified of the requirements of the confidentiality statutes and are required to sign such a document to verify their awareness of such provisions.

The Indiana Department of Revenue has entered into a 1975 version of the State-Federal co-operative exchange of information agreement. At that time internal audit inspectors from the IRS Inspection Division examined the procedures and methods of the Department and its data processing facility management company with respect to the security under which information obtained from the Internal Revenue Service was maintained. Minor suggested procedural

changes suggested by those auditors were implemented and the exchange agreement was subsequently formalized.

Very little use is made of actual copies of federal returns. Indiana is one of those states which has entered into the 1975 version of the IRS-state co-operative agreement, which specifically requires higher level safeguards of taxpayer information confidentiality.

In maintaining this level of confidentiality, new employees are informed in writing of the provisions of both state and federal confidentiality laws, their practical meanings, and the penalties for violation. Employees are further reminded throughout the year of the confidentiality requirements by the issuance of employee bulletins, reiterating the safeguards.

Large areas of the Department of Revenue are "off limits" to non-employees. Controlled access is maintained in those areas in which confidential materials are used.

This Department does not make federal tax information available to local governments—nor is state information thus available.

The co-operation between this Department and the Internal Revenue Service has meant a great deal to this Department in tax collection and service to taxpayers. I sincerely hope that the co-operation of the past will be allowed to continue—to the further benefit of both the state and federal tasks of tax collection.

Thank you.

DONALD H. CLARK, *Commissioner.*

STATEMENT OF RICHARD L. DAILEY, COMMISSIONER, WEST VIRGINIA STATE TAX DEPARTMENT

Mr. Chairman:

As you are aware, recent federal legislation has substantially altered the circumstances under which agencies may deny access to information contained in their record systems. The Freedom of Information Act, 5 USC § 552 (1967), hereinafter referred to as FOIA, now requires disclosure of all federal records and materials to "any person" unless the records or materials fall within one of nine specified exemption provisions. The Privacy Act, 5 USC § 552a (1974), permits all disclosures required by the Freedom of Information Act and forbids disclosure of material not specifically included within either the Freedom of Information Act or within its own exemption provisions.

The standards of disclosure have as yet to be clearly defined under either of the above acts. Disparities between the final Senate committee report and the final House committee report on the Freedom of Information Act and the lack of a conference report on the Privacy Act have left the agencies free to adopt conflicting interpretations of the FOIA and the Privacy Act in applying these statutes to their operations.

The Internal Revenue Service has consistently construed the disclosure provisions of the FOIA narrowly in reliance upon qualifying language in the House report not present in the Senate report. Court decisions have eroded the Internal Revenue Service construction and forced the agency to disclose certain materials previously deemed privileged. The Privacy Act has further obscured the standard for disclosure by introducing a "balancing test" to determine whether material is required to be released. If the factors favoring nondisclosure outweigh those for disclosure, the material remains privileged information and access is denied. The lack of clarity in the standards for application of the FOIA and the Privacy Act is a matter of concern for all agency administrators, including those within the Internal Revenue Service, in that officials who violate the provisions of these statutes are subject to disciplinary sanctions. It is therefore imperative that definitive standards be formulated, both for the sake of the regulators and administrators as well as for the sake of those persons who fall under the jurisdiction of the regulators.

A first step in clarifying a standard of disclosure compatible with both the FOIA and the Privacy Act is to assess the existing system of operation, to define problem areas, and to suggest solutions or alternatives to the problems created. From there, a general standard of application of the disclosure provisions can be formulated. Provision then should be made for adaption of the general standard to the particular needs of each agency. My task today is merely to assist the Subcommittee in their assessment of the existing system of disclosure as

practiced by the Internal Revenue Service. I will attempt to point out the problem areas in the application of the two conflicting statutes as such application affects both the federal tax officials and as it affects state tax officials.

As an agency within the meaning of the Freedom of Information Act and therefore within the meaning of the Privacy Act of 1974, the Internal Revenue Service must, in accordance with the FOIA, reveal upon request the following documents:

(1) final opinions, including concurring and dissenting opinions as well as orders made in adjudication of cases;

(2) statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(3) administrative staff manuals and instructions to staff that affect a member of the public, unless the administrative staff manuals are promptly published.

Certain federal courts have ruled that heretofore unpublished private letter rulings fall within category number two listed above, and that portions of Internal Revenue Service manuals and guidelines not related to employees conduct and housekeeping procedures properly belong to category number three. Thus the public must be granted access to both types of documents.

Information exempt from disclosure under the FOIA includes:

(1) Matters specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Matters related solely to internal personnel rules and practices of an agency;

(3) Materials previously or subsequently protected from disclosure by statute;

(4) Trade secrets and confidential financial information;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would:

(*a*) Interfere with enforcement proceedings,

(*b*) Deprive a person of a right to a fair trial or an impartial adjudication,

(*c*) Constitute an unwarranted invasion of personal privacy,

(*d*) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(*e*) Disclose investigative techniques or procedures, or

(*f*) Endanger the life or physical safety of law enforcement personnel.

(8) Documents contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells."

The exemptions pertaining to reports prepared for agencies responsible for the regulation of financial institutions and geological information related to wells clearly do not apply to the Internal Revenue Service. Inspection of federal tax returns is prohibited to all but state tax administrators, certain corporate shareholders, and designated select committees of Congress by Section 6103 of the Internal Revenue Code for 1954. Tax returns, then, fall within the FOIA exemption for documents previously protected from disclosure by statute. Many federal courts have held that technical advice memoranda which discuss information contained in individual tax returns, are privileged documents under this exemption.

To qualify for the FOIA exemption relating to trade secrets and confidential financial information, the agency documents or records must be independently confidential and incapable of being rendered anonymous through the deletion of

names and other identifying materials. One court has stated that commercial or financial information is confidential for purposes of this FOIA exemption only if the disclosure will either impair the governments' ability to obtain necessary information in the future or will cause substantial harm to the competitive position of the person from whom the information was obtained. Deletion of all identifying information would easily overcome this bar to disclosure. Indeed, if all identifying information can be severed from otherwise privileged materials, it appears that the materials thus rendered anonymous no longer enjoy protection of any FOIA exemption.

The scope of the intra-agency memoranda exemption has been judicially restricted to those memoranda containing pre-decisional recommendations, deliberations, and expressions of opinion. Factual material separable from policy or recommendation has been deemed by the courts not to fall within the exemption. Likewise, past policy and statements and their rationale appear no longer to be privileged Internal Revenue Service documents. Thus the FOIA exemption apparently cannot protect Internal Revenue Service materials which are factual documents; separable factual parts of documents containing pre-decisional policy and recommendations; documents containing adopted policy or the rationale for adopted policy; guideline manuals for staff which interpret or apply tax law or instruct staff members in procedure, or documents applying law to a given case from requests for disclosure pursuant to the FOIA.

The Internal Revenue Service has in the past invoked the FOIA exemption for law enforcement investigatory files to exclude from public scrutiny audit working papers and other data compiled to determine a taxpayer's taxable income.

However, a 1974 amendment to the Freedom of Information Act severely restricted the use by the Internal Revenue Service of this exemption to shield its working papers from disclosure. A list of six specific categories of privileged information replaced the more general language of the original statute. As stated previously, these include information which, if released, would interfere with law enforcement proceedings; deprive a person of a right to a fair trial or adjudication; constitute an unwarranted invasion of privacy; disclose the identity of a confidential source; reveal investigative techniques or endanger the life or safety of law enforcement personnel. Of the six categories, those categories relating to information the production of which would interfere with law enforcement activities, would constitute an unwarranted invasion of personal privacy, would reveal investigation techniques, or would disclose the identity of informants seem most applicable to Internal Revenue Service materials. The legislative history of the 1974 amendment suggests that the Congressional intent is to free "routine" scientific tests and procedures and information files after law enforcement actions have been terminated. Although the identity of informants is protected, the information they furnish appears to be disclosable. Further, although Internal Revenue Service investigative procedures and techniques remain privileged, those procedures and techniques which constitute "administrative staff manuals or instructions to staff that affect a member of the public" must be disclosed.

As is shown by the preceding discussion, the lack of firm standards of disclosure has rendered compliance with the conflicting congressional mandates set forth in the FOIA and the Privacy Act exceedingly difficult. Compliance is further complicated by the fact that, under Section 7 of the Privacy Act, restrictions have been placed upon the use of the social security account number as an identifier for state and federal record keeping purposes. Although its use is not expressly prohibited, the limits imposed by this section on such use of the social security identified by federal and state agency officials will place a great burden upon the shoulders of those charged with the responsibility of collection of taxes and enforcement of the revenue statutes.

Section 7 explicitly exempts restrictions upon the use of the social security account number by any federal, state or local agency maintaining a system of records in existence prior to January 1, 1975 and established pursuant to authority granted by statute or regulation in effect prior to that date. Some states, including West Virginia, have no authority by statute or regulation to maintain a record system keyed upon social security account numbers of the state's taxpayers. Therefore, administrative agencies, including state tax departments or departments of revenue, must abide by the statutory limitations and, perhaps, seek alternatives to the use of a taxpayer's social security account number as an identifier for its record systems.

Tax officials have proposed three alternative solutions as a means of eliminating problems created by the restriction on the use of the social security account number. Each proposal would involve a substantial sacrifice in administrative efficiency and, during the period prior to their actual implementation, possibly cause a loss in state revenues. The proposals are:

(1) To adopt the proposed "piggyback" system whereby the federal government is to be responsible for the administration and collection of state income tax revenues;

(2) To repeal the present income tax statute and to enact a totally new income tax law; and

(3) To formulate a new identifier for taxpayers.

For West Virginia at least, the piggyback system is not a viable alternative. In order for any state to adopt this method of proposed tax collection, two states having a population exceeding five percent of the total number of individuals filing federal income tax returns must enact legislation adopting this method. No state having the required population of taxpayers has yet embraced the system.

Should this initial requirement be overcome and West Virginia be given the opportunity to participate in the piggyback system of income tax collection, because state income tax statutes must, under piggybacking requirements, conform in their entirety to federal tax legislation, it is highly doubtful that the West Virginia Legislature would adopt this method of tax collection. To do so would eliminate numerous exemptions and deductions enjoyed under the state income tax statute but not granted by federal income tax laws and which would be abolished upon state legislative approval of the federal piggybacking provisions. A further problem most certainly to be encountered should the State turn to piggybacking to resolve its recordkeeping dilemma is caused by a unique provision of the state Constitution prohibiting the State from operating at deficit.

Article X, Section 5 of the Constitution of West Virginia provides that whenever any deficiency in the revenue occurs within a given year, the legislature at its next regular session must levy a tax sufficient to meet the past year's deficiency as well as the estimated expenses of the current tax year. As an alternative to imposing a new tax or raising existing tax rates to meet the deficiency, the State may issue bonds.

Under piggybacking guidelines, a state may not alter its tax rate after October 31st of a given tax year. However, the West Virginia Legislature convenes in Regular Session only for a sixty day period beginning January 15th of each year. The Legislature generally finalizes the State budget for the forthcoming fiscal year during this Regular Session. Should Congress legislate new income tax provisions granting greater deductions, additional exclusions, or further credits against a taxpayer's income after the Regular Session ends, the State, under Article X, Section 5 of the State Constitution, must somehow compensate for the corresponding decrease in revenue for that tax year. The Governor must then convene a special session of the legislature to amend the existing tax structure to cover the deficiency. If the income tax rate is to be increased, this, under piggyback provisions, must be accomplished by October 31st. The Legislature could of course delay action until the next Regular Session. Legislative options then would include an increase in the income tax rate for the next fiscal year, a restructuring of tax rates other than income tax, and the enactment of a new tax. In all probability, the income tax rate would automatically be raised and one of the other alternatives adopted to meet the existing deficiency caused by amendments of the federal income tax laws.

For example, on September 2, 1974 Congress passed the Employee Retirement Income Security Act of 1974, Pub. L. 93–706, hereinafter referred to as ERISA, which made certain substantial changes in federal income tax law applicable to the tax year beginning January 1, 1974. West Virginia, then in fiscal year 1975, had finalized its budget for 1975 on the basis of revenue estimates submitted in 1974. Such estimates were based on pre-ERISA law. If West Virginia were at that time subject to the October 31st deadline imposed under piggyback guidelines, the Governor would have been required to call a special session of the Legislature to review West Virginia's tax structure or make some other provision for meeting the revenue deficit incurred by ERISA. The complexities of ERISA posed great difficulties in the estimation of potential revenue decline and created further difficulties for the Legislature in determining the exact increase

in tax rates or other changes necessary. Had the time required to analyze ERISA's effects on state revenues for 1975 exceeded the time allotted under piggyback guidelines, the State would have been required to delay the enactment of increases in income tax and other tax rates until the Legislature convened in Regular Session to formulate the budget for fiscal year 1976. Thus the piggyback system, because of the special problems it creates for West Virginia, is not a valid substitute for a dual income tax collection system utilizing a taxpayer's social security account number as a common identifier.

West Virginia's present income tax statute conforms to the federal income tax statute insofar as it uses federal adjusted gross income as the point of departure for determining state income tax liability. Information contained in federal audit tapes serves the necessary function of providing a means of vertification of a taxpayer's stated income tax liability. Should the State Legislature repeal West Virginia's present income tax law and enact nonconforming legislation, the information contained in the federal audit tapes would become useless to state tax officials as a means of certification of statements of income and other information on the West Virginia income tax returns. Without this means of federal verification, an alternative method of effective crosscheck is necessary. The best solution appears to be the formation of a state income tax auditing staff, for which, of course, the State Legislature must grant the requisite appropriation. The State Legislature could also choose not to alter the substance of the present income tax statute. In that instance, both state and federal tax officials could jointly devise an alternate common identifier which would allow continued utilization of federal audit tapes as a state enforcement tool. This would place the huge administrative burden of conversion of all tax systems to the new identifier on the shoulders of all federal and state tax administrators. Tax officials would also face substantial problems involving the education of taxpayers in the use of the new tax identifier.

In conclusion, mutually exclusive considerations of tax-payer privacy and public access to information as contained in the Privacy Act and the FOIA affect all tax administrators. The lack of definitive standards of disclosure creates a particular threat to effective enforcement of federal and state income tax laws by fostering confusion as to the conflicting considerations which control agency action. While an affirmative open door policy is clearly evident within the provisions of the FOIA, this open door policy should not be allowed to interfere with the effective execution of the duties and responsibilities of tax officials. Likewise, while the privacy of a taxpayer must be protected, the means used to ensure such protection should not jeopardize existing enforcement procedures. The task of balancing these opposing considerations is admittedly not easy. However, a proper balance through delineation of adequate standards of disclosure must be achieved if effective administration of the tax laws is to continue.

Sincerely,

RICHARD L. DAILEY,
State Tax Commissioner.

STATE OF CALIFORNIA,
FRANCHISE TAX BOARD,
Sacramento, Calif., February 10, 1976.

MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

In response to the invitation to submit written statements for inclusion in the printed record of the hearings of the Subcommittee on Administration of the Internal Revenue Code in regard to Federal Tax Return privacy, the following is submitted.

The committee has heard oral presentations on behalf of the states attesting to the benefits derived from the existing reciprocal exchange of information programs between the Internal Revenue Service and the states and how well the program has worked. I fully agree with the conclusions by those appearing on behalf of the states that the exchange program has worked well and that its continuance is vital to good tax administration.

I would like to comment on the benefits the Internal Revenue Service state exchange program provides to the individual citizen taxpayer. Most individuals file correct state and federal tax returns and pay the tax due. A few make

mistakes, a few do not file returns and a few do not pay. The exchange program focuses on these few.

With regard to the few who make mistakes the exchange of audit information permits adjustments to correct the return with one audit only. The individual is not subjected to duplicate audits.

With regard to those who do not file or pay, the exchange program facilitates identification of nonfilers and assists in tax collection from those who do not pay. The resultant equitable distribution of the tax burden among all who have a duty to share insures that the great majority who file correct returns and pay their taxes do not assume more than their share of the tax burden.

Because of various statements regarding the volume of data exchanged under the existing program I think it is important to understand that the actual exchanges of data involve only a relatively few taxpayers. While the IMF tapes provided by the Internal Revenue Service to California contains names and data for many taxpayers, only data on nonfilers falls out and becomes visible. This amounts to a less than 1% actual disclosure of available data which could hardly be characterized as massive disclosure.

I would like also to comment on the imposition of safeguards. As we are talking about what is essentially one interrelated tax system and there is a two-way information flow, it seems to me the same safeguards should apply to all data regardless of source. There should not be one rule applicable to the Internal Revenue Service's use of its data and a second more restrictive rule applicable to the states' use of the same data. In the hands of either, the data should be available for all legitimate tax administration purposes.

MARTIN HUFF, *Executive Officer.*

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS,
Chicago, Ill., March 9, 1976.

Senator FLOYD M. HASKELL,
Chairman, Subcommittee on Administration of the Internal Revenue Code, Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: There have been several developments with respect to the IRS briefing paper. I understand that Commissioner Alexander has sent a letter to Congressman Cotter of Connecticut, in which he detailed certain inacuracies which appeared in the briefing paper.

In addition, NATA has checked the information in the briefing paper with state revenue departments and a preliminary report on the subject has been sent to Commissioner Alexander. A copy of the report and my letter to Commissioner Alexander are enclosed.

NATA sends the enclosed material in accordance with the interest it shares with IRS in clarifying this situation and in continuing and strengthening the long relationship the state revenue departments have maintained with IRS in the form of the Federal-State Exchange Program.

Sincerely,

LEON ROTHENBERG,
Executive Secretary.

Enclosures.

FEBRUARY 26, 1976.

Mr. DONALD C. ALEXANDER,
Commissioner of Internal Revenue, U.S. Treasury Department, Washington, D.C.

DEAR MR. ALEXANDER: I have had several conversations with Mr. Meade Emory, Assistant to the Commissioner, concerning the Briefing Paper on Internal Audit Reviews of Federal/State Agreements, which was the subject of discussion at the House Ways and Means hearings on the confidentiality of tax returns on January 28, and I was pleased to learn that the Internal Revenue Service has been reexamining the contents of the paper.

The state revenue departments greatly appreciate your efforts in seeking to clarify the issues which arose in connection with the briefing paper. NATA has made a partial review of the points in question, and I hope that the enclosed report will be helpful to you in this regard.

The state revenue departments have a vital concern in maintaining the confidentiality of tax returns. Under the Federal-State Exchange Program, they look forward to continuing their long-standing cooperation with the Internal Revenue Service, in developing and strengthening, in every way possible, the safeguards needed to protect confidentiality.

With many thanks, again, for the help and support the Internal Revenue Service has given the state revenue departments, I am

Sincerely,

LEON ROTHENBERG,
Executive Secretary.

Enclosures.

FEBRUARY 25, 1976.

A PRELIMINARY REPORT ON THE IRS BRIEFING PAPER ON INTERNAL AUDIT REVIEWS OF FEDERAL/STATE AGREEMENTS

At the House Ways and Means Committee hearing on the confidentiality of tax returns on January 28, following the presentation by the NATA panel, reference was made to a report on the Internal Revenue Service audit of state confidentiality safeguards. It was suggested that the report refuted statements which the NATA panel had made concerning the states' confidentiality protection systems.

Several congressmen on the Ways and Means Committee said that the IRS information on specific states indicated that state revenue departments were not maintaining tax return confidentiality adequately. The IRS report was not made available to the NATA panel in advance of the hearing, and it was not possible at the time to evaluate fully the assertions made in the course of the hearing. Subsequent to the hearing, NATA President William H. Forst requested the NATA Chicago office to look into the matter of the IRS report and review its contents.

The IRS report, entitled *Briefing Paper on Internal Audit Reviews of Federal/State Agreements*, a copy of which is enclosed, was obtained following the hearing. The following observations are noted after reading the briefing paper and consulting with some of the states for which IRS informatoin differed from the information reported to NATA.

(1) The information in the IRS briefing paper in most instances corresponds closely to the information reported by the NATA panel and in the FTA report, *Federal-State Exchange of Tax Information, 1975*, which was derived from a survey of the state revenue departments on the same matter. There are, however, several errors in the IRS briefing paper, and the tone and format of the paper may have led to a misreading of its contents by the congressman who referred to the report at the hearing.

(2) On page 1, the briefing paper refers to the instances summarized in the paper as "instances of unauthorized disclosure or control weaknesses which could result in unauthorized disclosure." In actual fact, there are no instances of unauthorized disclosure reported in the IRS briefing paper, and what the paper terms "control weaknesses which could result in unauthorized disclosure" is essentially the same information reported in the NATA testimony as recommendations for technical and procedural corrections, involving no instance of misuse or consideration of misuse.

(3) The IRS briefing paper intermingles instances of IRS district office activities with state tax department activities and, as a result, during the hearing, information related to IRS district offices was misinterpreted to apply to the state tax departments.

One congressman said that the IRS internal audits indicated that eleven states furnished returns to other states without the Commissioner's approval. What the IRS briefing paper said (item 2, page 1) was that "eleven offices furnished returns for out-of-state taxpayers to states without the Commissioner's required approval." The reference to "offices" was to IRS offices and not to state revenue departments.

(4) There are several errors of fact and omission in the IRS briefing paper which create an impression that certain states have been negligent in maintaining

confidentiality safeguards, when information reported to NATA indicates that this has not been the case. Here are some instances:

Indiana.—On page 8 under item 8, the briefing paper states:

Indiana had contracted with a private corporation to process the federal tax information furnished on magnetic tape.

While the statement is literally true, the implicit suggestion that IRS has regarded this operation as a violation of federal-state agreement disclosure safeguards does not correspond to information reported by the Indiana Department of Revenue.

The Indiana Department of Revenue has informed NATA that the data processing of its tax returns is conducted by a private contractor on departmental premises and under departmental supervision. The federal-state agreements do not prohibit such an operation, but provide that the processing of federal tax return information may be performed only under the immediate supervision and control of authorized employees of the state tax authority, in a manner which will protect the confidentiality of the information.

The Indiana Department of Revenue has employed this system since 1972 and it has kept the IRS district office informed of its operation. IRS representatives have often toured the Indiana Department of Revenue facilities, and IRS and Indiana tax officials usually meet monthly to discuss mutual federal-state matters. The Indiana Department of Revenue reports that it has never been informd by IRS that its system constitutes a violation of the federal-state agreement.

In addition to the above, the Indiana Department of Revenue has reported that:

(1) With respect to the IRS briefing paper's comment on page 2, item 4, it has periodically updated its list of officials eligible to receive federal tax return information. The latest update occurred November 17, 1975.

(2) With respect to page 2, item 6, it maintains a detailed record of all information received from the Internal Revenue Service and the disposal of such information.

(3) With respect to page 4, item 9, it annually gives written notice to its own employees and the employees of its contractor of the state's confidentiality requirements and the penalties for violation, and it requires their acknowledgment of this fact.

(4) In contradiction of the comment at the bottom of page 4, Indiana completed a 1975 model federal-state agreement in October 1975, which includes the most recent confidentiality requirements called for by IRS.

Wisconsin.—On page 4, item 8, the IRS briefing paper states:

Wisconsin allowed five members of a local CPA firm and an official of the University of Wisconsin unrestricted access to state tape files containing federal tax information.

Daniel G. Smith of the Wisconsin Department of Revenue has prepared a statement (enclosed) in response to this allegation. The following may be noted: The files to which the briefing paper referred contained no federal tax return information received from IRS, and thus no violation of the confidentiality of IRS-furnished information could have occurred. Only state tax returns were contained in the file, and Wisconsin is one of the states which requires a taxpayer to include as part of his state tax return a copy of his federal income tax return.

The Wisconsin Department of Revenue permits no one to have unrestricted access to its state tax files. The circumstance apparently referred to in the IRS briefing paper arises from a provision of the Wisconsin income tax law for the distribution of state income tax revenue to local governments on the basis of the taxpayer's residence. The provision authorizes the inspection of *state* returns by representatives of local governments only to verify or correct the amount of revenue distributed to the local governments. Local governments which do not have employees available for this type of examination sometimes employ CPA firms for this purpose. However, whether municipal employees or private contractors perform this research, those involved are subject to confidentiality requirements and to penalties for unauthorized disclosure.

Mr. Smith reports in his statement that no official of the University of Wisconsin has been given access to state tax files. (See the concluding paragraph of Mr. Smith's statement on this subject.) The Wisconsin Department of Rev-

enue reports that IRS has never made any complaints with respect to the above practices.

Nebraska.—On page 3 under item 8, the IRS briefing paper states the following:

Nebraska provided the Department of Motor Vehicles with names, addresses, and SSNs from IRS records without approval.

The facts in this instance are as follows: The Nebraska Assistant Tax Commissioner on August 14, 1973 wrote to the Chief of the IRS Audit Division asking him whether furnishing such information to the state department of motor vehicles would be in conflict with the federal-state agreement. The IRS official advised the Nebraska official on August 15 that furnishing this type of information did not violate any disclosure rules. Later, on review, IRS changed its position on this matter.

Vermont.—On page 3 under item 7, the briefing paper states that "Vermont had a contract with a private firm to do the audit." The Vermont Tax Department has reported that the sentence apparently refers to the state auditor's utilization of an outside auditing firm to conduct a cash audit of the tax department. Review of tax returns was not part of the audit.

The Vermont Tax Department also reports that whenever anyone, in an official capacity, outside the department, has access to any departmental records, the department designates him as an agent of the department and makes him subject to the same confidentiality requirements and penalties for violation as are applied to tax department employees. The Vermont Tax Department reports that IRS has never made any complaint concerning this procedure.

(5) The briefing paper states, on page 3 under item 8, that: Eleven states let non-tax agencies process or have access to federal tax information.

The eleven states listed include the instances of Indiana, Nebraska, and Wisconsin, which have been discussed previously in this report. They include four states in which "access to non-tax agencies" consisted of storing IMF tapes in the state tape libraries under the libraries' control procedures and where, from the information reported to NATA, such tapes were removed to tax department facilities when IRS raised this issue. They also include other states which have central data processing agencies where, in accordance with IRS' directive, the situation was corrected by assigning some central EDP employees to the tax department or by stationing tax department employees in the central EDP agency.

(6) Item 3 on page 1 states: Possible disclosure of federal tax information for out-of-state taxpayers made by North Carolina, Alabama, and Idaho without Commissioner's approval.

The reference in this item is apparently to the states' exchange of tax information with other states, and the possibility that federal tax return information may have been so transmitted. The Alabama Department of Revenue reports that it has examined all Alabama state tax returns sent to other states and it is certain, and has so assured IRS, that no federal tax return information has been transmitted in this process.

The North Carolina Department of Revenue has specifically directed its staff to insure that no federal tax return information is so transmitted.

In Idaho, the "possible disclosure" consisted of the use of federal tax return information in the course of a joint audit conducted with Oregon. There is a question whether such use conflicts with the federal-state agreement, but, in any case, this practice was discontinued upon IRS' objection.

(7) The IRS briefing paper neglects to mention the most important fact, namely that, as has been reported to NATA, the state revenue departments immediately made the safeguard changes recommended by the IRS inspectors. Locks have been added, tapes have been removed from tape libraries and stored in an approved facility, employees supervising the data processing of IMF tapes have been designated tax employees, assessment letter forms have been revised to include the appropriate statutory reference, employees have been advised of disclosure penalties in writing where this had not been done before, etc. As has always been the case, the state revenue departments have cooperated fully with IRS in maintaining confidentiality safeguards.

The above materials have been assembled from a partial check of the states listed in the IRS briefing paper. Supplemental information may be reported after the review is completed.

BRIEFING PAPER ON INTERNAL AUDIT REVIEWS OF FEDERAL/STATE AGREEMENTS

Federal State Tax Exchange Agreements were reviewed in 25 state and the District of Columbia. Attachment 1. Instances of unauthorized disclosure or control weaknesses which could result in unauthorized disclosure are summarized below.

1. *Confidential Data such as Special Agents' Reports, Informant Items, Examination Workpapers, and District Conference Reports were furnished to the States of Pennsylvania, North Carolina, Minnesota, Illinois, North Dakota and Iowa.* The Philadelphia, Greensboro, and St. Paul Districts did not purge these items from returns made available to the States. Unagreed RAR's were furnished to Illinois by the Springfield District and to Iowa by the Des Moines District.

2. *Eleven Offices furnished returns for-out-of-state taxpayers to States without the Commissioner's required approval . . .* Baltimore, Milwaukee, New Orleans, St. Paul, Des Moines, Springfield, Boise, Salt Lake City, and St. Louis Districts and the Atlanta and Ogden Service Centers.

3. *Possible Disclosure of Federal Tax Information for out-of-state taxpayers made by North Carolina, Alabama, and Idaho without the Commissioner's approval.* Federal tax data was associated with State tax files. . . . The State files were furnished to other States under reciprocal agreements.

4. *Listing of State Employees designated to receive and inspect tax information were not up-to-date.* Condition found for North Carolina, Alabama, Indiana, Iowa, Missouri, and Illinois. Also listings for Minnestota, Massachusetts, North Dakota and Vermont were not signed by the Governor as required.

5. *Necessary control records were not maintained over inspection and copying of tax data in fifteen District Offices and three Service Centers . . .* records should identify the State Employees and the witnessing IRS employees. Condition found in the Denver, New Orleans, Philadelphia, Indianapolis, Des Moines, St. Paul, Chicago, Fargo, Milwaukee, St. Louis, Springfield, Boston, Boise, and Salt Lake City Districts and the Philadelphia, Andover, and Ogden Service Centers. In the Baltimore District, control records were not maintained on 27 of 90 requests for specific taxpayers' returns.

6. *Illinois and Indiana did not maintain adequate records or control of receipts and disposals of magnetic tapes containing Federal tax data.* Illinois had no record certifying to destruction of tapes . . . tapes apparently were erased and reused by the state. Indiana kept no records on receipt and disposal of magnetic tapes.

7. *Security and Safeguards over Federal tax data were not sufficient in five States.* Iowa did not restrict their state tax return files, which contain Federal tax information to department of Revenue Employees . . . Also, these files were released to a private contractor for destruction without any control. In Utah, there were no written instructions or procedures identifying personnel authorized access to the State tax return files areas where Federal tax information was stored. Connecticut and Vermont make their tax administrative files available to State Internal Auditors . . . Vermont had a contract with a private firm to do the audit. Connecticut Vermont and New Hampshire stored returns in unlocked desks or cabinets.

8. *Eleven States let non-tax agencies process or have access to Federal tax information.* Nebraska provided the Dept. of Motor Vehicles with names, addresses, and SSNs from IRS records without approval. Idaho, Utah and North Dakota processed Federal tax information on magnetic tape in a State agency not under the control of the State tax authorities. Indiana had contracted with a private corporation to process the Federal tax information furnished on magnetic tape. Iowa released tapes containing Federal tax data to the State comptroller's Office for reproduction. The States of Maine, New Hampshire, Rhode Island and Vermont store the tapes in tape libraries which served all State functions. Wisconsin allowed five members of a local CPA firm and an official of the University of Wisconsin unrestricted access to the state tax files containing Federal tax information.

9. *Written Notice concerning penalties for disclosure of Federal tax information was not given to all appropriate State employees . . .* Condition found in Indiana, Minnesota, Illinois, Iowa, Idaho, Utah, North Dakota, Wisconsin, Missouri and Minnesota. In addition to the State employees, private employees who processed magnetic tapes for Indiana were not advised of the penalties.

10. *Correspondence from nine states to taxpayers did not include statutory references advising that the Federal Tax Information had been obtained pursuant to the law . . .* Condition found in North Carolina, Indiana, Illinois, Iowa, Utah, Nebraska, Maryland, North Dakota, and Missouri.

In addition to these widespread situations, our review of the Indianapolis District found that:

The State of Indiana Tax Exchange Agreement was negotiated in 1961 . . . no specific disclosure and security provisions are included. Agreement terms should be updated to includes necessary safeguards protect Federal tax information from unauthorized disclosure. The need for revision of Federal/State agreements was also noted in seven Mid-Western districts. However we were advised that revision of the agreements was being deferred per National Office instructions to await proposed legislation amending Internal Revenue Code sections concerning disclosure of Federal Tax Information.

ATTACHMENT 1.—*Review of Federal/State exchange agreements*

Region:	*States reviewed*[1]
Central	Indiana, Michigan.
Mid-Atlantic	Pennsylvania, Maryland, District of Columbia.
Midwest	Minnesota, Illinois, Nebraska, Iowa, Wisconsin, North Dakota, South Dakota, Missouri.
North Atlantic	Maine, Massachusetts, Vermont, Connecticut, New Hampshire, Rhode Island.
Southeast	North Carolina, Alabama, Florida.
Southwest	Colorado, Louisiana.
Western	Idaho, Utah.

[1] Findings included in briefing paper for all States reviewed except Michigan.

PREPARED BY DANIEL G. SMITH, WISCONSIN DEPARTMENT OF REVENUE

Under Wisconsin law, revenue collected from the state imposed income tax is shared with the state's counties, cities, villages, and townships. Until 1972, income tax collections were allocated to subdivisions of the state according to a formula relying upon source of taxes paid. Approximately 26 percent of the tax paid or payable to the state revenue department was returned to local units of government in which taxpayers lived.

In order to assure that taxes were correctly allocated, Wisconsin's tax law permitted representatives of a local government to inspect state tax records to see if its taxpayers properly identified the tax district in which they resided or conducted a business. Political subdivisions of the state, by filing with the state tax department a certified copy of a resolution adopted by the governing body, could gain authorization to inspect state tax returns for the purpose of correcting errors in the distribution of income tax collections. Whenever a local government did not have employees available or knowledgeable for such research, the political subdivisions could hire a CPA firm to conduct the examination of *state* tax records.

Whether municipal employees or individuals under contract to the state's political subdivisions were granted access to perform this research, the law provided that state tax records were open to examination only for the purpose of correcting distribution errors. Any misuse or disclosure of information by these individuals was prohibited. Misuse or unauthorized disclosure of information is subject to a fine of not less than $100 nor more than $500 and/or imprisonment for not less than one, nor more than 6 months.

This system of distributing state taxes to local units of governments ceased in 1972. However, counties and municipalities were given until December 31, 1975, to correct errors and file claims for incorrect allocations.

Under Wisconsin law adopted in 1965, individuals must file a true and complete copy of their federal income tax return with their Wisconsin return. When individuals are permitted to inspect Wisconsin returns, they do have access to taxpayers' submitted copies of federal returns. These documents are a part of a Wisconsin return. Importantly, this is not the same as saying persons outside the state revenue department have access to *federally transmitted* tax returns or tax return information.

Wisconsin's confidentiality law is less restrictive than the laws of most other jurisdictions. However, those individuals given access to Wisconsin returns are advised, in writing, of the confidentiality restrictions of Wisconsin law and of the penalties they may suffer for misusing the information to which they are given access. The following individuals are given access to Wisconsin returns—but *not* to federal returns transmitted by the IRS:

1. Public officers of the state or its political subdivisions, when the information sought is deemed necessary in the performance of the duties of their office.
2. Members of any legislative committee when the information sought is deemed necessary to accomplish the purpose for which the committee was organized.
3. Public officials of the federal government or other state governments where necessary in the administration of the laws of such government and only to the extent that such governments accord similar rights of examination to the tax officials of Wisconsin.
4. Pursuant to a court order, duly obtained upon a showing to the court that the information contained in such record is relevant to a pending court action.

The Department of Revenue has made information available for research purposes to the University of Wisconsin. However, in providing this data, the Wisconsin Department of Revenue has hired individuals, placed them under the jurisdiction of the state tax department, and collected non-identifying information for research purposes under contract with the university. In these instances the information is gathered by revenue employees, is placed on research data sheets, and then is turned over to the university without identifying the taxpayers. As with the tax district allocation research projects, this data deals only with state tax records and not tax returns or data received from the IRS.

STATEMENT BY MARY ELLEN MCCAFFREE, DIRECTOR OF REVENUE, STATE OF WASHINGTON

State tax administrators have observed reactions of the Congress to revelations about misuse of federal tax information with interest, and have monitored with care the numerous bills which would change disclosure provisions the Internal Revenue Service must follow. Of particular concern are those proposals which would restrict or eliminate entirely the exchange of tax information between federal and state tax administrations.

Along with other members of the National Association of Tax Administrators, I have considered what requirements may be reasonably included in legislation dealing with the federal-state exchange procedures. The major considerations are included in the enclosed draft legislation prepared by the National Association of Tax Administrators Committee on Federal-State Legislative and Administrative Matters. This proposal consists of amendments to existing section 6103 of the Internal Revenue Code. I participated in the drafting of this legislation, and strongly support it. Our Governor Daniel J. Evans has also expressed interest and support for continuation of the exchange program as provided for in the National Association of Tax Administrators proposal.

This proposal allows state tax administrators access to federal tax returns and return information, if they follow certain safeguards. Under provisions of this draft, federal tax information would be shared with the state tax agencies, but not with local units of government. In order to receive the information, the head of the state tax department would be required to request exchangeable information in writing from the Secretary of Treasury and, at the same time, certify that the information will be used for tax administrative purposes only. Further, a listing of those state employees who may have access to and may receive tax return information is required.

As a condition to receiving tax information from the Internal Revenue Service, each state would agree to maintain the shared information in a secure area and in a safe manner, would limit access to federal data to those persons whose duties or responsibilities require such access, and would either destroy or return the records to IRS after they have served their purpose. Additional reasonable safeguards may be requested by the Secretary of Treasury, or his delegate, in order to ensure protection of confidentiality and to prevent disclosure.

This legislation also specifies that whenever unauthorized disclosure is made by a state, the Secretary of the Treasury will terminate exchange rights and deny information flow to that state until the Secretary is satisfied that corrective steps have been taken to prevent further abuse.

Although the proposal does not include changes to section 7213(a)(2) as have several other legislative proposals, it is agreed that such changes should be adopted, if section 7213 (a)(1) amendments, dealing with federal employees, are made.

In drafting this legislation, particular care has been taken to specify precise requirements for continuation of an appropriately regulated information exchange program of long standing. Toward that end, reassuring safeguards and a specified penalty procedure that is quickly enforceable and remedially adjustable has been incorporated into the proposal.

The exchange program has been beneficial to both the federal and the state tax agencies, in terms of efficient administration of tax laws and economies in the accompanying costs which are paid for by taxpayer dollars. As a result of this sharing of information, duplicate auditing of the same taxpayers has been avoided in many cases, administrative innovations have been shared and enforcement costs reduced. This is especially true for states which now have an income tax. Although the State of Washington tax base does not now include personal income, looking forward to a future time when the State does implement a state income tax, the advantages and real need for the federal-state exchange program can not be overstated. It is for this reason that we have examined carefully any

legislation affecting the program and have weighed it in terms of such future realities.

Currently, requests from the Washington Department of Revenue for federal tax return copies have been on a very limited scale, averaging ten to fifteen per year for excise tax and business and occupation tax purposes. But this limited need for return information is largely due to the fact that taxpayers are aware we have that right of access, and thus will voluntarily supply the requested information. If such access were denied, however, the voluntary compliance of requests for federal return information, as part of routine audit procedure, could be expected to erode substantially, with resultant detrimental effects on the administration of our Washington State tax laws.

Costs to administer a Washington state income tax can be estimated on the basis of research our Revenue agency conducted in preparation for possible voter approval of the several income tax ballot proposals we have had in the past few years. The availability of Internal Revenue Service information substantially reduces our cost estimates, mainly in the area of audit. Audit related costs currently represent about fifty-one percent of the agency total budget for excise tax administration. The cost for an income tax audit program would at least equal that expenditure. Having access to federal tax information and the opportunity to reciprocally share audit results would cut that cost at least in half.

Real benefits of the exchange program are realized also in terms of reducing federal tax administrative costs through the use of state agency information. For Washington State, information passed along to the Internal Revenue Service has been mainly in the excise and inheritance and gift tax areas. So far as excise tax is concerned, special agents of the Internal Revenue Service intelligence division frequently contact our Office Audit Section to review state returns filed by specific taxpayers. That Section estimates contacts of this type average over 100 per year. While we have no information on the results of the special agent contacts and the corresponding dollar yield to the Federal Government, we must assume that accessibility of our records is of considerable value, in view of their continued utilization of the privilege and frequency of their requests.

For the inheritance and gift taxes, there are many instances each year where valuable information is provided to the Internal Revenue Service by the State of Washington Department of Revenue. Examples are:

1. In examining an estate already released by the Internal Revenue Service we discovered a $100,000 addition error. Upon being informed of the error, federal agents reopened the estate and recovered more than $8,000 in additional taxes, interest and penalty.

2. A discrepancy in the assets of a deceased and the surviving sister was brought to the attention of the federal tax administration. As a result, a full audit was conducted, and more than $100,000 was added to the taxable estate.

3. A gift of timber company stock was reported for federal and state purposes at $290 a share. As a result of information we provided, the Internal Revenue Service conducted an audit which resulted in doubling the reported value. Increased federal tax is approximately $200,000.

One further area should be mentioned. In the course of auditing taxpayer's records in connection with our state excise tax audit program, any failure on the taxpayer's part to file federal returns is noted in the auditor's report and this information is forwarded. This procedure has enabled the Internal Revenue Service to identify a number of taxpayers who were not filing federal returns.

The record of unwarranted disclosure of federal information by personnel of state tax agencies is very good, with only one known violation of the confidentiality provisions of state and federal law. Such violation has never occurred in the Washington Department of Revenue. With one exception, all states, including Washington, have criminal sanctions against disclosure of tax information. Also, section 7213(a)(2) of the Internal Revenue Code specifies that state employees who improperly divulge federal tax information are subject to the same criminal penalties imposed against federal employees who similarly reveal facts taken from tax return information unlawfully.

In the State of Washington Department of Revenue, access to Internal Revenue Service information is limited, under a formal agreement, to seven designated individuals. The confidentiality of any facts or information our employees have access to is mandated by state law (RCW 82.32.330). A violation of this statute is punishable by a fine of up to $1,000, dismissal from employment with the state and a prohibition from re-employment for a total of 2 years. All Department of Revenue employees are required to acknowledge that they are aware of and

understand the penalty provisions of the law by signing a copy of the confidentiality statute when entering employment. Additionally, we are now implementing further controls on handling federal tax information which call for prompt destruction of any Internal Revenue Service records we receive and make the individual receiving such information solely responsible for its destruction.

The Privacy Act of 1974, while dealing with broader concepts and procedures, imposed accountability requirements on all federal agencies with respect to the release of information about individuals. However, accordng to testimony presented in Congress at that time, it was not the intent of the Act to amend the long-standing agreements beween the Internal Revenue Service and state tax departments for the exchange of returns, audit information, and other records deemed necessary to continue a coordinated tax effort by both levels of government.

Just prior to the vote on S. 3418 (the Federal Privacy Act of 1974) Senator Sam Ervin of North Carolina and Congressman William S. Moorhead of Pennsylvania declared in specific terms that it was the intent of the bill that the Internal Revenue Service continue to furnish state and local governments with federal tax information. Here are some quotes from the *Congressional Record* of their statements:

. . . When the IRS sets up a deficiency against a taxpayer who lives in a state the IRS frequently sends information on this deficiency to the state or local tax agency. The states use this information in collecting their own taxes . . . Under this bill, this is intended to constitute a routine use for a purpose compatible with the purpose for which the information was collected, so the IRS could continue to send this information to the state and local tax agencies as is presently done.

Also the IRS sends to state and local tax agencies the federal tax returns of individuals who live in the state so that the state agency can check to see if the individual has reported the same income and deductions on his federal and state or local tax returns. . . . Under the bill, it is intended that this would be a routine use for a purpose compatible with the purpose for which the information is collected so the IRS can continue to send tax information to state and local tax agencies in this way.

It is understandable and commendable that Congress should seek to safeguard individual privacy of taxpayers. However, it is my strong conviction that this can be accomplished without jeopardizing the real benefits allowed by a federal-state information exchange program carried out with reasonable and effective constraints.

The National Association of Tax Administrators has also addressed itself to two other aspects of the information exchange between federal and state tax administrations. We have developed draft legislation as follows:

1. An amendment to section 6109 of the Internal Revenue Code which will guarantee continued use of taxpayer identifying numbers (social security number) for purposes of state tax law administration;

2. Legislation to authorize withholding of state income taxes from military pay.

A copy of these proposals is attached for your review and consideration. Again, my concern in supporting these proposals is based on the very real possibility that the State of Washington will adopt a state personal income tax at some point in the near future, at which time we would be faced with nearly unsurmountable problems in administering the tax without a viable federal-state information exchange program.

PROPOSED AMENDMENT TO SECTION 6103(b), INTERNAL REVENUE CODE, TO CONTINUE FEDERAL-STATE EXCHANGE OF TAX INFORMATION

To amend the Internal Revenue Code of 1954 to specify the conditions under which the States have authority to inspect tax returns and receive return information for tax administration purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 6103(b) of the Internal Revenue Code of 1954 is amended to read as follows:

"(b) Disclosure to State tax officials.—

"(1) *General Rule.*—Returns and return information with respect to taxes imposed under this title shall be open to inspection by or disclosure to any State agency, body, or commission lawfully charged with tax administration for the purpose of, and only to the extent necessary in, the administration of a specific tax law of such State and shall be used only for such tax administration. Such inspections shall be permitted, or the disclosure made, only upon written request of the head of such agency, body, or commission, designating the representatives of such agency, body, or commission to make such inspections or to receive the returns or return information on behalf of such agency, body, or commission. This subsection does not apply with respect to taxes imposed by chapter 35 or 53.

"(2) *Safeguards.*—Any State agency, body, or commission shall, as a condition for receiving returns or return information—

"(A) establish and maintain a secure area or place in which such returns or return information shall be stored;

"(B) restrict access to the returns or return information only to those persons whose duties or responsibilities require access;

"(C) when the returns or the return information provided by the Secretary or his delegate in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically-produced tapes, disks or records have served their purpose, return to the Secretary or his delegate such returns or return information (along with any copies made therefrom) or destroy or otherwise make undisclosable in any manner whatever the returns and return information, and

"(D) provide such other safeguards as are necessary or appropriate, and as may be reasonably requested by the Secretary or his delegate, to protect the confidentiality of the returns or return information and prevent the disclosure of a return or return information to a person unauthorized to receive such information.

"(3) *Unauthorized Disclosures.*—If returns or return information are submitted to a State, and thereafter the Secretary or his delegate finds that officers or employees of such State have made disclosure of a return information to a person unauthorized to receive such information, the Secretary or his delegate shall notify the head of such agency, body, or commission of the State that no further returns or return information will be furnished until the Secretary or his delegate is satisfied that such unauthorized disclosures will cease. Until the Secretary or his delegate is so satisfied, no further returns or return information shall be furnished to such State.

"(4) *Definitions.*—For purposes of this subsection—

"(A) Return.—The term 'return' means any tax or information return or declaration of estimated tax required by, or provided for or permitted under, the provisions of this title file by, on behalf of, or with respect to any person with the Secretary or his delegate, and any amendment or supplement thereto or claim for refund, including supporting schedules, attachments, or lists which are designed to be supplemental to, or become part of, the return so filed.

"(B) Return information.—The term 'return information' means any data including a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any particular of any data, in whatever form (whether as a report, investigative file, memorandum or other document, including a registration statement described in section 6057) or manner received by, recorded by, prepared by, furnished to, or collected by the Secretary or his delegate with respect to a return as described in subparagraph (A) or with respect to the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

"(C) State.—The term 'State' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, possessions of the United States, and other places under the sovereignty of the United States.

"(D) Taxpayer identity.—The term 'taxpayer identity' means the name of a person with respect to whom a return is filed, his mailing address, and his taxpayer identifying number (as described in section 6109) or a combination thereof.

PROPOSED AMENDMENT TO TITLE 5, U.S. CODE TO PERMIT STATE WITHHOLDING FROM MILITARY PAY

To amend Title 5, United States Code, with respect to withholding State and District of Columbia income taxes from compensation of members of the armed forces who are domiciliaries of a State or the District, as specified by the Soldiers' and Sailors' Civil Relief Act of 1940, Title 50, Sec. 574

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsections 5516(a) and 5517(a), of Title 5, United States Code, be amended to read as follows:

"5516. Withholding District of Columbia income taxes.

"(a) The Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the Commissioner of the District of Columbia within 120 days of a request for agreement from the Commissioner. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of subchapter II of chapter 15 of title 47, District of Columbia Code, in the case of employees of the agency who are subject to income taxes imposed by that subchapter and whose regular place of employment is within the District of Columbia. The agreement may not apply to ~~pay for service as a member of the armed forces or to~~ pay of an employee who is not a resident of the District of Columbia as defined in subchapter II of chapter 15 of title 47, District of Columbia Code. *In the case of pay for service as a member of the armed forces, the second sentence of this subsection shall be applied by substituting 'who are domiciled in' for 'whose regular place of employment is within'.* For the purpose of this subsection, 'employe' has the meaning given it by Section 1551c(z) of title 47, District of Columbia Code."

"5517. Withholding State income taxes.

(a) When a State Statute—

(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from pay of employees and making returns of the sums to the State: and

(2) imposes the duty to withhold generally with respect to the pay of employees who are residents of the State; the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with-which the agreement is made. ~~The agreement may not apply to pay for service as a member of the armed forces.~~ *In the case of pay for service as a member of the armed forces, the preceding sentence shall be applied by substituting 'who are domiciled in' for 'whose regular place of Federal employment is within'.*

PROPOSED AMENDMENT TO SEC. 6109, INTERNAL REVENUE CODE TO GUARANTEE CONTINUED USE OF SSNS AND EINS FOR STATE TAX PURPOSES

To amend section 6109 of the Internal Revenue Code of 1954 with respect to the use of taxpayer identifying numbers by States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6109 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(d) Use of taxpayer identifying numbers by States.—Notwithstanding section 7 of the Privacy Act of 1974 (P.L. 93-579), the social security account number assigned to a person by the Secretary of Health, Education and Welfare or his delegate, or the employer identification number assigned to a person by the Secretary or his delegate may be required by any official, body, or commission lawfully charged with administration of any tax law of any State or political subdivision thereof for the purpose of such tax administration and shall be used only for such purpose."

STATE OF NEW JERSEY,
DEPARTMENT OF THE TREASURY,
Trenton, N.J., January 26, 1976.

MR. MICHAEL STERN,
Staff Director, Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: Thank you for the opportunity to submit a statement for the record with regard to the privacy of federal tax returns and tax information.

I am Director of the New Jersey Division of Taxation and, as such, have responsibility for the administration of most of New Jersey's State taxes.

It is my opinion that in the administration of state tax laws, it is essential that there be an exchange of tax information among the states themselves and between the states and the Internal Revenue Service. It is only by permitting this exchange to continue that federal and state tax laws can be more economically and efficiently administered and that unnecessary duplicative inquiries be avoided. In most cases, a state tax agency having access to federal tax information, for example, is satisfied that the taxpayer's reporting is correct and consistent and, hence it becomes unnecessary to inquire further of the taxpayer. On the other hand, the information may disclose inconsistent reporting or the omission of important items necessitating further inquiry.

~~The his~~tory and record of cooperation between the states and the Internal Revenue Service should not be impaired. Both have benefited immeasurably from the free exchange of information. Because of this, duplicative audits have become unnecessary in many cases. The exchange enables the tax agency to complete its review within a shorter period than otherwise.

As long as there are adequate safeguards to insure that the returns and information therein are kept confidential and not disclosed, except as may be provided for by the law, the Privacy Act should not be construed to foreclose the exchange.

The use of social security numbers is an expeditious way of accounting for and processing tax returns as well as coordinating information contained in various tax returns filed under a variety of other laws.

New Jersey has a very strict confidentiality statute. All employees of the Tax Division are aware of its provisions and of the penalties for their violation. A copy of the New Jersey statute is attached hereto.

It is my opinion that continuation of the exchange agreements and the employment of social security numbers should be excepted from prohibition against disclosure under the Privacy Act. The continuation of such procedures are vital to effective tax administration and should not be impaired.

Very truly yours,

SIDNEY GLASER,
Director, Division of Taxation.

Attachments.

UNIFORM PROCEDURE LAW

54:50–8. RECORDS CONFIDENTIAL

The records and files of the commissioner respecting the administration of this subtitle or of any State tax law shall be considered confidential and privileged and neither the commissioner nor any employee engaged in the administration thereof or charged with the custody of any such records or files nor any person who may have secured information therefrom under subdivision "d", "e", "f", or "g" of section 54:50–9 of this Title shall divulge or disclose any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the commissioner nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of this subtitle or of the State tax law affected, or where the determination of the action or proceeding will affect the validity or amount of the claim of the State under some State tax law, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of this subtitle or of any State tax law. As amended L.1939, c. 175, p. 526, § 2.

54 :50–9. CERTAIN OFFICERS ENTITLED TO EXAMINE RECORDS

Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The commissioner, in his discretion and subject to reasonable conditions imposed by him, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney-General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the commissioner, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other State, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the commissioner, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law. As amended L.1939, c. 175, p. 527, § 3; L.1943, c. 110, p. 342, § 1.

[From the Federal Register, Vol. 41, No. 18—Tuesday, January 27, 1976]

5. Section 305.75–8 is added to Part 305 to read as follows:

§ 305.75–8 Internal Revenue Service Procedures: Tax Return Confidentiality (Recommendation No. 75–8).

(a) *Purpose and Scope of Application of Recommendations.* (1) Under existing law, tax returns are disclosed by the Internal Revenue Service for many purposes to many governmental agencies outside the Internal Revenue Service. The purpose of these recommendations is substantially to narrow the authority of the Service to disclose to other governmental agencies tax returns pertaining to the tax liability of individuals and decedents, including principally individual income tax returns (Forms 1040 and 1040A), estate tax returns (Form 706), gift tax returns (Form 709), and income tax returns filed on behalf of estates or trusts (Form 1041). Tax returns of business entities such as partnerships and corporations, even though they may have bearing on the tax liability of individuals, are outside the scope of these recommendations. The omission of such other tax returns from the scope of application of these recommendations is intended to reflect neither approval nor disapproval of existing law or of the disclosure practices of the Internal Revenue Service thereunder, with respect to such other tax returns. But Congress, in addresing the subject of tax return confidentiality should make provision to govern the confidentiality and conditions of disclosure of all categories of tax returns, including categories that are outside the scope of these recommendations.

(2) As used in these recommendations, the term "tax return" means (i) the return itself together with any schedule, list, and other written statement filed by or on behalf of the taxpayer with the Internal Revenue Service which is designed to be supplemental to or become a part of the return, and (ii) other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to the items included in paragraph (a) (2) (i) of this section.[1]

(b) *General.* Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service only as authorized by express

[1] This definition is taken from Treasury Regulation § 301.6103(a)–1(3)(i). In considering any legislation in this area, Congress should consider the adequacy of this definition, since some technical problems may exist under the present regulation.

statute designating the persons to whom and the purposes for which disclosure may be made, the procedures governing such disclosure, and limitations on use or redisclosure that shall govern such disclosure.

(c) *Availability of Tax Returns to Executive Departments and Agencies.* (1) Legislation should be enacted which would permit the disclosure by the Internal Revenue Service of tax returns to any Executive department or agency of the Federal government in the following circumstances:

(i) To any office of the Treasury Department for use that is necessary to its exercise of responsibility for the administration of the tax laws, the formulation of tax policy, or the preparation of economic analyses.

(ii) To a United States Attorney, or to an attorney of the Department of Justice, for use in preparing for and conducting civil or criminal litigation that is related to administration of the tax laws, provided, that any such disclosure shall be limited to (A) the tax return of the taxpayer who is a party to the litigation, (B) the tax return of an alleged co-conspirator of such party, and (C) the tax return of any other taxpayer which contains information that is pertinent to an issue in the litigation, and provided further, that when any such disclosure is to be made in response to a request initiated by any such attorney, the request shall be in writing and state with specificity the reasons for seeking the tax return.

(iii) To the Bureau of the Census and to the Bureau of Economic Analysis of the Department of Commerce for use that is necessary to their respective statistical collection and publication responsibilities.

(iv) To the Social Security Administration for use that is necessary to its responsibility for administering the Social Security Act.

(v) To the Department of Labor and to the Pension Benefit Guaranty Corporation for use that is necessary to their respective responsibilities for administering the Employee Retirement Income Security Act.

Particularly, the Internal Revenue Service should not be permitted to disclose tax return information to any Executive department or agency of the Federal government for use in any way relating to an individual's service as a juror. [The Conference defers consideration of whether, and under what circumstances, tax returns should be disclosed to Executive departments or agencies of the Federal government for use in litigation or investigations not related to the administration of the tax laws.]

(2) Any disclosure in a form that allows identification of the taxpayer should be made only if the agency or department to which disclosure is made follows procedures based on legally enforceable regulations no less restrictive than those of the Internal Revenue Service which are designed to assure that the tax return will not be used or redisclosed for any purpose other than that for which such disclosure is made.

(d) *Availability of Tax Returns to the Executive Office of the President,* (1) Legislation should be enacted which would permit the disclosure of tax returns by the Internal Revenue Service to the Executive Office of the President, only in accordance with the following limitations:

(i) The President shall personally sign a written request for such disclosure which (A) specifies the taxpayer's tax return to be disclosed; (B) designates by name a responsible individual to whom disclosure is to be made; (C) states with specificity the reasons for seeking the tax return and the uses to which it will be put; and (D) states that the tax return requested will not be reproduced and will not be used or redisclosed for any use other than that for which disclosure is requested.

(ii) The requested tax return shall be furnished by the Internal Revenue Service only in written form and only to the President or to an individual designated in the request.

(iii) The written material furnished by the Internal Revenue Service shall be returned to the Service after the use for which it was requested has been completed.

(2) The Internal Revenue Service should maintain permanent records of all disclosures of tax returns to the Executive Office of the President, including copies of Presidential requests, the dates and reasons therefor, the individuals to whom disclosure is made, and the dates when materials furnished are returned to the Service. Based on such records, the Internal Revenue Service should prepare and submit an annual report to the committees of the Congress which are charged with responsibility for oversight of the administrative procedures of the Service, of the names of all taxpayers about whom information was disclosed,

the reasons for which each disclosure was requested, and the names of all individuals to whom such disclosures was made.

(e) *Availability of Tax Returns to Committees of Congress.* The existing statutory authority (Section 6103(d) of the Internal Revenue Code) for disclosure of tax returns to the House Committee on Ways and Means, the Senate Committee on Finance, and the Joint Committee on Internal Revenue Taxation should be continued. Disclosure of tax returns by the Internal Revenue Service to any other commitee of the House or Senate, or joint committee of the Congress, should only be in accordance with specific authorization for such disclosure by a resolution of the House or Senate or, in the case of a joint committee, by a concurrent resolution.

(f) *Availability of Tax Returns to States.* (1) Legislation should be enacted which would amend Section 6103(b) of the Internal Revenue Code by providing the following additional limitations on the right of any State official, body, or commission to inspect tax returns:

(i) The State shall have enacted a statute, which the Commissioner of Internal Revenue has determined to be substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, making it a crime for any officer, employee, or agent of the State, or of any political subdivision thereof, to disclose any information acquired by him as a consequence of a disclosure made by the Internal Revenue Service pursuant to Section 6103(b) of the Internal Revenue Code.

(ii) The State shall have entered into, and shall fully comply with, an agreement with the Internal Revenue Service by which the State is obligated to adopt legally enforceable regulations and procedures to safeguard the confidentiality of tax returns which are determined by the Internal Revenue Service to provide satisfactory assure that (A) information disclosed by the Service to the State, pursuant to Section 6103(b) of the Internal Revenue Code, and (B) information, submitted by a taxpayer to the State or local tax authorities, which is the same as or substantially similar to that compiled for submission with the taxpayer's federal income tax return, will be used or disclosed only within the limitations therein provided.

(2) The Internal Revenue Service should adopt regulations which shall contain provisions to accomplish the following.:

(i) Establish procedures whereby (A) the Service will make the determination that a State has enacted a statute that is substantially similar to paragraph (2) of Section 7213 of the Internal Revenue Code, and (B) the Service will monitor the State's enforcement of such statute;

(ii) Establish criteria that will be applied by the Service in making determinations regarding the sufficiency of State regulations and procedures designed to limit use and redisclosure of information to be disclosed pursuant to Section 6103(b) of the Internal Revenue Code;

(iii) Establish criteria that will be applied by the Service in acting upon requests for disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code; and

(iv) Establish procedures whereby the Service will audit and enforce the performance by the States of their obligations provided in agreements entered into as a condition of obtaining disclosure of information pursuant to Section 6103(b) of the Internal Revenue Code, including a procedure for suspending disclosure of information to a State under Section 6103(b) whenever the Service determines that the State has failed to perform any of its obligations provided in such agreement.

(g) *Requisition of Tax Returns by Service Personnel.* The Internal Revenue Service should strengthen its procedures designed to eliminate unnecessary inspection of tax returns by Service employees. Such procedures should provide for (1) periodic monitoring by Service management of the requisitioning of tax returns by Service employees, (2) preparation and maintenance of statistical records designed to reveal patterns of frequency in, and of reasons for, the requisitioning of tax returns by Service employees, and (3) preservation of the documents employed by Service employees to requisition tax returns by incorporating each such document in the permanent file of the return requisitioned thereby.

(h) *Notice to the Public About Tax Return Disclosures.* The Internal Revenue Service should inform each taxpayer, by means of a concise statement in the tax return or other appropriate place, of the disclosure, for uses unrelated to the administration of Federal tax laws, that may be made of information supplied

by the taxpayer in the return. Such statement should include reference to a public document, which should be prepared and disseminated by the Service, which identifies the governmental agencies and other persons to which disclosures of tax returns are made and the purposes for such disclosures, and which fully describes the procedures followed by the Service with respect to the disclosure of tax returns.[2]

DEPARTMENT OF TAXATION,
Columbus, Ohio, January 20, 1976.

Senator FLOYD K. HASKELL,
c/o Mr. Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR HASKELL: This letter is being submitted to you in your capacity as Chairman of the Senate Subcommittee on Administration of the Internal Revenue Code which will be holding, in the near future, hearings regarding the disclosure of federal income tax return information and data.

On behalf of the State of Ohio, I wish to go on record that access to federal income tax return data is vital to the effective administration of our state income tax! Specifically, Ohio's personal income tax is based on federal adjusted gross income, and that dollar amount, together with the axpayer's name, address, and social security number, constitutes the foundation of all administration and enforcement of the tax. It is difficult to comprehend how we could administer this tax absent this information currently being received from the I.R.S. I must also point out that access to such data on *magnetic tape format* is equally important; restrictions limiting access to "hard copies" would effectively defeat the utilization of such access, particularly in reference to a "volume" tax like our state income tax.

In addition, Ohio law currently provides for severe penalties for breach of confidentiality by any state tax employee or official. I am proud to state that we have never had to levy these penalties in Ohio for such unauthorized disclosure.

I trust you will weigh these considerations in reaching your conclusions in this area, and will recognize the legitimate needs of state tax administrators in the resolution of this matter.

Sincerely,

EDGAR L. LINDLEY, *Tax Commissioner.*

Senator HASKELL. Thank you. The hearing will be adjourned, and the record will stay open for 2 weeks for additional submissions.

[Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

---

[2] This recommendation might be implemented by amplification of the Privacy Act notification provided with the 1975 income tax returns.

○