TAXPAYER BILL OF RIGHTS

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 850

JUNE 2, 1981

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TUESDAY, JUNE 2, 1981

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

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. Charles E. Grassley (chairman) presiding.

Present: Senators Grassley and Baucus.

[The press release, description of S. 850, and Senator Max Baucus' opening statement, follow:]

Press Release No. 81-133

PRESS RELEASE

FOR IMMEDIATE RELEASE

COMMITTEE ON FINANCE
UNITED STATES SENATE
Subcommittee on Oversight of
the Internal Revenue Service
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE SETS HEARING ON TAXPAYER BILL OF RIGHTS

Senator Charles E. Grassley, chairman of the Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance, announced today that the subcommittee will hold a hearing on Tuesday, June 2, 1981, on S. 850, the Taxpayer Bill of Rights. The hearing will begin at 9:30 a.m. in Room 2221 of the Dirksen Senate Office Building.

Requests to Testify.--Witnesses who desire to testify at the hearing on June 2, 1981 must submit a written request to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510, to be received no later than noon on May 26, 1981. Witnesses will be notified as soon as practicable thereafter whether it has been possible to schedule them to present oral testimony. If for some reason a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such case a witness should notify the committee of his inability to appear as soon as possible.

Legislative Reorganization Act. Senator Grassley stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) All witnesses must submit written statements of their testimony.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be submitted by noon on Monday, June 1, 1981.

(4) Witnesses should not read their written statements to the subcommittee, but ought instead to confine their oral presentations to a summary of the points included in the statement.

(5) Not more than five minutes will be allowed for the oral summary.

Written statements. Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five (5) copies to Robert E. Lighthizer, Chief Counsel, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Tuesday, June 16, 1981. On the first page of your written statement please indicate the date and subject of the hearing.

P.R. #81-133

DESCRIPTION OF S. 850

TAXPAYERS' BILL OF RIGHTS ACT

ON JUNE 2, 1981

PREPARED FOR THE USE OF THE

COMMITTEE ON FINANCE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The Senate Finance Committee's Subcommittee on Oversight of the Internal Revenue Service has scheduled a hearing on June 2, 1981, on S. 850, the Taxpayers' Bill of Rights Act (introduced by Senator Baucus).

The bill deals with the following areas of tax administration procedures and tax payment requirements: (1) establishment of an independent taxpayer's ombudsman in the IRS; (2) provide administrative appeal of tax liens; (3) revision of rules relating to levies and seizures of property for collection of taxes; (4) setting time requirements for issuance of Treasury Regulations; (5) modifying estimated income tax payment requirements for individuals; and (6) changing the rule for time of furnishing Forms W–2 to terminated employees

This pamphlet, prepared in connection with the hearing, contains four parts. The first part is a summary of present law and the bill. The second part is a discussion of present law and procedures relating to the items considered in the bill. The third part provides a listing and brief discussion of issues raised by the bill. Part four provides a more detailed description of the provisions of S. 850, including effective dates and the revenue costs of the estimated tax payment provision.

I. SUMMARY

A. Present Law

IRS taxpayer services

The Internal Revenue Service currently provides a number of taxpayer services. These services are provided in three major ways: (1) telephone assistance, (2) walk-in assistance, and (3) taxpayer information and education programs.

The Problem Resolution Program (PRP) was established within the IRS for the purpose of providing special attention for persistent taxpayer problems and complaints that are not resolved in a prompt or proper manner through normal procedures. The Taxpayer Ombudsman, an IRS employee, administers the Problem Resolution Program and exercises other functions on behalf of taxpayers.

Tax liens

Under present law, if a taxpayer refuses to pay tax after a tax assessment has been made and the payment has been demanded, the tax owed becomes a lien in favor of the United States on all property owned by the taxpayer. Present law contains very specific and detailed rules concerning lien priorities and the recordation of liens. There are no administrative procedures for appealing the imposition of a Federal tax lien. (However, there are several opportunities for appeal prior to the assessment of tax.)

Seizure of property for the collection of taxes

In general, if a person who is liable to pay tax, after an assessment has been made, neglects or refuses to do so within ten days after notice and demand, the tax may be collected by levy upon that person's property. However, there are several types of property, including a portion of a taxpayer's wages, that are exempt from levy. The Secretary of the Treasury is not required to obtain a court order before making a levy.

Issuance of Treasury Regulations

Present law does not impose time limitations upon the issuance of Treasury Regulations. Often, the regulations process can take a substantial amount of time because of the number of levels of review involved, the resource limitations of the Treasury Department, and the input that must be received from persons within and without the Treasury Department.

Installment payments of estimated taxes by individuals

Present law generally requires individuals to make quarterly declarations and payments of estimated taxes if their tax liability is expected to exceed withheld taxes by $100 or more. Farmers and fisher-

men generally may wait until January 15 of the following year to declare and pay estimated tax.

Time for furnishing Forms W–2 to terminated employees

In general, employees who terminate employment prior to the close of the calendar year must be provided with Forms W–2 at the time of their last salary payment.

B. Summary of S. 850

1. Establishment of an Office of Ombudsman

The bill would establish an independent Ombudsman, within the IRS, who would be appointed by the President, by and with the advice and consent of the Senate. The Ombudsman primarily would be an advocate for taxpayers' rights. In addition, the Ombudsman would be permitted to take certain actions on behalf of taxpayers who are suffering from unusual hardships because of the manner in which the tax laws are being administered by the IRS.

2. Administrative appeal of tax liens

Under the bill, a taxpayer would be able to appeal, administratively, the imposition of a lien upon his property.

3. Revision of rules relating to property levies

In general, the bill would require the Secretary of the Treasury to obtain a court order prior to making a levy upon property. A taxpayer also would be permitted to appeal a decision by the Secretary to make a levy.

4. Time requirements for issuance of Treasury Regulations

In general, the bill would require that Treasury Regulations be issued within 18 months after an amendment to the Internal Revenue Code is enacted. If this time limitation is not met, then a taxpayer who is contesting an issue with respect to which regulations have not been promulgated would be permitted to rely on any reasonable position regardless of what is contained in the regulations when promulgated.

5. Installment payments of estimated income tax by individuals

Under the bill, declarations of estimated income tax would not be required. Instead, individuals would make quarterly payments of estimated taxes from the time they first meet the estimated tax payment requirements. Furthermore, estimated tax payments would not be required if an individual's annual estimated tax could reasonably be expected to be less than $300. Moreover, the bill would give farmers and fishermen the option to wait until March 1 of the succeeding taxable year to make full payment of their estimated taxes.

6. Time for furnishing Forms W–2 to terminated employees

In general, the bill would permit an employer to furnish Forms W–2 to employees who terminate employment during the calendar year at the same time as they are furnished to all other employees (that is, by January 31 of the succeeding calendar year).

II. PRESENT LAW

A. Overview of Taxpayer Services Provided by the Internal Revenue Service

1. Programs under the Assistant Commissioner of Internal Revenue (Taxpayer Service and Returns Processing)

In general

The Internal Revenue Service conducts a year-round tax information program in each of its 7 regions, 58 internal revenue districts, 10 internal revenue service centers, and in various foreign countries (through the IRS Office of International Operations). The basic assistance part of the program is operated by a Taxpayers Service Division under the supervision of the Assistant Commissioner of Internal Revenue (Taxpayer Service and Returns Processing). Assistance ranges from interpreting technical provisions of the tax law and assisting taxpayers in preparing their returns to answering questions on tax account status and furnishing forms requested by taxpayers. In addition, since 1977, the Service has operated a special Problem Resolution Program (discussed below) to handle situations in which normal procedures are considered inadequate.

Taxpayer assistance is provided by three principal methods: telephone assistance, assistance to taxpayers who walk into an Internal Revenue Service office, and taxpayer information and education programs, including programs directed at special groups.

Telephone assistance

A toll-free telephone network, centralized in 57 answering locations, allows taxpayers to call IRS personnel for tax assistance. This service covers all of the United States, Puerto Rico, and the Virgin Islands. In addition, assistance is provided without cost to deaf and hearing-impaired taxpayers through a television/telephone/teletypewriter system.

Walk-in taxpayer assistance

The walk-in taxpayer assistance program is available both at permanent and temporary (during the filing season) sites located throughout the country. (During the 1980 fiscal year, the IRS offered this assistance at 702 permanent and 142 temporary offices.) The scope of the program includes answering taxpayer questions, furnishing tax forms and publications, assisting in preparation of returns for taxpayers, and reviewing returns completed by taxpayers.

Taxpayer information and education

In addition to its telephone and walk-in assistance programs, the IRS presently conducts a year-round public information program with special emphasis on the filing period (January through April). This program includes training participants in several volunteer programs and supervising the programs, directing educational programs for taxpayers, and preparing media efforts for targeted groups and the general public.

The Volunteer Income Tax Assistance Program (VITA), begun in 1969, provides assistance in completing tax returns to low-income,

elderly, and non-English speaking persons who have difficulty obtaining assistance from paid tax return preparers or IRS walk-in assistance personnel. Community volunteers are trained by the IRS in simple tax return preparation skills. These individuals then offer free tax return preparation assistance in neighborhood locations throughout the country.

Tax Counseling for the Elderly, a similar volunteer program, was established by the Revenue Act of 1978, to help meet the special tax needs of persons aged 60 and older. Under this program, the IRS enters into agreements with selected nonprofit organizations which provide volunteers to furnish tax assistance to the elderly. The volunteers are reimbursed by the IRS, through the sponsoring organizations, for out-of-pocket expenses incurred in providing the assistance.

The Student Tax Clinic Program is conducted at 15 colleges and universities across the country. Under this program, law and graduate accounting students represent low-income taxpayers before the IRS in examination and appeal proceedings.

Small Business Workshops and Tax Practitioner Institutes are conducted in each internal revenue district to educate small businessmen and tax practitioners on recent tax developments which may affect them.

Disaster and Emergency Assistance Programs are conducted by IRS in cooperation with other government agencies to provide specialized tax information to victims of major disasters and emergencies.

The Understanding Taxes and Fundamentals of Tax Preparation Programs provide free student publications to high schools and colleges. Additionally, under this program, IRS employees may meet with teachers to explain these publications and answer questions on tax laws and procedures.

2. Problem Resolution Program and Office of the Taxpayer Ombudsman

In 1977, the Internal Revenue Service implemented a taxpayer complaint handling system, known as the Problem Resolution Program (PRP), in each of its districts. Under this program, there is a Problem Resolution Officer in each district who reports directly to the district director. In 1979, this program was expanded to cover all Internal Revenue Service centers, as well as districts.

PRP was established to handle taxpayers' problems and complaints not promptly or properly resolved through normal procedures, or those problems which taxpayers believe have not received appropriate attention. In addition, the program provides for the analysis of problems resolved by it to determine their underlying causes so corrective action can be taken to prevent their recurrence.

In 1979, the IRS established a Taxpayer Ombudsman in the Office of the Commissioner of Internal Revenue. The Ombudsman works under the direct supervision of the Deputy Commissioner of Internal Revenue. The responsibilities of the Ombudsman include the administration of the Problem Resolution Program; representation of taxpayer interests and concerns within the IRS decision-making process; review of IRS policies and procedures for possible adverse effects on taxpayers; proposal of ideas on tax administration that will benefit taxpayers; and representation of taxpayer views in the design of tax forms and instructions.

B. Tax Liens

Assessment of tax

Present law authorizes and requires the Secretary of the Treasury to make assessments of all taxes, imposed by the Internal Revenue Code, which have not been duly paid (Code sec. 6201(a)). Under Treasury Regulations, this authority has been delegated to the district director for the district in which the taxpayer's property is located (Treas. Reg. sec. 301.6201–1). In general, under the assessment procedure, the district director records the liability of the taxpayer and, upon request, furnishes the taxpayer with a record of the assessment.

If income, estate, or gift tax liability is understated on a tax return (or, if no tax return is filed), the amount of the deficiency becomes the assessment amount. The deficiency (assessment amount) is, in general, the excess of tax due over the tax shown on the tax return (Code sec. 6211(a)). The taxpayer is notified of a deficiency, generally after completion of the audit process, through a Notice of Deficiency, which is sent by certified mail or registered mail to the taxpayer's last known address (Code sec. 6212). Within 90 days (150 days if the taxpayer is outside the United States) from the date the Notice of Deficiency is mailed, the taxpayer may petition the Tax Court for a redetermination of the deficiency. Thus, with the exception of certain types of assessments (for example, termination assessments and jeopardy assessments authorized under Code secs. 6851 and 6861), an assessment may not be made until the 90-day period for petitioning the Tax Court expires or until a decision of the Tax Court becomes final.[1]

After the tax has been assessed, the taxpayer must receive, within 60 days, a notice ("Notice of Demand") stating the amount of the unpaid tax and demanding payment thereof (Code sec. 6303). The Notice of Demand is left at the dwelling or usual place of business of the taxpayer or mailed to the taxpayer's last known address. However, a 60-day notice is not required if the deficiency has been redetermined by the Tax Court. The redetermined deficiency is assessed when the decision of the Tax Court has become final and is due immediately upon notice and demand (Code sec. 6215).

Imposition of tax lien

If, after the tax has been assessed and payment has been demanded, the taxpayer refuses to pay, then the amount owed becomes a lien in favor of the United States on all property and rights to property, whether real or personal, belonging to the taxpayer (Code sec. 6321). The lien arises at the time the assessment is made and, unless removed

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[1] The Tax Court is not the only judicial forum in which the taxpayer can contest his or her tax liability. The taxpayer also may contest the liability in a Federal district court or the Court of Claims by paying the tax and filing a suit for refund. Liability for taxes other than income, estate, and gift taxes can be litigated only by refund suits.

or released, continues until the tax has been paid or until the lien becomes unenforceable by reason of lapse of time (Code sec. 6322).[2]

Tax lien priorities

A Federal tax lien is not valid against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until a notice of the lien has been properly filed (Code sec. 6323(a)).[3]

Moreover, certain commercial transactions financing agreements are protected against a Federal tax lien even though notice of the lien has been filed (Code sec. 6323(c)).[4] Such a transaction generally is protected if the transaction takes place pursuant to a written agreement entered into with the taxpayer before the date of the filing of the notice of the lien, and is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation. In addition, if these requirements are met, security interests, created within 45 days after the tax lien is filed, in property existing at the time of filing, also are protected (Code sec. 6323(d)).

Ten types of transactions are protected against Federal tax liens without regard to when a purchaser's, creditor's or lienholder's interest in the taxpayer's property arose (Code sec. 6323(b)). A Federal tax lien is invalid in the following situations: (1) Against purchasers of securities, or holders of security interests in securities, who at the time of purchase, or creation, of the security did not have actual notice or knowledge of the existence of the lien; (2) against a purchaser of a motor vehicle if, at the time of purchase and taking of possession, the purchaser has no actual notice or knowledge of the existence of the lien and does not thereafter relinquish possession to the seller or his agent; (3) against a purchaser of personal property at retail in the ordinary course of the seller's business (even if the purchaser knows of the lien), unless the purchaser intends the purchase to (or knows the purchase will) hinder, evade, or defeat the collection of tax; (4) against a purchaser of household goods, personal effects, or other tangible personal property in a casual sale for less than $250, provided that the purchaser does not have actual notice or knowledge of the lien or of an intention on the part of the seller to dispose of his tangible personal property in a series of sales; (5) against the holder of a lien under local law to secure the reasonable price of repair or improvement of tangible personal property, so long as the holder is, and has been, continuously in possession of the

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[2] In general, the statute of limitations with respect to the collection of tax runs for six years after the assessment of the tax (Code sec. 6502).

[3] In the case of real property, notice of the Federal tax lien must be filed in the one office within the State (or the county or other governmental subdivision) designated by the State where the real property is situated. Likewise, in the case of personal property, notice of the lien must be filed in the one office within the State (or the county or other governmental subdivision) designated by the State in which the personal property is situated. (Personal property is situated at the residence of the taxpayer.) If the taxpayer has real property located in the District of Columbia, or resides therein, notice of the lien must be filed in the Office of the Recorder of Deeds. If a State has not designated one office for the filing of notice, then notice of the lien must be filed with the clerk of the U.S. District Court for the District in which the property is situated. (Code sec. 6323(f).)

[4] These agreements are (1) commercial transactions financing agreements, (2) real property construction or improvement financing agreements, and (3) obligatory disbursement agreements.

property from the time the lien arose; (6) against the holder of a lien on real property to secure payment of: (a) real property taxes, (b) special assessments imposed on real property by any taxing authority to defray the expenses of any public improvement, or (c) utility or public service charges for services furnished to the property by any governmental instrumentality (if, under local law, the lien is entitled to priority over security interests in the property that are prior in time); (7) against a mechanic's lienor with respect to real property subject to a lien for repair or improvement of a personal residence (containing no more than four dwelling units) occupied by the owner, provided that the contract price on the contract with the owner is not more than $1,000; (8) against an attorney who holds a lien or a contract enforceable under local law against the proceeds of a judgment or settlement of a claim, to the extent of reasonable compensation for services; (9) against an organization that is an insurer under a life insurance, endowment, or annuity contract with respect to actions taken before the organization has actual notice or knowledge of the existence of a tax lien; and (10) against certain financial institutions with respect to a loan secured by a savings deposit, share, or other account evidenced by a passbook, if the loan was made without actual notice or knowledge of existence of the lien and if the institution has been continuously in possession of the passbook from the time the loan was made. Purchase money mortgages, although not specifically noted in the statute, also are entitled to protection even if they arise after the filing of a Federal tax lien.[5]

Release, discharge or subordination of a tax lien

A district director may issue a certificate of release of a lien whenever he finds that the entire tax liability, plus interest, has been satisfied or has become legally unenforceable (Code sec. 6325(a) and Treas. Reg. sec. 301.6325–1(a)). Moreover, the district director has the discretion to issue a certificate of release of a tax lien if he accepts a bond that is conditioned upon the payment of the amount assessed (together with interest) within the time agreed upon in the bond, but no later than six months before the expiration of the statutory period for collection.

Property subject to a tax lien may be discharged if the value of the property remaining subject to the lien is at least twice the amount of the unsatisfied liability secured by the lien (Code sec. 6325(b)(1)). Furthermore, property subject to a tax lien may be discharged if the Treasury is paid an amount which is not less than the value of the government's interest in the property or if it is determined that the government's interest has no value (Code sec. 6325(b)(2)).

If a dispute arises between competing lienors, including the United States, the property subject to the tax lien may be sold and the proceeds from the sale may be substituted as a fund subject to the claims of the competing lienors (Code sec. 6325(b)(3)).

Under certain conditions, a district director may subordinate a tax lien to another lien or interest in the property. A tax lien can be subordinated to another lien if an amount equal to the lien amount is received (Code sec. 6325(d)(1)). In addition, the district director has the authority to subordinate the government's lien, if it is believed

[5] See, Rev. Rul. 68–57, 1968–1 C.B. 553.

that such action will ultimately aid in the collection of the entire lien [6] (Code secs. 6325(d)(2) and (3)).

In order to qualify for subordination, or any other type of discharge from a lien, the interested person must apply in writing to the district director (Treas. Regs. secs. 301.6325–1(b)(4) and (c) and Rev. Proc. 68–8, 1968–1 C.B. 754). In general, the person seeking to have a lien discharged or subordinated must persuade the district director that to do so would be in the best interests of the government.

In situations where there has been confusion, such as a similarity in names, which results in a mistake in tax lien filing, a certificate of nonattachment of lien, certifying that the property of an individual is free from a tax lien, may be issued (Code sec. 6325(e)).

Special rules—gift and estate tax liens

Special rules apply with respect to gift tax liens and estate tax liens. In general, a gift tax lien arises at the time a gift is made and attaches to all gifts made during the period for which the return was filed (Code sec. 6324(b)). A gift tax lien continues for ten years from the date of the gift unless sooner terminated. If the gift tax is not paid when due, the donee of the gift becomes personally liable for the tax to the extent of the value of the gift.

An estate tax lien arises at the time of the decedent's death and continues for ten years unless sooner terminated (Code sec. 6324(a)). An estate tax lien attaches to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator (Treas. Reg. sec. 301.6324–1(a)). Thus, the attached assets may include such items as gifts made within three years of death and gifts taking effect at death.

Further, special liens apply with respect to deferred estate taxes attributable to a farm or other closely held business and with respect to the recapture of estate taxes attributable to special use valuation of farm or closely held business real property (Code secs. 6324A and 6324B).

Enforcement of a tax lien

A Federal tax lien may be enforced by sale of seized property (discussed below) or by an action in a U.S. district court to enforce the lien (Code sec. 7403).

The Federal Government may intervene in any civil action or suit in order to assert its tax lien (Code sec. 7424). If the application of the government to intervene is denied, the adjudication in such civil action or suit will have no effect on the lien.

Special rules are provided to protect Federal tax liens that are subordinate to other interests and that may be discharged by the holder of a senior security interest in a judicial, or other, State foreclosure proceeding. (Code sec. 7425). In general, if the Federal Government has

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[6] This may occur, for example, in a situation where a farmer needs money to harvest his crop and a bank would be willing to make a loan that is secured by a first mortgage on the farm which is prior to the Federal tax lien. In such a situation, the district director might believe that the collection of the tax liability would be facilitated by the availability of cash when the crop is harvested and sold and, thus, might subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan (see, Treas. Reg. sec. 301.6325–1(d)(2)(ii), example (1)).

properly filed a notice of tax lien before a judicial foreclosure proceeding has begun, but has not been joined in the proceedings, a judgment does not discharge the Federal tax lien. However, if notice of a Federal tax lien was not properly filed, then a judgment in a State judicial proceeding discharges the Federal tax lien, if State law so provides. With respect to non-judicial State foreclosure sales, if a notice of the Federal tax lien was filed more than 30 days prior to the sale and the Federal Government was not given notice of the sale, then the Federal tax lien cannot be discharged. The Federal tax lien may be discharged, however, if notice of the Federal tax lien was improperly filed or if the government is properly notified of the sale.

Present law allows a person (other than the person against whom was assessed the tax out of which the levy arose) to bring an action in a Federal district court to recover property which was seized under a wrongful levy (Code sec. 7426). Moreover, a junior lien holder may bring an action to enforce his interest in surplus proceeds realized by the Federal Government on a sale after levy.

C. Levies on and Seizure of Property for Collection of Taxes

Procedures for collection of tax by levy

After a tax assessment has been made, if a person who is liable to pay the tax neglects or refuses to do so within ten days after notice and demand, the district director may collect the tax by levy (Code. sec. 6331(a) and Treas. Reg. sec. 301.6331-1(a)). If the district director finds that the collection of tax is in jeopardy, notice and demand for immediate payment may be made and, upon failure or refusal by the taxpayer to pay, collection of the tax by levy is lawful without waiting the usual ten-day period.

Property subject to levy includes any property, or rights to property, whether real or personal, whether tangible or intangible, belonging to the taxpayer (unless specifically exempted from levy). The district director also may levy upon property with respect to which there is a lien for the payment of tax.

Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality thereof, by serving a notice of levy upon the employer. Levy also may be made upon the salary or wages of any individual with respect to any unpaid tax after the individual has been notified in writing of the intent to levy (Code sec. 6331(d)). This notice must be given in person, left at the dwelling or usual place of business of the individual, or be mailed to the individual's last known address, no less than ten days before the day of levy. The notice requirement, however, does not apply if there has been a finding that the collection of the tax is in jeopardy. A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is satisfied or becomes unenforceable due to lapse of time.

In general, any person in possession of (or obligated with respect to) property or rights to property upon which levy has been made must surrender such property or rights (or discharge such obligation) upon demand (Code sec. 6332(a)).[7] This, however, does not apply with respect to property or property rights that are subject to an attachment or execution under any judicial process. A person who fails, or refuses, to surrender any property, or rights to property, upon demand becomes personally liable for an amount equal to the lesser of the value of the property or the amount of the tax liability with respect to which the levy was made, plus costs and interest from the date of the levy (Code sec. 6332(c)). In addition to personal liability, a person who fails or refuses to surrender property upon which levy has been made, without reasonable cause, is liable for a penalty equal to 50 percent of

[7] Special rules apply in the case of life insurance and endowment contracts. (See Code sec. 6332(b) and Treas. Reg. sec. 301.6332-2).

the amount for which there is personal liability.[8] A person in possession of property upon which a levy has been made who honors the levy and surrenders the property is discharged from any liability to the delinquent taxpayer (Code sec. 6332(d)).

Exemptions from levy

Present law exempts from levy the following items of property:[9]

(1) Wearing apparel and school books necessary for the taxpayer or members of his family (not including expensive items that are luxuries);

(2) Fuel, provisions, furniture, personal household effects, arms for personal use, livestock, and poultry, not exceeding $500 in value, provided that the taxpayer is the head of a family;

(3) Books and tools necessary for the trade, business, or profession of the taxpayer, not exceeding $250 in aggregate value;

(4) Unemployment benefits;

(5) Undelivered mail;

(6) Certain annuity and pension payments;[10]

(7) Amounts payable under workmen's compensation laws;

(8) So much of the wages, salary, or other income of the taxpayer as is necessary to comply with a prior judgment of a court of competent jurisdiction for support of the taxpayer's minor children; and

(9) A minimum amount of wages, salary, and other income (in general, $50 per week plus $15 per week for each dependent).

Seizure and sale of property

As soon as practicable after the seizure of property, notice must be given to the owner of the property. Moreover, notice of sale generally must be published in a newspaper that is published or generally circulated in the county where the seizure was made. The time of sale of seized property may be no less than 10 days or more than 40 days from the time that public notice is given. A minimum price must be determined prior to the sale. If no person offers such minimum price, the property is declared to be purchased at such price by the United States or the property is declared to be sold to the highest bidder. Seized property may be sold only by public auction or by public sale under sealed bids (Code sec. 6335).

Special rules are provided for perishable goods (Code sec. 6336). Such property will be returned to the owner if the owner pays an amount equal to the property's appraised value or gives an acceptable bond. Otherwise, the property will be sold as soon as practicable.

A person whose property has been levied upon has the right to pay the amount due, together with any costs and expenses, prior to the sale of the property (Code sec. 6337). Upon such payment, the property

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[8] This penalty is not applicable if a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy (Treas. Reg. sec. 301.6332-1(d)).

[9] Code sec. 6334 and Treas. Reg. secs. 301.6334-1 and 301-6334-2.

[10] That is, annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and annuities based on retired or retainer pay under chapter 73 of title 10 of the U.S. Code.

will be returned to the taxpayer. Furthermore, the owner of real property which is sold, his heirs, executors, administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, may redeem the property sold (or a portion thereof) within 120 days after the sale.

Any money realized from the sale of seized property is applied in the following manner: first, against the expenses of the sale; second, against any specific tax liability on the seized property; and, finally, against the liability of the delinquent taxpayer (Code sec. 6342). Any surplus proceeds are credited or refunded to the person or persons legally entitled thereto (generally, the delinquent taxpayer unless another person establishes a superior claim).

Release of a levy

A levy may be released, if it is determined that such action will facilitate the collection of the tax liability. Moreover, if it is determined that property has been wrongfully levied upon, the IRS may return the specific property levied upon, an amount of money equal to the amount of money levied upon, or the amount of money equal to an amount of money received by the United States from a sale of such property. Interest at the current effective rate is paid for property seized under a wrongful levy. (Code sec. 6343)

D. Description of Procedures Relating to the Issuance of Treasury Regulations

The principal method used by the Internal Revenue Service to interpret the tax law is regulations adopted as Treasury decisions.[11]

Types of tax regulations

Tax regulations are of two broad types. First, interpretative regulations advise taxpayers of the Treasury's interpretation of statutory law. Second, legislative regulations provide detail necessary to implement rules of law pursuant to specific Congressional grants of rulemaking authority. Most tax regulations are interpretative. Tax regulations may be relied upon as precedent by taxpayers and are entitled to a presumption of correctness in court proceedings. Moreover, the position taken in the regulations generally is binding on the IRS.

Procedures for adoption of tax regulations

Treasury tax regulations are adopted after detailed consideration by the Office of Chief Counsel for the IRS, nearly all functions of IRS, and the Treasury Department Office of Tax Policy. Primary responsibility for drafting regulations and coordinating their adoption is assigned to the Office of Chief Counsel for the IRS. The Office of Chief Counsel issues a monthly status report on pending regulations.

Development of proposed regulations

Most tax regulations are developed in response to new legislation; however, some regulations result from internal review of existing regulations or suggestions received from the public. When a regulations project is opened, a Regulations Work Plan must be approved by the Chief Counsel, the Commissioner, the Office of Tax Policy, and the Secretary of the Treasury, before further development can proceed beyond the stage of study and issue classification.[12] After the work plan is approved, the regulation project is assigned a priority (priority numbers range from 1 to 3). A preliminary draft of a regulation is prepared in the Office of Chief Counsel and circulated to designated

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[11] The Internal Revenue Service also uses other methods of issuing interpretations of the tax law. Revenue rulings, ruling letters, and Technical Advice Memoranda are developed by personnel working under the Assistant Commissioner (Technical) and are subject to varying levels of review both within the IRS and by the Office of Chief Counsel and the Treasury Department's Office of Tax Policy, including many of the same personnel who are involved in developing regulations.

[12] Temporary regulations, which are issued to answer questions on an interim basis when timing is critical, and nonsignificant regulations (primarily those that are only clerical or clarifying) are exempt from the work plan requirement.

In addition to the work plan requirement, Treasury Directive 50.04F requires that a regulatory analysis be prepared before development of any regulation whose economic impact is estimated to exceed $50 million.

offices for review and comments. The Treasury Department's Office of Tax Policy reviews the draft for legal accuracy, as well as on issues of tax policy.

A revised draft is prepared to incorporate comments from these offices, and a proposed notice of proposed rulemaking is forwarded for formal approval to the Assistant Commissioner (Technical), who also coordinates with other Assistant Commissioners. After approval by the Assistant Commissioner (Technical), the proposed notice of proposed rulemaking is forwarded for formal approval to the Director of the Legislation and Regulations Division of the Office of Chief Counsel, the Chief Counsel, the Commissioner, the Assistant Secretary of Treasury for Tax Policy, and the Executive Secretariat of the Secretary of the Treasury.[13] After approval by all of these offices, the proposed regulation is published in the *Federal Register* together with a request for written comments from members of the public, and notice that a hearing will be held upon request.

Public comment on proposed regulations

The standard period allowed for public comment on a proposed regulation is 60 days; however, if public interest warrants, this period is extended by notice published in the *Federal Register*. If requests for a public hearing are received, a separate notice is published in the *Federal Register* announcing the date and time of the hearing. A minimum of 30-days notice of the hearing date is provided. The public hearing is the final step in the formal process for public input into the regulatory process.

Final approval and publication of regulations

After all formal input is completed, the regulation process continues with preparation of a proposed Treasury decision. This proposed Treasury decision is circulated, reviewed, and approved in the same manner as the proposed regulation, first for comment, and then, formally, for approval. After final approval is secured, the regulation is adopted and published in the *Federal Register* as a Treasury decision.

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[13] The Paperwork Reduction Act of 1980 (P.L. 96-511) requires Office of Management and Budget review and approval of any "information collection request" imposed by an agency after April 1, 1981. It is unclear whether regulations that impose such requirements are subject to OMB review under this Act. If they are, failure to secure the necessary OMB approval would mean that IRS could not require taxpayers to comply with the requirements after December 31, 1981.

E. Installment Payments of Estimated Income Tax by Individuals

Estimated tax requirements generally

Declaration and payment of estimated tax generally is required of single persons, or married couples with one earner entitled to file a joint return, whose gross income is expected to exceed $20,000 for the taxable year; a married individual entitled to file a joint return, whose gross income is expected to exceed $10,000 for the taxable year, if both spouses receive wages; and a married individual, not entitled to file a joint return, whose gross income is expected to exceed $5,000 (Code sec. 6015). In addition, an individual taxpayer who expects to receive more than $500 from sources other than wages (*e.g.*, dividends or interest) during the year generally is required to file a declaration of estimated tax. However, no declaration is required if an individual's tax liability for the year, including self employment tax liability, reasonably can be expected to be no more than $100 over the amounts withheld during the year.

In general, the time for filing declarations of estimated tax is on April 15 if the requirements of Code sec. 6015 are first met on or before April 1 (Code sec. 6073). If the declaration filing requirements are first met after April 1, a calendar year taxpayer must file a declaration in accordance with the following requirements:

Date requirements are met—	*Date declaration is due—*
After April 1 and before June 2	June 15.
After June 1 and before September 2	September 15.
After September 1	January 15 of the succeeding year.

For calendar year taxpayers, estimated tax payments are due on April 15, June 15, and September 15 of the current tax year and on January 15 of the following tax year (Code sec. 6153). Fiscal year taxpayers are subject to similar rules as to time of payment. Farmers or fishermen who expect to receive at least two-thirds of their gross income for the calendar year from farming or fishing may elect to wait until January 15 of the following calendar year to file their declaration or pay the tax.

Underpayment penalties

Individuals who fail to pay in full an installment of estimated tax on or before the due date may be subject to a penalty which cannot be waived for reasonable cause (Code sec. 6654). The penalty, which is applied to the period of the underpayment of any installment at an annual rate of 12 percent, applies to the difference between the payments (including any withholding), if any, made on or before the due date of each installment and 80 percent (66⅔ percent for farmers or fishermen) of the total tax shown on the return for the year, divided by

the number of installments that should have been made. Thus, there is no penalty if the sum of a taxpayer's estimated tax payments, plus taxes withheld, is at least 80 percent (66⅔ percent for farmers or fishermen) of the tax liability as shown on the tax return.

In addition, present law contains four exceptions to the general underpayment penalty. No penalty is imposed upon a taxpayer if: (1) total tax payments (withholding plus estimated tax payments) exceed the preceding year's tax liability; (2) total tax payments exceed the tax on prior year's income under the current year's tax rates and exemptions; (3) total tax payments exceed 80 percent (66⅔ percent for farmers or fishermen) of the taxes which would be due if the income already received during the current year were placed on an annual basis; or (4) total tax payments exceed 90 percent of the tax which would be due on the income actually received from the beginning of the year to the computation date.

F. Time for Furnishing Forms W–2 to Terminated Employees

General requirements

Under present law, every employer who pays wages from which Federal income tax or FICA (Social Security) tax must be withheld is required to furnish each employee a statement (Form W–2) which sets forth: the names of the employer and employee; the amount of wages subject to income tax withholding and the amount withheld; the amount of FICA wages and FICA tax withheld; and the amount, if any, of advance payment of the earned income credit (Code sec. 6051 (a)). In the case of most employees, W–2 Forms for the calendar year must be furnished no later than January 31 of the following year. However, if an employee terminates employment prior to the close of the calendar year, that employee must be furnished with a Form W–2 on the day on which his or her last salary payment is received.

IRS procedures

The Internal Revenue Service has provided through regulations that an employer may furnish a Form W–2 to an employee whose employment terminates prior to the close of the calendar year at any time after the termination but no later than January 31 of the following year. However, if an employee who terminates employment prior to the close of the calendar year requests earlier receipt of a Form W–2, and if there is no reasonable expectation on the part of the employer and employee of further employment during the calendar year, then the employee must be given a Form W–2 on or before the later of the 30th day after the request or the 30th day after the last salary payment (Treas. Reg. sec. 31.6051–1(d)(1)).

III. ISSUES

Summary of principal issues

The bill presents several issues for consideration. The principal issues include the following:

(1) Whether there should be an independent ombudsman within IRS or the Treasury Department to act as an advocate of taxpayers' right and, if so, the proper scope of powers that could be exercised by an ombudsman;

(2) Whether there should be a procedure for administratively appealing the imposition of Federal tax liens;

(3) Whether a court order should be required before the IRS can levy upon a taxpayer's property;

(4) Whether statutory time requirements should be imposed with respect to the issuance of Treasury Regulations and, if so, what those requirements should be;

(5) Whether the declaration requirements with respect to the rules relating to the payment of estimated taxes by individuals should be repealed and whether the tax liability threshold for the payment of estimated taxes should be increased; and

(6) Whether employees who terminate employment during the year should be provided with Forms W-2 at the same time as all other employees (rather than with the last salary payment).

Discussion of certain issues

The primary issues raised by the bill involve the proper level of IRS taxpayer services and scope of an ombudsman, the level of protection which should be afforded to taxpayers in regard to IRS collection procedures, and the tax regulations process.

Taxpayer services and ombudsman

Taxpayer services

Many individuals believe that increasingly complex tax laws mandate that the IRS provide continually increasing levels of taxpayer services. These people especially are concerned that, in times of budget cuts, taxpayer services are an easy target, and believe that the Congress should send a signal to the IRS that it does not want taxpayer services to be cut. Other people feel that the primary function of the IRS should be to collect taxes and that taxpayer services should be provided only to the extent that they do not detract from that function. In general, the problem is one of how existing IRS resources should properly be allocated.

Ombudsman

Many people believe that there is no need for the law to provide for an ombudsman in the IRS since the IRS already has established, internally, an Office of Ombudsman. Others, however, would point out that taxpayers might perceive that an ombudsman could not operate as a

truly independent spokesman for taxpayer rights unless legally independent of the IRS.

Tax collection procedures

The present law tax collection procedures provide important tools (including liens and levies) necessary for the IRS to collect taxes which have been assessed but not paid. While collection procedures may be necessary to assure the Federal Government a means for collecting taxes and to preserve the integrity of the tax system, many people have expressed a concern that certain tax collection devices have been administered in a heavy-handed manner and have the potential of depriving innocent taxpayers of their property. These people feel that there should be some sort of appeals process prior to collection and that the IRS generally should be required to get a court order before levying against or seizing a taxpayer's property. Others argue that taxpayers are currently afforded adequate protection prior to the time an issue reaches the collection stage and that to provide for appeals or to require a court order for levy would enable taxpayers to further delay the collection of taxes properly due.

Regulations process

With respect to Treasury Regulations, many have voiced concern that the time involved in issuing regulations contributes to ambiguity in the tax law. Some people believe that time limits should be placed on the issuance of regulations. Others would argue, however, that because of resource limitations, complexity of issues, the need to provide proper guidance, and input that must be considered both from sources inside and outside the IRS, time limitations would be unrealistic.

IV. DESCRIPTION OF S. 850
(THE TAXPAYERS' BILL OF RIGHTS ACT)

A. Statement of Findings and Purpose

This part of the bill contains a declaration by Congress that the success of our tax system depends upon the willingness of taxpayers to accurately assess and voluntarily pay their taxes; that it is in the national interest to encourage all Americans to voluntarily comply with the tax laws; and that the Internal Revenue Service can encourage voluntary compliance by improving the assistance it provides to taxpayers in answering tax questions, helping taxpayers complete tax returns, and explaining notices and bills.

The stated purpose of the bill would be to protect the rights of American taxpayers, basic to which would be the ability to receive the assistance needed to deal with tax laws that have become increasingly complex and difficult to understand.

B. Establishment of an Office of Ombudsman

1. In general

The bill would establish, within the Internal Revenue Service, the Office of Ombudsman. Although established within the IRS, this office would be under the supervision and discretion of the Ombudsman. The Ombudsman would be appointed by the President, by and with the consent of the Senate, for a term of six years. The Ombudsman would be permitted to employ personnel he deems necessary to carry out the functions of the office. The Ombudsman would be compensated at the rate established for Federal Government personnel at level V [1] of the Executive Schedule.

2. Duties of the Ombudsman

The Ombudsman would be an advocate of the rights of taxpayers. Under the bill, the Ombudsman would have the following duties:

(1) To establish procedures to review and evaluate complaints of taxpayers relating to improper, abusive, or inefficient service by IRS employees and, with due regard to the rights both of taxpayers and IRS employees, to take action, under regulations to be prescribed, to correct such service;

(2) To survey taxpayers for the purpose of obtaining their evaluation of the quality of the service provided by the IRS and the Office of Ombudsman;

(3) To compile data concerning the number and type of taxpayer complaints in each Internal Revenue district and service center and to evaluate actions taken to resolve those complaints;

[1] Compensation for personnel at this level currently is $53,600. This is the same compensation paid to the Chief Counsel of IRS.

(4) To issue "Stop Action Orders" (described below);
(5) To provide a forum for taxpayers to communicate their problems in dealing with the tax forms, publications, complex regulations, and internal procedures of the IRS; and
(6) To carry out any other functions, relating to the assistance of taxpayers, that the Ombudsman deems appropriate.

In addition to these duties, the Ombudsman would be required to submit to the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Taxation an annual report on the activities of the Office of the Ombudsman (including any recommended legislation).

3. Stop Action Orders

Under the bill, a taxpayer could apply (in such form, manner, and at such time as prescribed by Treasury Regulations) for the issuance of a "Stop Action Order." The Ombudsman would issue a Stop Action Order if it is determined that a taxpayer is suffering, or is about to suffer, an irreparable loss as a result of the manner in which the Internal Revenue laws are being administered by the Secretary.

The effect of a Stop Action Order would be to prevent the Secretary from taking any action adverse to the taxpayer (for a period of up to 60 days) under any provision of the Internal Revenue Code relating to collection, bankruptcy and receiverships, discovery of liability and enforcement of title, or any other provision of law that is specifically described by the Ombudsman in the Order. A Stop Action Order, however, would not be effective if the Secretary determines that the collection of tax would be jeopardized by a delay.

4. Effective date

These provisions would become effective on the 90th day after the date of enactment.

C. Administrative Appeal of Tax Liens

Under the bill, a person who has a lien placed upon his property, or rights to property, would be able to appeal the imposition of the lien. The appeal would be to the Secretary and would be made in a manner to be prescribed by regulations to be issued no later than 180 days after the bill is enacted.

Effective date

This provision of the bill would be effective with respect to liens imposed 180 days or more after the date of enactment.

D. Revision of Rules Relating to Levies on and Seizure of Property for Collection of Taxes

The bill would require that in order for the IRS to levy upon any property, with respect to any unpaid tax liability, a court order authorizing such levy would have to be issued. However, if the collection of tax is found to be in jeopardy, a court order would not be required.

The Secretary could seek a court order from any Federal judge or from any judge of a State court of record within the district where the property (or right to property) to be levied upon is located. A court order authorizing a levy would be granted only upon a finding that: (1) the owner of the property to be levied upon has exhausted all administrative appeals with respect to the imposition of a lien upon the property (or that the time for making such appeals has expired); (2) the Secretary has established that the statutory requirements for making a levy upon property have been met; and (3) there is reasonable cause to believe that the Secretary has met all of the requirements for making a levy.

(The bill is unclear whether the taxpayer would be a party to the action seeking a court order. If the taxpayer is not a party, then the proceeding would amount to a judicial review of the IRS file. If the taxpayer is a party, it is not clear what defenses to the levy request could be raised by the taxpayer.)

In addition to the court order requirement, a person would be permitted to appeal the decision of the Secretary to levy upon his property or rights to property. The Secretary would be required to prescribe regulations to implement an administrative appeal procedure within 180 days after enactment of the bill.

Effective date

This provision of the bill would be effective with respect to any levy issued 180 days or more after the date of enactment.

E. Time Requirements for Issuance of Treasury Regulations

The bill would provide that, unless any law provides otherwise, all final regulations necessary to implement any addition to, or amendment of, the Internal Revenue Code would have to be promulgated within 18 months after the enactment of such addition or amendment.

The failure by the Secretary to promulgate regulations within the prescribed time would have the following effects: (1) the effective date of the regulations could be no earlier than the date of publication in the *Federal Register*, and (2) any reasonable position advanced by a taxpayer, with respect to an issue for which regulations have not been promulgated, would apply to the taxpayer, with respect to that issue, notwithstanding that regulations are promulgated subsequently. In a legal proceeding involving issues concerning which regulations have not been issued within the time prescribed, the taxpayer would have the burden of proving that his position is reasonable. Moreover, with respect to such issues, the position of the Secretary would not be given any greater weight than that of the taxpayer. These rules would apply only to issues which arise with respect to a taxpayer after the 180 day period for promulgating regulations and on or before the date of publication of the regulations in the *Federal Register*. Moreover, these rules would not apply to reoccurrences of issues with respect to the taxpayer after the regulations are published in the *Federal Register*.

Effective date

In general, these provisions would apply to Internal Revenue Code amendments enacted after December 29, 1969. However, in the case of Internal Revenue Code amendments enacted after December 29, 1969, and before six months after the date of enactment of the bill, any regulations necessary to implement those amendments would have to be issued within 36 months after the date of enactment of the Taxpayers' Bill of Rights.

F. Installment Payments of Estimated Income Tax by Individuals

The bill would repeal the present law requirement that individual taxpayers make declarations of estimated tax;[2] it would raise the annual estimated tax payment threshold from $100 of tax liability in excess of withholding to $300; and it would allow farmers and fishermen to have until March 1 of the succeeding taxable year (rather than January 15) to make full payment of estimated tax.

The bill would not change the requirements with respect to who must pay estimated taxes (except for the increase in the tax liability threshold). Under the bill, individuals required to pay estimated taxes would make payments according to the following schedule:

If the estimated tax requirements are met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	1st month of succeeding taxable year
Before the 1st day of the 4th month of the taxable year	25	25	25	25
After the last day of the 3d month and before the 1st day of the 6th month of the taxable year		33⅓	33⅓	33⅓
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year			50	50
After the last day of the 8th month and before the 1st day of the 12th month of the taxable year				100

Effective date

These provisions would apply to taxable years beginning after the date of enactment.

[2] The General Accounting Office has made a similar recommendation in a report entitled "Legislative Change Needed to Eliminate the Requirement for a Declaration of Estimated Tax" (May 8, 1980).

Revenue effect

It is estimated that this provision would reduce budget receipts by $107 million in fiscal year 1982, $22 million in 1983, $27 million in 1984, $31 million in 1985, and $37 million in 1986.

G. Time for Furnishing Forms W-2 to Terminated Employees [3]

Under the bill, the employer of an employee who terminates employment prior to the close of the calendar year would be required to furnish the employee with a Form W-2 no later than January 31 of the following calendar year, unless the employee requests earlier receipt. If a terminated employee makes a written request for early receipt of a Form W-2, then the employer would be required to furnish the form no later than 30 days after the receipt of the request.

In addition, an employer would be required to furnish to a terminated employee (on the day on which the last salary payment is made) a written notice stating that: (1) the employee may request early receipt of a Form W-2; (2) that an amount of Federal taxes has been withheld; and (3) that, if the employee is entitled to a refund, he must file a return based on information which, unless requested earlier, will be sent to the employee's last known address prior to January 31 of the next year.

Effective date

These provisions would become effective 30 days after enactment of the bill.

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[3] These provisions are similar to section 225 of H.R. 5829 (The Tax Reduction Act of 1980), as reported by the Senate Finance Committee on September 15, 1980 (Sen. Rept. 96-940). This bill was not considered by the Senate.

PREPARED STATEMENT BY SENATOR MAX BAUCUS

Good morning, ladies and gentlemen, I want to thank Chairman Grassley for holding this hearing on S. 850, the Taxpayers' Bill of Rights Act, which I recently introduced.

This bill would put American taxpayers on a more equal footing with the Internal Revenue Service by providing protection against arbitrary, irresponsible IRS actions.

Fair and sensitive administration of a nation's tax laws is crucial to the existence of a just society. If we expect American citizens to comply voluntarily with our tax laws, we have an obligation to assure them that the laws are administered fairly and impartially, that enforcement activities are carried out evenhandedly, that help is available to assist them in coping with the complexity of the system, that there are clear and speedy methods to resolve questions or conflicts, and that complaints are given prompt, high-level attention.

The issue of taxpayer rights has been the subject of several bills in both the House and the Senate during the last few years. However, today marks the first time hearings have been held to address the need for such legislation.

Briefly, my bill would: (*a*) Establish a policy that the IRS should maintain and improve its taxpayer service programs; (*b*) create an independent taxpayer advocate, an Ombudsman, within the IRS; (*c*) require the IRS to establish an administrative appeal procedure for disputed collection cases; (*d*) require the IRS to obtain a court order before seizing any citizen's property for non-payment of taxes; (*e*) require the IRS to issue regulations within 18 months after new laws are enacted; (*f*) eliminate the requirement that taxpayers file periodic declarations of estimated tax, and raise from $100 to $300 the amount of tax one can owe on a return before quarterly estimated tax payments are required; and (*g*) eliminate the requirement that employers send W-2 forms during the year to persons who leave a job. All W-2 forms would be issued at the end of the year for all employees.

TAXPAYER SERVICES

Our federal tax system makes taxpayers responsible for determining whether they are required to file a tax return and, if so, for determining the amount owed. Fairness requires that the government help taxpayers comply with the burdens it has imposed.

Over the years, IRS has gradually increased and improved its taxpayer service programs. However, during times of budget cuts, these programs are easy targets.

There is a growing gap between taxpayers' need for help and the level of help provided by the IRS. Thus, my bill declares that it is Congressional policy that IRS continue to maintain and improve its taxpayer service programs.

INDEPENDENT OMBUDSMAN

In 1977, the IRS established a Problem Resolution Program (PRP) to respond to taxpayer difficulties and complaints. In 1980, IRS created the position of Taxpayer Ombudsman to bring the rapidly expanding PRP under centralized control and to act as the principal advocate of taxpayer interests and concerns within IRS.

I applaud the efforts of the IRS in establishing the Taxpayer Ombudsman and the Problem Resolution Program. Unfortunately, the Ombudsman has not been given sufficient lattitude to act as an aggressive advocate of taxpayers' rights. In addition, because this ombudsman was established administratively, the IRS could abolish it at any time.

Taxpayers must not view their representative as merely an extension of the Internal Revenue Service. Thus, my bill mandates the establishment of a statutory, independent Ombudsman, appointed by the President for a six-year term, with the independence, the power and the authority to intervene aggressively on behalf of American taxpayers.

DISPUTED COLLECTION CASES

The Internal Revenue Service has remarkable authority for dealing with taxpayers. This authority is most readily abused in the area of collection of taxes.

Numerous horror stories have been reported in Montana and elsewhere, describing tales of IRS harassment and unwarranted confiscation of property. Fear of the IRS is based not only on the agency's abuse of its collection authority, but also on its well-earned reputation for inconsistence and unpredictibility.

I believe that IRS collection powers, without any type of administrative appeal, and specifically its authority to seize property without a court order, are unreasonable government authority.

In order to rectify this injustice, my Taxpayers' Bill of Rights will require the IRS to establish an administrative appeal procedure for contested collection cases similar to that currently provided for unagreed examination cases, and to obtain a court order before seizing any citizen's property for non-payment of taxes.

REGULATION BACKLOG

Implementation of tax legislation passed by Congress requires that the Internal Revenue Service establish specific rules. Unfortunately, the IRS is nortoriously slow to formulate these rules. Professionals who have to give tax advice based on the law are frustrated and taxpayers are afforded little guidance.

To guard against unreasonable delays, my bill provides that all regulations must be issed within 18 months, unless the law provides otherwise.

REDUCTION OF PAPERWORK BURDEN

The remaining provisions in my bill would remove some of the growing paperwork burdens our tax system imposes on individual and business taxpayers.

CONCLUSION

The complexity of the tax laws and the arbitrary administration of these laws by the IRS have undermined much of the faith taxpayers have in government.

The procedures contained in my Taxpayers' Bill of Rights Act would require some added services at some cost to the IRS budget. However, these provisions will help restore the taxpayers' faith in the equitable administration of the tax laws by insuring that taxpayers are treated fairly and impartially by the IRS.

In this regard, my bill would reduce long-run costs of the IRS by increasing taxpayers' confidence in the equity and efficiency of IRS operations and thereby increasing voluntary compliance with the tax laws.

I want to welcome all the witnesses and express my appreciation to them for giving up their time to be with us today to give us the benefit of their views.

I ask that S. 850 and my accompanying statement be included in the hearing record.

Senator GRASSLEY. I would like to call the hearing of the Subcommittee on Oversight of the Internal Revenue Service to order.

The topic of our hearing is the Taxpayers Bill of Rights, introduced by Senator Max Baucus. The term "Taxpayers Bill of Rights," refers to a group of proposals which give the taxpayer added rights and protections against the Internal Revenue Service.

The ranking minority member of this subcommittee, my colleague, Senator Max Baucus, introduced this legislation to give taxpayers added redress in their grievances.

It has been crafted to try to protect the IRS from unreasonable, dilatory tactics, while providing those taxpayers with genuine disputes a better system for obtaining satisfaction.

Some of the highlights of my colleague's measure include: One. Making the ombudsman independent within the Service, as an advocate for taxpayers; two, requiring the IRS to obtain a court order before they seize property; three, instituting new processes of administrative appeal; and four, requiring the Service to promulgate regulations within 18 months of congressional enactment of a controlling statute.

Citizens throughout the country have asked for these protections.

Senator Baucus is to be commended for his continued attention to this problem of great personal concern to all of us on the Subcommittee of Oversight of the IRS.

At this time, I would like to call on Senator Baucus for his comments, before I introduce our first panel.

Senator BAUCUS. Thank you, Mr. Chairman.

I appreciate very much your holding these hearings on the bill.

As you have stated, this bill would put American taxpayers on a more equal footing with the Internal Revenue Service, by providing protection against arbitrary and irresponsible IRS action.

Fair and sensitive administration of the Nation's tax laws is crucial to the existence of a just society. We can expect American citizens to comply voluntarily with our tax laws. We have an obligation to assure them that laws are administered fairly and impartially and enforcement activities are carried out evenhandedly, that help is available to assist them in coping with the complexity of this system, that there are clear and speedy methods to resolve questions or conflicts and that complaints are given prompt, high level attention.

The issue of taxpayers' rights have been the subject of several bills in both the House and Senate, during the last few years.

But, today marks the first time that hearings have been held to address the need for such legislation.

Briefly, the bill would establish a policy that the IRS should maintain and improve its taxpayers service programs.

Second, it would create an independent taxpayer advocate, an ombudsman, within the IRS.

Third, require the IRS to establish an administrative appeal procedure for disputed collection cases.

Fourth, require the IRS to obtain a court order before seizing any citizen's property for nonpayment of taxes.

Fifth, require the IRS to issue regulations within 18 months after new laws are enacted.

Next, eliminate the requirement that taxpayers file periodic declarations of estimated tax and raise from $100 to $300, the amount of tax one can owe on a return before quarterly estimated tax payments are required.

Finally, eliminate the requirement that employers send W-2 forms, during the year, to persons who leave a job. All W-2 forms would be issued at the end of the year for all employees.

Mr. Chairman, I ask that my full statement be included in the record. I very much look forward to discussing these points with the various witnesses.

Senator GRASSLEY. Without objection, your entire statement will be included in the record.

Before we go to the first panel, I would like to say that today's witnesses include Commissioner Egger, Commissioner of the Internal Revenue Service, whose comments will serve as a focus for our discussion today.

Mr. William McKee, Tax Legislative Counsel of the Department of Treasury, will comment on the policy impacts of this legislation.

Our second panel will include two organizations which are taxpayer public interest groups. These organizations have distinguished themselves by making a valuable contribution to the protection of the rights of individual taxpayers and offering helpful suggestions on how to better administer our tax law.

Our third panel includes an honored guest, Mr. George Anderson, incoming president of the American Institute of Certified Public Accountants.

He will be testifying as an individual since the AICPA does not yet have an official position on Senator Baucus' bill.

Of course, that is a dilemma we are familiar with in the Congress of the United States.

We also have with us a former Member of the U.S. Senate, the Honorable Eugene McCarthy, from the State of Minnesota. He will be speaking for the National Taxpayers Legal Fund.

At this point, I would like to call as our first witness, Mr. Egger.

I know, Mr. Egger, that right now a meeting of all your district and regional representatives is being held. We understand the problems faced by agencies under any new administration, and that makes us all the more appreciative of you taking time away from your busy schedule to come here to be with us today.

Would you like to proceed and also introduce us to any of your associates I failed to mentioin?

STATEMENT OF HON. ROSCOE EGGER, COMMISSIONER OF INTERNAL REVENUE; BILL McKEE, TREASURY TAX LEGISLATION COUNSEL; PHIL COATES, ASSISTANT COMMISSIONER FOR COMPLIANCE; EDDIE HEIRONIMUS, ASSISTANT COMMISSIONER FOR TAXPAYER SERVICE AND RETURNS PROCESSING; JERRY SEBASTION, ACTING CHIEF COUNSEL

Mr. EGGER. Thank you, Mr. Chairman.

First, let me say that Bill McKee, the Treasury Tax Legislative Counsel is going to be here, but through some logistical error, he is on his way. He will join us, I trust.

With me, at the witness table, at the right, is Harold Browning, who is the ombudsman for Internal Revenue.

Phil Coates, on my right, who is Assistant Commissioner for Compliance.

Eddie Heironimus who is Assistant Commissioner for Taxpayer Service and Returns Processing.

And, Jerry Sebastian, who is Acting Chief Counsel.

Now, Mr. McKee, of the Treasury has joined us, on the end.

Mr. Chairman, I would like to submit a more lengthy statement for the record and to give you a truncated version and allow as much time as possible for questions and answers so as to try to get through those things which you would like to hear about.

We at Internal Revenue share very much the concerns which are expressed in the title of this bill. We believe that the taxpayers' rights must be protected.

We believe also there are in place numerous safeguards of those rights in the procedures we have already established for the collection of taxes, once liability is fixed.

In introducing S. 850, Senator Baucus has indicated that he is very concerned over numerous horror stories describing alleged IRS harassment and unwarranted confiscation of property.

The Service, too, would be very concerned, if these supposed horror stories accurately reflected current Service practices.

The plain fact is that rarely are these stories fully accurate.

The Service, however, cannot publicly refute the allegations and accusations in these stories, since they typically involve tax return matters, which, under section 6103 of the Internal Revenue Code, we are precluded from discussing publicly.

Typically, no publicity is given to the millions of matters that are resolved in appropriate fashion, without any rancor or conflict.

Concern has also been expressed that levies and seizures have increased significantly in recent years.

In fact, the number of seizures, when compared to 1975 and 1976 has gone from an average of 18,000 per year, down to around 9,400, in 1980, a considerable change in emphasis, particularly in view of the fact that the number of accounts receivable we must deal with has nearly doubled in that same period.

Moreover, the number of installment agreements entered into by the Service has been increasing. Thus, the percentage of collection cases disposed of by seizure has decreased significantly in recent years.

In 1978, a report issued by the GAO, entitled "IRS Seizure of Property, Effective but Not Uniformly Applied," examined seizures during 1975, and found that while there was not always uniformity among the IRS districts, uniformity should not be equated with fairness, and that taxpayers, as a general rule, are treated fairly. We believe this conclusion is equally valid today.

The procedures set out in S. 850, will not, in my judgment, eliminate those rare cases where a taxpayer may be treated harshly.

We are constantly trying to improve our procedures.

As this subcommittee, in the exercise of its oversight jurisdiction identifies problem areas, we will move quickly to correct them.

The existing administrative procedures and systems at the Internal Revenue Service provide taxpayers with a number of rights, and we believe they are sufficient to allow us to find solutions to collection problems as they arise.

But, Mr. Chairman, with over 85,000 people in the Internal Revenue Service, highly decentralized, at nearly 1,000 locations, all having to exercise some sort of discretion at one level or another, the elimination of every human, every judgmental error, in my opinion, can never be legislated.

S. 850 would establish a presidentially appointed ombudsman, within the Internal Revenue Service, to act as a taxpayer advocate. I assume the ombudsman would report directly to the Commissioner, but that is not clear in the bill.

The Internal Revenue Service has two major programs for providing taxpayer assistance presently in place. First, the taxpayer service program, and second, the problem resolution program.

The taxpayer service program, under the jurisdiction of the Assistant Commissioner [Taxpayer Service and Returns Processing] provides assistance to taxpayers in completing their tax returns, and responds to inquiries from taxpayers requesting information about the tax system, their rights and obligations under it, and the tax benefits available.

During 1982, the taxpayer service program expects to handle some 33 million telephone calls, through a nationwide telephone system, answer about 100,000 letters, and assist more than 6 million taxpayers who walk into about 800 IRS offices, located throughout the country.

The taxpayer service program also provides educational materials for schools and colleges, a volunteer program for low-income and elderly taxpayers, special help for hearing-impaired and foreign language speaking taxpayers, special publications and work-

shops for small businesses. In addition, it responds to technical inquiries and provides widely used publications about the tax law and the tax administration system.

In addition to the services of the general taxpayer service program, we have established a problem resolution program within the IRS. This program was established to provide special attention for taxpayers' problems and complaints not properly or promptly resolved through the normal procedures and for problems taxpayers believe have not received appropriate attention.

Problems handled by the problem resolution program are analyzed to determine the underlying causes so that corrective action can be taken servicewide to prevent recurrence.

The problem resolution program has proven very successful with a high level of taxpayer satisfaction reported through followup questionnaires.

In 1979, the Service established a taxpayer ombudsman in the Office of the Commissioner.

The taxpayer ombudsman reports directly to me, and therefore has authority to cut across organizational lines in order to quickly resolve individual taxpayer problems and systemic problems.

Mr. Chairman, I am committed to keeping the relationships with the general public at the highest possible level.

It is therefore in my interest and in that of the IRS to see that this effort works well.

We believe the present IRS problem resolution program and ombudsman position largely accomplish what S. 850 would seek to accomplish through establishment of an ombudsman, with the exception of the proposed ombudsman's authority to issue stop action orders.

I would like to discuss that a little bit further later on.

With regard to S. 850's provision that the ombudsman be appointed by the President, confirmed by the Senate, and then report annually directly to the tax writing committees of Congress, I am very concerned that there will not be a clear delineation between the Commissioner's responsibilities and the ombudsman's responsibilities with regard to tax law administration.

This is especially true with S. 850's provision for the ombudsman to have the authority to issue stop action orders.

As proposed by S. 850, the ombudsman, even though apparently located in the Office of the Commissioner, would be a political appointee whose job is to function as an advocate for taxpayers rights and who would thus effectively have some independent power to administer the tax law.

We are concerned that such independent power (1) would not provide a balance between protecting the Government and the taxpayers' interests and (2) would open up a dangerous potential for political abuse of the tax system.

In addition, the ombudsman, perceived as an independent authority, may be less effective working within the Service to resolve individual taxpayer problems and systemic problems than the present ombudsman.

The bill provides that the proposed ombudsman would have the authority to issue stop action orders which would in certain cases, delay for up to 60 days, IRS action adverse to the taxpayer.

Under existing procedures Service officials—for example, District Directors, regional commissioners, and the taxpayer ombudsman—have the authority to stay administrative action in cases of severe hardship to particular taxpayers. In exercising this authority Service officials are guided by Internal Revenue Service policy and procedures which provide for an automatic stop action system at the taxpayer's initiative.

For example, assessment does not occur until the taxpayer has exhausted all examination, appeals, and where appropriate, Tax Court channels, for resolving the tax liability issues.

Also, after the tax liability has been determined and assessed, taxpayer claims creating reasonable doubt as to the validity of the assessment almost always result in freezing action on the account while the claim is being investigated.

The law and Service policy and procedures governing the collection process contain numerous safeguards to protect taxpayers' rights during the process.

In exercising discretion to determine whether and when to take various tax enforcement actions, Service officials are responsible for protecting both the interests of the Government and those of the taxpayers.

Granting additional independent authority to an ombudsman to issue stop action orders, in certain situations, by considering only the taxpayers' and not the Government's interests could seriously impair the Service's ability to administer the tax laws in an orderly and timely fashion.

S. 850 provides that the IRS could levy only after obtaining a court order, except where collection is in jeopardy and that administrative systems for taxpayer appeals of liens and levies would have to be established within the IRS.

These provisions, if enacted, will, in my judgment, severely impair the Service's ability to collect revenue and are, we believe, unnecessary, in view of existing statutory and Service procedural requirements governing the collection of taxes.

Assessment of the tax occurs when the tax liability has been determined. This determination can be made for example, by the taxpayer's filing the return, by the taxpayer's agreement with IRS findings, by a Tax Court determination, or by IRS findings with regard to taxes not under Tax Court jurisdiction.

There are in place at this time elaborate appeal rights and procedures to assure the taxpayer a full and fair determination of tax liability. But thereafter, I am not at all sure what would be the objective of appealing in the collection process. This process begins after the assessment of the tax, that is, after the tax liability has been determined. Collection issues do not involve questions of whether the tax is owed, but of whether or how the taxpayer will pay.

Internal Revenue Code section 6321 provides that if any person liable for tax neglects or refuses to pay the tax after demand, a lien for the unpaid amount arises in favor of the Government on all the taxpayer's property.

S. 850 would not affect the occurrence of the lien itself.

Section 6322 provides that this lien arises upon assessment. After the lien arises, the Government can file a notice of lien which then

becomes a matter of public record, and is an important means of safeguarding the Government's interest against other creditors.

A determination to file a notice of lien must be made within 120 days from the date the taxpayer's delinquent account is received in the district, with an additional 45 days for individual accounts and 60 days for business accounts allowed if the case is assigned to a revenue officer.

The taxpayer will have been sent previously, four computer-printed notices, before the case is sent to the district.

An Internal Revenue Service policy statement provides that a notice of lien shall not be filed until reasonable efforts have been made to contact the taxpayer in person or by telephone and afford him or her the opportunity to make payment.

After talking with the taxpayer a determination may be made not to file the notice of lien.

In the few instances where lien notices are filed improvidently or erroneously, the Service sends a letter to the taxpayer apologizing for the filing of notice of lien, and suggesting that the taxpayer might want to furnish a copy of the letter to creditors or other persons.

A unanimous Supreme Court decision, in 1977, generally upheld the Service's power to levy or seize without a court order while requiring a court order where a search or entry of private property was necessary to effect the seizure.

Our procedures scrupulously adhere to the requirements for obtaining court orders as required by the Court's ruling.

Service policies and procedures, once a taxpayer delinquent account is issued, also provide the taxpayer with protections.

For example, we have encouraged the use of installment agreements. Other policies and procedures require our personnel to consider other alternatives and to seek supervisory approval before taking certain forms of collection action.

Providing for an administrative appeal of a Federal tax lien notice or levy would unduly and unnecessarily delay the securing of the Government's interest in property.

It is also unclear what the issue of the appeal would be, since the tax liability, as I said before, has already been determined prior to the commencement of the collection process.

S. 850's proposal for obtaining a court order prior to levy would create an extreme administrative burden on the Service.

Under this provision the Service, to levy, would have to obtain from a Federal or a State court, an order based on the Court's findings that the taxpayer has exhausted the administrative remedies and that the statutory requirements for levying have been met.

During fiscal year 1980, the Service issued 611,000 notices of levy, and effected 9,421 seizures.

We believe the additional drain on collection resources that would be imposed by the Court order requirement is unnecessary in light of current law, and Service procedures providing protection for taxpayers prior to levy action.

In addition, at the end of fiscal year 1980, we had some $5 million plus accounts receivable outstanding aggregating $10 billion in debts owed the Government.

It is essential we make every effort to reduce that figure.

The Internal Revenue Service shares the concern of the sponsors of S. 850 for protecting the rights of taxpayers in the collection process.

However, we believe the collection provisions in S. 850 present severe administrative problems while not providing taxpayer protection beyond what current law and current Service policy and procedures provide.

The bill provides for the issuance of regulations within a prescribed time limit. Here, S. 850 would require that initial, final regulations necessary to implement Internal Revenue Code provisions be issued within 18 months after enactment of the code provisions.

In addition, it would require that any initial final regulations necessary to implement code amendments or additions enacted after 1969, but before 6 months from the date of enactment of S. 850 be issued within 36 months of enactment of S. 850.

If a regulation is not issued within the prescribed period, then the effective date of the regulation cannot be earlier than the date of publication of the regulation in the Federal Register, and any reasonable position taken by a taxpayer with respect to an issue for which regulations have not been promulgated on time, shall apply to that taxpayer, notwithstanding any subsequent regulations. This would not apply to recurrences of the issue after the date on which the regulations are published.

This provision is of great concern both to the Treasury and to the Internal Revenue Service. We share the responsibility for issuing tax regulations.

We both believe that the enactment of this inflexible deadline provision would be highly detrimental to the tax regulations process.

We are very concerned that the 18-month deadline proposed in the bill would affect adversely the quality of tax regulations by taking away from the Service and Treasury the flexibility to issue regulations within time frames that take into account the complexity and the priority of the issues involved and the need for more prompt guidance in certain areas.

For example, the extreme complexity of the recently enacted windfall profit tax statute and the fact that the statute generally left to the regulations the design of the system for administering this tax, required that the Service issue regulations covering the administration of the tax immediately.

Accordingly, those regulations were issued on the day the windfall profit tax was enacted.

Had there been a statutory deadline for the issuance of all regulations, it might not have been possible to promptly issue the windfall profit tax regulations, because of the diversion of resources to other projects.

We are very concerned with the idea that nonretroactivity and giving credence to all "reasonable" interpretations is an appropriate sanction if the regulations are not issued timely. The "penalty" that results does not apply to either the Service or the Treasury, but to all other taxpayers. Requiring them to suffer the consequence of a delay in the issuance of a regulation will not improve

the rights of these taxpayers. Thus, we feel it will be a serious mistake to institute these "penalties" for regulations not issued on the prescribed schedule.

The bill also provides for the reduction of redtape for both individuals and small businesses. S. 850 proposes that the present statutory requirement for filing declarations of estimated tax by individuals be eliminated.

Under the proposal in S. 850, individuals would be required to make installment payments of tax in situations where they are now required to file declarations of estimated tax.

We agree that the elimination of the estimated tax declarations for individuals would simplify the administrative burden for taxpayers and the Service.

We also agree with S. 850's proposal to raise the $100 floor in present law before a declaration or installment payments are required to $300.

The Service has recommended both of these estimated tax legislative changes in the past, as tax simplification measures, and we are pleased to see congressional support for these changes.

With regard to S. 850's proposal that employers not be required to furnish employees W-2 forms when employment is terminated in the middle of the calendar year, existing regulations under Internal Revenue Code section 6051 already accomplish that.

Those regulations provide that, if an employee terminates employment before the close of the calendar year, the employer shall furnish the W-2 at any time, but no later than January 31 of the next year.

The regulations further provide that, if the terminating employee requests that a W-2 be furnished before January 31 of the next year, the employer must do so within 30 days of that request or 30 days of the last salary payment, whichever is later.

This amendment to the regulations was made in 1979 and is in effect.

We would, of course, have no objection to the proposed statutory requirement.

Mr. Chairman, this concludes the prepared, shorter version of our testimony. I would now be pleased, either myself or my colleagues here, to answer any questions.

Before doing so, I would like to ask Mr. McKee of the Treasury if he has anything he would like to add.

Mr. McKEE. The Treasury Department supports wholeheartedly the statement of the Commissioner with respect to S. 850. The concern of the Treasury Department lies primarily with the issues which directly affect our operation which are primarily the rules dealing with the timely issuance of regulations.

We would like to join in that portion of the testimony especially. It would cause a substantial number of problems for our office in processing and reviewing Treasury regulations in a timely fashion and in devoting our resources in an appropriate way if we were required to respond, in all cases, within the 18-month time period.

Senator GRASSLEY. Thank you, Commissioner Egger, Mr. McKee.

Senator Baucus and I have questions we want to ask you.

Senator Baucus' bill gives the IRS additional duties and responsiblities, such as requiring you to publish final regulations within

18 months, and new appeals procedures and more attorney time to obtain court orders and a stronger ombudsman program. In light of the smaller budget increases the service had this year and years past, how would you prioritize these new responsibilities assuming this legislation was passed?

Mr. EGGER. Well, Mr. Chairman, if the legislation requires that we put these people in place as well as the procedures in place, obviously we will do it.

It will simply mean that something else has to give. Our resources are stretched pretty thin, as you know, and something has to give when we add additional burdens.

We are trying very hard at the present time to give as much attention as we possibly can to our problem resolution program and to the ombudsman's actions and his activities.

We would not like to see that reduced and do not intend to reduce it any more than absolutely required, but we would have to deal with this, the requirements in this legislation in the same fashion.

Senator GRASSLEY. You are probably aware that in March or early April, Senator Baucus and I inserted a statement in the Congressional Record that we felt that the tax enforcement efforts of the IRS should not be diminished as a result of the budget restraints. This statement was based particularly upon the necessity of the voluntary compliance system of the IRS to work in this great country of ours.

Mr. EGGER. The resources required to deal with the regulations are different from the taxpayer service program and not interchangeable.

Conceivably, in a future budget we might see some effects on that by reason of having some overall further limitations on our resources.

But, as things now stand, if this legislation were to require the 18-month deadline, it would simply mean that we would have to assign different priorities to the regulations projects.

Senator GRASSLEY. You have stated that an independent ombudsman is not necessary within the IRS organization. Without statutory authority, would it be possible, to abolish the office of ombudsman?

Mr. EGGER. Yes, of course. The ombudsman was established administratively and could be abolished administratively. There is no question about it.

I cannot think why it would be in the interest of the IRS to not want this program to work and work extremely well, since we believe that taxpayer relationships are an essential ingredient to a high level of compliance.

So, to me, that is just as important as having our enforcement activities at a high level.

So, while you are quite right, it could be abolished administratively, I certainly see nothing that would bring that about.

Senator GRASSLEY. While I am sure that you would keep your word on this important matter, others who follow you might not be so scrupulous and might act in an arbitrary manner effectively destroying this needed taxpayer protection.

Of course, I assume that is the purpose for making this provision statutory.

Senator Baucus' bill includes a variety of procedures for appeal of an IRS lien or levy. In your view, are these appeals procedures workable? I realize you addressed this question earlier at some length, but I felt you were questioning the necessity of this measure rather than whether or not you thought it was workable.

Mr. EGGER. Well, I still would raise the question of why, because I am not clear on what the issues would be that would be appealed.

But, assuming that there is something to be appealed, the bill itself doesn't provide the procedures, but rather leaves it to the Secretary to in effect put a system in place for the appeal.

So, since we have not done that yet, we don't know what it would look like. I am satisfied that if required to do so by statute, we could put an appeal system in place in much the same fashion as we have an appeal process for the substantive issues and determination of tax liability.

Senator GRASSLEY. Internal appeal of agency actions are already available. How many taxpayers use that route of appeal, and how much does it cost the Service to administer?

Mr. EGGER. I think I will ask Phil Coates here who is the Assistant Commissioner for Compliance to respond to that question.

Mr. COATES. Senator Grassley, I don't have the figures with me this morning. We have some 800 to 900 appeals officers stationed all around the country and some 700 offices or other sites that are served either by appeals officers located there or circuit riding into areas where the officers may not be located to accommodate taxpayers.

These appeals officers now deal with the substantive tax issues that are in disagreement related to, for example, income tax, estate and gift tax, employee plans, exempt organizations, and penalties.

That organization is in place. The number of appeals that they hear each year and the cost, I don't have. But certainly we can provide it for the record.

Senator GRASSLEY. We would appreciate that information.

Mr. COATES. All right, sir.

Senator GRASSLEY. We would like to have that information, especially as it applies to income taxes.

Mr. COATES. Yes, sir.

Senator GRASSLEY. Are you to separate it from all the other appeals procedures you have?

Mr. COATES. Yes, sir. I will be happy to provide that, sir.

[The tables were subsequently supplied:]

Table 1—APPEALS DATA

	Fiscal year 1980, actual	Fiscal year 1981, plan	Fiscal year 1982, budget
Staffyears:			
Appeals officer	868	838	797
Appeals auditors	130	135	128
Other (managerial, paraprofessional, administrative and clerical positions)	886	904	848
Total	1,884	1,877	1,773
Program cost	$59,750,000	$64,571,000	$63,718,000

Table 1--APPEALS DATA—Continued

	Fiscal year 1980, actual	Fiscal year 1981, plan	Fiscal year 1982, budget
Work unit receipts	53,467	55,154	55,154
Work unit disposals	[1] 49,971	[1] 47,485	[1] 45,053
Tax year/tax period disposals	[1] 138,944	[1] 132,032	[1] 125,270
End of year inventory	36,047	43,716	53,817
Average work units per AO	[2] 43	[2] 54	[2] 70
Number of posts of duty	98	98	98
Additional conference sites	605	605	605
Total sites where conferences are held	703	703	703

[1] One Work Unit equals 2 7805 tax years/tax periods—substantially equivalent to a tax return
[2] Average work units per appeals officer does not include penalty appeals work units
Sources Fiscal year 1982 Congressional Budget Request, Mar 10, 1981, revision and 1980 Commissioner's Annual Report

Table 2—FISCAL YEAR 1980 DISPOSALS—TAX YEARS/PERIODS

Case type	Docketed	Nondocketed	Total
Income and fiduciary	50,767	49,563	100,330
Estate and gift	1,969	2,586	4,555
Corporation	6,610	10,177	16,787
Employment	165	7,459	7,624
Excise	0	3,122	3,122
Exempt organizations	59	156	215
100 percent penalty	4	4,105	4,109
Offer in compromise	0	268	268
Other	1,707	227	1,923
Total	61,281	77,663	[2] 138,944

[1] A tax year/tax period count is substantially equal to a tax return count except for excise tax which reports multiple tax periods on 1 tax return
[2] Conversion to work units 1 work unit equals 2 7805 tax years/tax periods 138,944 tax years/tax periods divided by 2 7805 equals 49,971 work units

Senator GRASSLEY. Do you feel that the taxpayers are adequately aware of the existing appeal procedures within the IRS?

If not, what would you do to increase taxpayer awareness of these procedures?

Mr. EGGER. At every stage in the examination process, that is, from the time the tax auditor or revenue agent contacts the taxpayer, the taxpayer is given written information explaining fully his or her rights of appeal.

At the next stage, which is typically a revenue agent report or report of examination, the appeal at that stage is again spelled out, in writing, and given to the taxpayer.

As each stage goes along, the taxpayer is fully informed as to the appeal rights. We go out of our way to make sure that nobody is uninformed or misinformed on that.

Perhaps Mr. Coates would like to add a little more to that.

Mr. COATES. Just simply that in examination where the tax is going to be unagreed or apparently there is a disagreement, our tax auditors and revenue agents have an obligation, per Service policy, that they advise the taxpayer and/or representative of the appeal rights and provide them with all the information that they need for making an administrative appeal.

The appeal procedures are relatively simple. If the tax in any tax year is less than $2,500, the taxpayer does not even have to file a

written protest. He or she can go to appeal without representation, should they choose to do so.

Senator GRASSLEY. Are you anticipating any change in procedures to enhance taxpayers' awareness of appeal procedures, or what their rights might be?

Mr. EGGER. It has been suggested on occasion that we publish an omnibus or an encyclopedia-type of comprehensive discussion of the appeal rights. We could do that, but I am not satisfied yet it would be more useful to the taxpayer.

I am more troubled by the fact that taxpayers will be informed of all their rights on the front end, and then forget about some of them as things progress, and they will not be as well informed as under the present system.

Here again, it is in our interest to make sure that the taxpayer is fully informed, since our obligation is to administer the tax laws and not necessarily function in an adversary fashion.

Senator GRASSLEY. I would like to return to the subject of the 18-month time limitation from the enactment of legislation to the issuance of regulations.

Three members of this subcommittee are also members of the Judiciary Committee. We are all concerned about regulatory reform.

We are anxious to see all agencies of Government be more responsive to our constituents. That is very much a part of the regulation writing process.

You have indicated that it might be difficult to issue regulations as promptly as this bill would require. In light of your concerns about the 18-month time limit, what do you consider a reasonable time limit?

Mr. EGGER. I am less concerned with the 18 months than I am that there would be a rigid time limit imposed on all regulations.

Here the real problem, in my opinion, is the ability to prioritize the regulations projects.

I would like to just quickly sketch for you what happens in developing a regulation under the Internal Revenue Code.

We have it drafted in the Office of Chief Counsel, in the Legislation and Regulations Division of Chief Counsel. As that drafting process takes place, there are many, many issues that arise.

We frequently call in groups from outside and consult with them. After we have drafted the regulations, at that stage, they go through another level of review by the Chief Counsel. They go through a level of review in my office. Then they have to go to the Tax Legislative Counsel at Treasury and ultimately are approved by the Assistant Secretary for Tax Policy.

Occasionally, they have to go to the Office of Management and Budget. They have to go to the Secretary's desk if they are significant regulations.

This whole process takes a lot of time. In so doing, if we have something such as the windfall profit tax that comes out of the Congress without a great deal of advance notice, we have to put something aside in order to deal with that.

In that connection, right now, although that law is more than a year old, we are struggling with the industry and with industry representatives on very, very difficult complex, technical problems.

Those regulations simply aren't yet fully responsive to the needs of industry, because we don't have enough experience with them.

So, these kinds of things happen. I just hate to be put in the straitjacket, whether it is 18 months or 24 months or some other number.

I agree with you that we need to do more in acting quickly on regulations. I assure you that the Treasury and my office are working on that right now, because we do recognize that occasionally some of these regulation projects get put aside where there is not a great deal of pressure from taxpayers to get them out.

Senator GRASSLEY. Do you think there is something inherently unreasonable with placing time limits on the issuance of regulations.

Mr. EGGER. Only because you can't predict whether that time limit will require that you deal with regulation projects that have less priority than others that you should deal with in order to meet the deadline.

Senator GRASSLEY. If Senator Baucus' bill were to pass, would you issue more temporary regulations?

Mr. EGGER. I don't think so, necessarily. We would simply have to reorder the priorities.

Bill McKee may want to comment on that, since he has a big stake in this as well.

Mr. MCKEE. I think two things would happen. We would not be able to deal as promptly with pressing projects such as the housing bond regulations relating to legislation passed at the end of last year. We hope to have regulations out in the next week.

So, I think if we had to get everything out in 18 months, everything would tend to come out toward the end of that 18-month period. Things like housing bonds would simply get in the line and would not receive priority attention.

Second, I think the quality of the regulations would suffer.

Some of the regulations projects with which we deal are inordinately complex. I expect the best example of that is the debt equity regulations under section 385 of the code.

They are an example of two things. One is, I would agree, inordinate delay. That project has been languishing for 11 or 12 years.

It is also an example of a project that is so complex that I am not sure it could possibly be done within 18 months.

The previous administration gave that project the highest priority and devoted incredible time and effort to those regulations. They are 118 typewritten pages. They are fearsomely complex.

We are undertaking another review of them. There has been a great deal of criticism of those regulations, as they were originally proposed.

To have been forced to come out with those regulations in final form in 18 months would, I think have seriously detracted from the quality, not only of the original draft, but also of the process of review of written comments submitted by the public.

The efforts of the Treasury and the Service to incorporate those comments into the final product will suffer in some cases, from a shortening of the time period.

Senator GRASSLEY. If a taxpayer disagrees with the Service on the interpretation of an agency regulation and pursues his appeal

with the ombudsman, is it foreseeable that you might have a district commissioner disagreeing with the ombudsman on a point of law?

Mr. EGGER. Well, this is part of our real concern. It is obvious that if we have a total taxpayer advocate in the IRS as a part of the program, that it might change the character of the function of the ombudsman.

At the present time, that program is not another level of appeal. It is to deal with those kinds of problems which require that we depart from our usual procedures, that we cut across functional lines, that we get out of the pattern, if you will, but it is not another level of appeal.

A statutory ombudsman would surely have to have counterparts in the district offices in order to properly serve the taxpaying public. We are concerned that the role would then become one of an advocate in true fashion and, eventually, the ombudsman would be a kind of opposite pole from the District Directors or some other functional group within the IRS.

We are seriously concerned that the proposal here might very well have the opposite effect that is intended.

Senator GRASSLEY. If such a scenario were to occur, as Commissioner what would you do to arbitrate such a dispute?

Mr. EGGER. Well, that too is a part of my problem, because it isn't clear in the bill just where the ombudsman's legal authority starts and stops.

It is not clear, for example, to me, that that person would report to the Commissioner.

I could see a situation in which the ombudsman would issue a stop action order and the Commissioner's Office might have a totally different view of that.

We might end up just sort of arm wrestling back and forth over an issue that ought to be in the courts or someplace else. The taxpayer would, in the meantime, end up in the middle.

The present arrangement and the way I think an ombudsman should work, is for the ombudsmen to have as free a hand to act in even an unorthodox fashion as can possibly be, and to give the Commissioner's clout to the ombudsman to make certain that he is able to get things accomplished in other parts of the Internal Revenue Service.

Typically, the Commissioner does not involve himself in cases as such, but rather deals with the policy and much broader scope issues.

So, this is true, certainly in the case of the ombudsman arrangement right now.

Senator GRASSLEY. You would be the arbitrator in that case?

Mr. EGGER. Yes.

Senator GRASSLEY. Right?

Mr. EGGER. Yes, of course.

Senator GRASSLEY. Can you think of any mechanisms you might install to prevent problems like this from occurring?

Mr. EGGER. Well, the only thing that could happen would be to perhaps separate the ombudsman role from the District Director so they would each have independent authority.

I am satisfied at the moment at least that that would create more problems than it would solve.

Right now our problem resolution officers in the districts are under the District Director's control, but here again, the program is working well and is working well because it is in the interest of the district directors to see to it that it does.

In an advocacy position, I am not sure how it would work.

Senator GRASSLEY. I appreciate your answer to my questions.

Senator Baucus do you have any questions for the panel?

Senator BAUCUS. Thank you, Mr. Chairman.

Commissioner, as you know, one of the biggest problems our country is facing today is the decline of voluntary compliance with our code.

There are a lot of reasons I suspect for the decline in voluntary compliance, reasons why taxpayers are giving the IRS more and more troubles. They are not just paying taxes that they probably owe.

Certainly one reason is the high rates of inflation. People's pocket books are a little more thin than they have been in past years, at least arguably.

Inflation pushes people into higher tax brackets and more people are in the 40 and 50 percent tax brackets as is the case not too many years ago. People don't like paying those higher marginal rates. I am sure that is part of the problem.

In addition to that I think 70 percent marginal rates, higher rates encourage one to abuse tax avoidance with various deductions and so forth.

I am sure that is part of why—the reason why high income tax payers scorn the IRS in many cases. Not only don't they like to pay taxes, but they like to take advantage of their higher rates with all kinds of investment schemes to set off losses against income.

Beyond that I think a lot of middle income people are protesting more because they see the complexity of the code and they think all the higher income people are taking advantage of the complexities and they don't have the income perhaps, to take advantage of the complexities. They are angry. They are upset.

I think that is the reason too and finally I think eventually people are going to be losing more faith in Government generally. That is another reason why people are not paying taxes this year.

That, to me has a lot to do with the people's confidence in the IRS. I think a lot of people find the IRS in many cases, insensitive, aggressive, as they should be. It is a job of the IRS to enforce the Tax Code.

But, the problem, it seems to me is in part the statement you made in the second page of your testimony, finding there aren't many instances of IRS harassment. There are very, very few, it is minute amount of horror stories.

I must tell you that I don't find that statement to be very accurate. That is, I personally find that people tell me that there are a lot of horror stories, if you will or harassment, it amounts to the same thing. These are people who I trust. Just average, ordinary Americans. They come in and talk to me, and some of them I know quite well, I have known them for years.

They have told me of many instances where say during an IRS audit, an IRS employee will come in and keep looking and admit that he is going to keep looking and demand more records until he finds something, however small it is, he just has to keep looking until he finds something.

In one particular case, an IRS employee admitted that to this friend of mine. Finally, sure enough, they found something. I mean, if you audit anybody's tax returns minutely enough, you are going to find something.

After a year later, they finally found something, a little tax liability, the audit was minute, an amount that was very, very small. They found it and paid the deficiency and that was that.

That is not an isolated case. I have talked to others who have had the same problems.

In addition, I have talked to many IRS employees who feel, yes, there are instances, a significant number of instances of harassment so that something has to be done. It is hard for people to come up with solutions, but at least they feel something has to be done.

That is frankly, the reason for this bill. I don't think this bill is going to solve all of the problems with voluntary compliance. I think it is a step in that direction. We are going to encourage Americans to voluntarily comply with the Tax Code. I think we have to address some of the other problems that I mentioned earlier.

In addition, I think that the way people perceive the administration of IRS is part of the problem and we are trying to resolve it.

Now, I am not surprised that the Service does not want an independent ombudsman. Nobody wants anybody looking over anyone's shoulder. It is just human nature. But, frankly, that is the whole point of this provision, that is, we do want some person who is an advocate for taxpayers, to look over the shoulder of the IRS to make sure that employees are following procedures.

IRS is an extremely large organization. You personally can't oversee every minute detail. Even your people can't oversee the entire Service, in part because it is a bureaucracy and people work for people and people don't want to be fired and they don't want to be transferred. That is part of the system. That is part of bureaucracy.

The thought here is that if we could have a person who is independent, who would have access to the records of the Service, that person would be a better advocate for the taxpayers and would help the IRS, frankly.

I am a little surprised you don't embrace the concept of the ombudsman. I would think you would want someone or some procedure, some system, to help raise the perception, the perceived integrity and efficiency and fairness of the system.

I just hope this bill passes.

Second, that with the ombudsman the Service realizes that if this in fact will be the case, the perception of the Service is enhanced and it will help the IRS very much.

I have a few specific questions though about the present ombudsman procedure.

The first one is, how many taxpayers know there is an ombudsman now in the IRS?

Any estimate? Any guess of that?

Mr. EGGER. I don't know. Mr. Browning, the ombudsman for the Service is here. I would like to ask him to answer that one.

Mr. BROWNING. Senator, that is a difficult question to answer.

Senator BAUCUS. How many people call you up and say, "I have a problem. I want you to help me out."

Mr. BROWNING. Personally, I would say several calls a week.

Senator BAUCUS. Several a week?

Mr. BROWNING. Yes.

Senator BAUCUS. How many taxpayers are there?

Mr. BROWNING. Well, just guessing off the top of my head, I probably receive in the neighborhood of about 20 to 30 calls a week.

But, in terms of being more responsive to your question, the problem resolution program which I am the program manager for, is mentioned in the income tax instruction booklet that goes out to all taxpayers. They are made aware of the program.

Publication 17, which is commonly referred to as the blue book within the Internal Revenue Service, is a more comprehensive book on income tax matters. It has a discussion as to the problem resolution program.

This booklet is given free to taxpayers.

There are TV spots.

Senator BAUCUS. That is informational though, isn't it? All this is informational, thus far?

Mr. BROWNING. It is informational to let the taxpayers know that the Internal Revenue Service has a problem resolution program, someplace they can turn to, if they don't feel they are getting satisfactory——

Senator BAUCUS. How long has the problem resolution program been in effect?

Mr. BROWNING. Since 1977.

Senator BAUCUS. Over these 4 years how many complaints has the problem resolution program received?

Mr. BROWNING. I can furnish that specifically for the record.

Senator BAUCUS. Do you know the answer to that question?

Mr. BROWNING. Well, if you want a total, I can give it to you by year.

Senator BAUCUS. Just a rough estimate.

Mr. BROWNING. There were during 1977, approximately 36,000.

Then, it went up to 68,000 in 1978.

Then, for 1979, it was 79,000.

For 1980, it was 223,000.

This year, for the first 6 months of this fiscal year, 176,000.

Senator BAUCUS. What is the nature of those complaints?

Can you divide them by two or three categories?

Mr. BROWNING. No. We have a system to identify them by problem code. There are approximately 30 codes that the problems are identified by.

The largest number of our complaints come in the area of failure to receive a tax refund timely.

Senator BAUCUS. I am sorry. The largest number of what now?

Mr. BROWNING. Come in the area of failure to receive refunds. About 35 percent of the problems we handle in the problem resolution program have to do with failure of the taxpayers to receive their refunds or they have some problem with their refunds.

Senator BAUCUS. What do the other 65 percent pertain to?

Mr. BROWNING. They will fall into several different categories. You will have examination-type problems which run about 5 to 6 percent of the total.

Collection problems run approximately the same figure, between 5 to 6 percent.

One of the smallest percentages is on discourtesy by employees. We really receive very, very few.

Senator BAUCUS. What has been the resolution of these complaints?

Mr. BROWNING. We have a followup procedure. Once the problem is resolved, we take a balanced statistical sample which was determined by our statistics division, in the national office, and send out letters to the taxpayer asking them what their experiences were with the program and whether they were satisfied with the way their problem was handled.

There is a consistent 90 percent, 89.9, 90.1, but approximately 90-percent taxpayer satisfaction rate of the services rendered by the problem resolution office.

Senator BAUCUS. A 90-percent satisfaction rate. That is satisfaction from whose point of view?

Mr. BROWNING. The taxpayers.

Senator BAUCUS. How do you handle the remaining 10 percent?

Mr. BROWNING. When they come back and say they were not satisfied, the case is reviewed. If it was a fact that the Service didn't get it resolved, that case is reopened. The taxpayer is then given another opportunity to come back through the program.

There are times, though the taxpayer just disagrees with the law. They disagree with the way the Internal Revenue Service has to handle a particular item.

So, you can never get 100-percent satisfaction unless you always resolved problems in their favor.

Senator BAUCUS. How do you perceive your role? Do you perceive your role as a judge or do you perceive your role as an advocate for the taxpayer?

How do you see yourself?

Mr. BROWNING. I see myself as an advocate for the taxpayer and being on the Commissioner's staff I have an opportunity to sit in on all staff meetings. I am involved in conferences. I deal with people when they come in.

I have the opportunity to be in the initial stages of policy being formed and to have input into these policymaking decisions as far as the Internal Revenue Service is concerned.

Senator BAUCUS. But what power do you have?

It sounds like you are simply an adviser. Do you have any power? Any teeth? Anything you can do that will encourage or force the IRS to do something you think they should do or not do something they should not do?

What power do you have? Other than just an advisory role to sit in on these meetings and just give your advise?

Mr. BROWNING. As any staff person, and I am a staff person of the Commissioner, the power of my office comes from the Commissioner's office.

If I have a position on something and the Commissioner feels my position is correct, then I have the full power of his office.

Senator BAUCUS. So your power really stems directly from the Commissioner?

Mr. BROWNING. That is correct.

Senator BAUCUS. Only to the degree the Commissioner agrees with you?

Mr. BROWNING. That's correct.

Senator BAUCUS. So, you have no power in those cases where the Commissioner disagrees with you?

Mr. BROWNING. Right.

Senator BAUCUS. How many instances have you very strongly disagreed with the Commissioner over a significant case or policy?

Mr. BROWNING. I can't think of any situation where there has been a major disagreement.

Senator BAUCUS. That, to me, indicates that either you agree with everything the IRS does or IRS is perfect. I think the truth is somewhere in between.

If you have no power in those cases where you disagree, it would seem to me your role as an advocate for taxpayers is somewhat weak.

I agree that you can't stand up for every taxpayer in every instance. I am sure in a good number of instances the taxpayers owe and they should pay taxes.

But in those cases where you do agree with the taxpayer and where IRS disagrees with you, which I am sure is not an unlikely event, you have no power, based upon what you have just said, because IRS gives you your power. You are simply an advisory person.

We do not have a lot of time this morning. Let me go on to another subject and that is the regulations, the time limit for regulations.

Again, I am not surprised the Service doesn't like the limit. Nobody does. I don't either. Nobody likes limits, time limits.

I frankly think to a large degree this world is run by a deadline. It is human nature to procrastinate until our backs are up against the walls and we are forced to do something.

There is a great temptation in a modern, complex society to keep postponing, procrastinating, until some pressure comes up and we have to do something.

Some people can plan more better than others, but I think to a large degree deadlines are very helpful.

I was a little surprised that your answer, Commissioner, in response to Chairman Grassley's point, that you don't like any deadlines; does that mean you don't like a 10-year deadline or a 12-year deadline?

Can you live with that?

Mr. EGGER. Oh, I think I can live with 10 years all right. What I am trying to say, Senator Baucus, is that any time you introduce rigidity into a process which necessarily involves a high degree of discretion, you do create problems after a fashion.

Now, if the Congress sets a deadline of 18 months, and frequently they do set deadlines in a given situation in a statute, we will live with it.

But, we simply want to point out that there are consequences in doing that. So long as everyone is aware of the consequences, if that then becomes the judgment of the Congress, we will do our best to abide.

Senator BAUCUS. Could you tell me how long does it take now on the average to issue regulations?

What is the high-low range and what is the average?

Mr. EGGER. The Acting Chief Counsel is here.

Mr. SEBASTIAN. I can't really give you an average. I tried to get that information yesterday. They are compiling it. We probably can provide it for the record.

Mr. SEBASTIAN. The time it takes to issue regulations varies, of course. The windfall profit tax regulations for instance, were issued the day the bill was passed, the day the President signed the bill. On the other hand, regulations involving section 385, the debt-equity question which Congress gave Treasury authority to solve by regulations are extremely complex and have been pending for some time. The present administration is reviewing the regulations proposed by the last administration.

I just cannot give you now the average time it takes to issue regulations but I can provide it for the record.

Senator BAUCUS. I am curious. In your position as Chief Counsel, I understand you are the primary person with the primary responsibility.

Mr. SEBASTIAN. I am Acting Chief Counsel.

Senator BAUCUS. That's right, Acting Chief Counsel. Maybe it is because you have been acting a short period of time, I don't know. I am a little surprised that you don't even have a feel for the average length it takes regulations to come out.

Mr. SEBASTIAN. Well, let me say this. We have to have a work plan which has to be submitted to the Secretary of the Treasury before we can even start on a regulation.

In those plans, we do try to estimate the time it will take us to finish a regulation. The average time we have been using lately is probably about 14 months after starting on the regulations depending again, upon the complexity of the regulations.

The problem is not always how long it takes to actually work on the regulation. The problem is often when we are able to start our work on a particular regulation.

Senator BAUCUS. When you can what?

Mr. SEBASTIAN. When we are able to start a particular regulation project. In other words, with the resources we have and the fact that we probably have to set up about 90 regulations projects a year as a result of laws passed by Congress, the fact that we have approximately 50 attorneys working on regulations, we cannot always start a regulations project the date the law is passed. We have to set up priorities.

Senator BAUCUS. Of course, you have some advance notice. I grant you the windfall profit tax is so complex it will take some time to get the regulations out. I think it is inordinately complex and it needn't be that complex frankly.

Nevertheless, that is primarily an administration bill, so the administration had some advance notice what was in the bill.

Mr. SEBASTIAN. That is true. The people who are going to write the regulations were also working on the legislation.

Senator BAUCUS. So there is much more than 18-month time period here.

Mr. SEBASTIAN. From the time it starts. Well, I would probably say, yes.

Senator BAUCUS. So the people who draft the bill were also the people who write the regulations.

Mr. SEBASTIAN. The initial draft.

Senator BAUCUS. I am just trying to establish as a practical matter how much time the Service has.

Mr. SEBASTIAN. That is right. The initial draft of the bill is done by the attorneys in the Legislation and Regulations Division of the Office of Chief Counsel. During that period they cannot, in most instances, work on the regulations. At that time, there is no clear indication of what the law will provide when enacted. In most cases, it would probably be a waste of time to work on the regulations before it is absolutely clear what the statute will provide.

Senator BAUCUS. In addition to that, there is a provision in this bill that at the 18-month limit, it will apply unless otherwise provided by law.

That is, if another "Windfall Profit Tax Bill" comes along, that bill could very easily include a provision that the time could be 24 months or 2 or 3 years or something.

I hope it wouldn't go that far, but at least that is certainly possible.

Mr. SEBASTIAN. Quite often, Senator, the extended time results from extended objections and discussion with people who are affected by the bill.

The regulatory process of which Mr. Egger spoke includes publishing a notice of proposed rulemaking in the Federal Register. We then provide a period for people to make written comments.

We then set up a hearing in which interested parties come and testify. The proposed regulations may have to be partially revised as a result of testimony at the hearing and the written comments.

Some of the bills are so complex we have had to have several hearings.

Senator BAUCUS. That reminds me of Mr. McKee's point. He explained that some regulations are extremely complex, many pages and so forth.

The thought occurred to me that is all the more reason for an 18-month time limit to cut down the number of pages here.

I talk to a lot of tax attorneys. They complain about the complexity. In fact, the central core of the complaint is that they are now less sure they are giving sound advice to their clients. They are more worried about potential liability, because of the increased complexity of statutes and the code.

I grant you that statutes are a large part of the problem here. Tax attorneys are finding it more and more difficult to give sound advice to their clients. It is becoming quite worrisome.

Mr. SEBASTIAN. There is, as you mentioned in the discussion relative to the bill, a ruling process provided by the Service. We do

issue a number of rulings during the time we are studying the regulations, to particular taxpayers, where we preceive that there is a difficult problem.

[The material concerning average time to issue regulations follows:]

During the three-year period 1978 to 1980, inclusive, the Internal Revenue Service published 172 regulations which arose out of enactments of new public laws. During this period, the average amount of time that elapsed between enactment of the public law to which the regulation related and the issuance of that regulation was about 3 years 4 months. The range for issuance of regulations was the date of enactment of the related public law to 187 months after enactment. This time lapse includes not only the time required for public participation in the rulemaking process, but also the considerable amount of time that is often required for review of the regulations by Treasury Department officials for policy purposes. Two other factors must also be noted: (1) In the case of many of the regulations, the regulations had been published in the Federal Register in proposed form well in advance of the final regulations, and thus, the public was aware of at least tentative IRS and Treasury views; (2) for purposes of computing the period between enactment of legislation and publication of implementing regulations, only the earliest public law covered by a regulation was taken into account. Thus, the average time period stated above is longer than it would be if each public law were taken into account separately.

Senator BAUCUS. I would like to turn now to the appeal process in collection cases.

Commissioner, you mentioned a couple of times that you didn't know what the issues would be.

Mr. EGGER. Right. I still don't.

Senator BAUCUS. Let me tell you. As I understand it, in many cases, even in collection cases, the taxpayers contest or disagree with the amount owed. I mean, it is not entirely just a collection.

That is, the issue of the amount owed is not separated out entirely or completely. So, there is a significant element of doubt as to the amount owed and a significant number of collection cases.

Second, I can think of very few jobs worse than being a tax collector. It must be awful, tough, to go out and knock on doors and collect taxes. I am sure tax collectors suffer more abuse than most of us in public office. I am sure people slam doors in their faces and call them names. It must be just a rotten business.

In all probability, after a while, I am sure a lot of collectors get a little bit, if not callous, a little—they get used to this, accustomed to this to some degree and there is a temptation for a lot of tax collectors to get a little routine, because they have seen so many deadbeats so many people that just should pay their taxes and why the heck don't they pay their taxes and why should all these collectors go through all this abuse and going through the collection process.

So the point here is to provide just one appeal step, that is from—in those cases where taxpayers are still contesting, disputing the amount owed, and second, to help keep collectors from being too callous, too insensitive, to taxpayers.

Mr. EGGER. Senator Baucus, let me comment a bit on those things.

To begin with, in those instances where even after all of the appeal rights have been afforded the taxpayer in the determination of the tax liability, in those instances where there is dispute, genuine dispute over the amount, this is one of the areas where our problem resolution program works quite well.

The officials of the districts have authority to stop cold the collection process. If the taxpayer simply indicates reasonably that there is a genuine question as to the amount owed, the collection process is stopped under our present sytem and the matter investigated.

The revenue officers who are basically the collection people do not have blanket authority to go ahead, for example, on seizure; that always has to be approved on up the line.

The filing of the lien is simply formalizing something that the statute has already put in place; namely, the existence of a lien, once the tax is assessed.

Finally, the great majority of our problems come not from a taxpayer who just now and again has a problem and doesn't want to pay because he genuinely believes that he shouldn't pay, they come from repeat offenders. They come from people with whom we have difficulty time after time.

Many of them, certainly on the business side, in the small business side, come from trust fund problems—taxes that they have withheld from salaries and wages of their employees, have not been paid over to the Government, but instead, have been diverted to the use of the individuals or the business.

So, we have a continual parade of repeat offenders. Those are the people that our revenue officers are dealing with and invariably those are the problems, those are the ones that complain most about their problems.

Senator BAUCUS. We don't have a lot of time here. I am going to have to stop.

Mr. EGGER. You said earlier that you believed there are a great many cases where in fact the IRS has been arbitrary, capricious or whatever, borne too heavily on the taxpayers.

I would say that does happen now and again, but based on everything I am able to find out, in the vast majority of those cases, when we investigate them, we find that there is every bit as much problem on the taxpayer's side as there is on the side of the Internal Revenue Service.

Our problem is that we are hamstrung. We can't talk about it.

Senator BAUCUS. I understand that. I just think it is not an insignificant problem. It is one that should be addressed.

Let me just give you a chance now to sound off on voluntary compliance. I think it is a problem we are all going to have to address here, quickly. I am curious what your personal views are as to the rise of involuntary compliance.

Mr. EGGER. Well, you said it extremely well. I happen to agree with literally everything you said in your opening comments. I think that voluntary compliance is in jeopardy because of most of the things you refer to. I am troubled by the potentially disappearing voluntary compliance. I am sure it is attributable to inflation. I am sure it is attributable to a sort of disaffection with Government in general.

I am sure that people hate to part with their money in the first place. All those are reasons why some taxpayers are beginning to be unhappy.

Senator BAUCUS. I understand that the number of protestors and people who don't comply is rising very significantly.

Mr. EGGER. Yes.

Senator BAUCUS. Therefore, I think it is a problem we have to address.

Thank you very much, gentlemen. I appreciate your coming. I know you have taken a lot of time away from your work. We appreciate it very much.

Senator GRASSLEY. There may be other members of the subcommittee or full committee who want to ask you questions in writing. We would appreciate it if you would respond to those.

Thank you for the 1 hour and 25 minutes you have given us of your time. Your reaction to this legislation is most helpful to us as we consider the provisions within this bill.

We appreciate your expertise and thank you.

Mr. EGGER. Mr. Chairman, we would be happy to respond to questions in writing. I have been asked by the Treasury to request of you that this legislation not get ahead of the tax package that the President has in mind, but that it could be part of the second bill.

Senator BAUCUS. The President seems to be adding more provisions though, in that bill. [Laughter.]

Mr. EGGER. Well, I am not privy to that, Senator Baucus.

Senator GRASSLEY. You can take a message back to the administration that I am not going to stand in the way of a clean bill being adopted, but if there is to be only one tax bill, I have several provisions I want to add to it as well.

Thank you very much.

[The prepared statement of Hon. Rosco Egger follows:]

STATEMENT OF ROSCOE L. EGGER, JR., COMMISSIONER OF INTERNAL REVENUE

Mr. Chairman and members of the subcommittee, I am pleased to appear before you this morning to present the views of the Internal Revenue Service on S. 850, the "Taxpayers' Bill of Rights Act." I am accompanied today by Taxpayer Ombudsman Harold Browning, Assistant Commissioner for Compliance Philip Coates, Assistant Commissioner for Taxpayer Service and Returns Processing Eddie Heironimus and Acting Chief Counsel Jerome Sebastian.

The Service shares the concerns expressed in the title of this bill. We believe that taxpayers' rights must be protected and have provided numerous safeguards of those rights in the procedures we have established to collect taxes once liability is fixed. In introducing S. 850, Senator Baucus indicated that he was concerned over numerous "horror" stories describing alleged IRS harassment and unwarranted confiscation of property. The Service, too, would be very concerned if these supposed "horror" stories accurately reflected current Service practices. The fact is that rarely are these stories accurate. The Service, however, cannot publicly refute these stories since they involve tax return matters protected under section 6103 from public disclosure.

Concern has also been expressed that levies and seizures have increased significantly in recent years. In fact, the number of seizures, when compared to 1975 and 1976, has gone from an average of 18,000 per year to 9,400 in 1980. Moreover, the number of installment agreements entered into by the Service has been increasing. Thus, the percentage of collection cases disposed of by seizure has decreased significantly in recent years. A 1978 report by GAO entitled IRS Seizure of Property: Effective, But Not Uniformly Applied, which examined seizures during 1975, found that while there was not always uniformity among IRS districts, uniformity should not be equated with fairness and that taxpayers, as a general rule, are treated fairly. We believe that this conclusion is equally valid today.

The procedures set out in S. 850 will not, we believe, eliminate those rare cases where a taxpayer may be treated harshly. The Service constantly is trying to improve its procedures. As this Subcommittee, in the exercises of its oversight jurisdiction, identifies problem areas, we will move to correct them. The existing administrative procedures and systems at the Internal Revenue Service provide

taxpayers with a number of rights and, we believe, are sufficient to allow us to find solutions to collection problems as they arise.

I would now like to discuss the specific provisions of S. 850.

TAXPAYER SERVICE AND RESOLUTION OF TAXPAYER PROBLEMS

S. 850 would establish a Presidentially appointed "Ombudsman" within the Internal Revenue Service to act as a taxpayer advocate. The Ombudsman would report directly to the Commissioner.

The Internal Revenue Service has two major programs for providing taxpayer assistance: (1) the Taxpayer Service Program and (2) the Problem Resolution Program. The Taxpayer Service Program, under the jurisdiction of the Assistant Commissioner (Taxpayer Service and Returns Processing) provides assistance to taxpayers in completing their tax returns and responds to inquiries from taxpayers requesting information about the tax system, their rights and obligations under it, and the tax benefits available. The Problem Resolution Program is headed by the Taxpayer Ombudsman, who functions as an advocate for the needs and concerns of the taxpaying public and reports directly to me.

Taxpayer service

During 1982, the Taxpayer Service Program expects to handle about 33 million telephone calls through a nationwide telephone system, answers about 100,000 letters, and assists over 6 million taxpayers who walk into about 800 IRS offices located throughout the country. The taxpayer service programs also provide educational materials for schools and colleges, a volunteer program for low income and elderly taxpayers, special help for hearing-impaired and foreign language speaking taxpayers, special publications and workshops for small businesses, responses to technical inquiries, and widely used publications about tax law and the tax administration system.

Problem resolution program

In addition to the Service's general Taxpayer Service Program, we have established a Problem Resolution Program within the IRS. This program was established nationwide in 1977 to provide special attention for taxpayers' problems and complaints not promptly or properly resolved through normal procedures, or problems taxpayers believe have not received appropriate attention. In addition, problems handled by the Problem Resolution Program are analyzed to determine their underlying causes, so that corrective action can be taken Servicewide to prevent their recurrence. The Problem Resolution Program has proven very successful, with a high level of taxpayer satisfaction reported through follow-up questionnaires. In 1979, the Service established a Taxpayer Ombudsman in the Office of the Commissioner. The Taxpayer Ombudsman reports directly to me and, therefore, has the authority to cut across organizational lines in order to quickly resolve individual taxpayer problems and systemic problems. The Ombudsman, which is a Senior Executive Service position, administers the nationwide Problem Resolution Program; represents taxpayer interests and concerns within the IRS decision-making process; reviews IRS policies and procedures for possible adverse effects on taxpayers; proposes ideas on tax administration that will benefit taxpayers; represents taxpayers' views in the design of tax forms and instruction; and suggests (as the taxpayers' advocate) changes to proposed or existing legislation.

During Fiscal Year 1980, 210,000 individual taxpayer problems were resolved through the Problem Resolution Program (PRP). Each problem, when received by PRP staff, is documented on a special form, given a control number, and entered on a control log. The problem is then sent to the IRS function responsible for that type of problem (i.e., Collection, Examination, Taxpayer Service). PRP cases are strictly monitored until the problem is resolved. The taxpayer is kept informed of the status of the case, and follow-up questionnaires are sent to a statistically valid sample of closed case taxpayers to measure the effectiveness of the program. Every effort is made to resolve PRP cases as expeditiously as possible. If a case cannot be resolved within five workdays, the taxpayer is contacted, advised of the status of the case, and provided the name and telephone number of the employee responsible for resolution of the problem. A PRP case is not considered closed until all actions have been taken to resolve the problem.

In addition to resolving individual taxpayer problems, the Problem Resolution Program analyzes the underlying causes of taxpayer problems so that systemic problems can be resolved. Since the beginning of the program, 139 systemic problems requiring National Office resolution have been identified; of these, 97 problems have been resolved and have resulted in systemic changes improving Service efficiency and responsiveness to the public. For example, a reduction in the criteria for

examining amended individual income tax returns has eliminated a delay in receiving refunds for a significant number of taxpayers filing amended returns. Other examples of systemic changes resulting from the Problem Resolution Program are: a change in processing forms requesting missing return information in order to eliminate erroneous assessment of late filing penalties, and a revision in the Form 1040 instructions to prevent delays in issuing refunds to taxpayers who have changed their names or are filing joint returns with different last names.

We believe that the present IRS Problem Resolution Program and Taxpayer Ombudsman position largely accomplish what S. 850 would seek to accomplish through establishment of an "Ombudsman," with the exception of the proposed Ombudsman's authority to issue "stop action orders," which I will discuss shortly. With regard to S. 850's provision that the Ombudsman be appointed by the President and confirmed by the Senate, and report annually directly to the tax-writing committees of Congress, we are concerned that there may not be clear delineation between the Commissioner's responsibilities and the Ombudsman's responsibilities with regard to tax law administration; this is especially true with S. 850's provision for the Ombudsman to have the authority to issue "stop action orders."

As proposed by S. 850, the Ombudsman, even though located in the Office of the Commissioner, would be a political appointee whose job is to function as an advocate for taxpayers' rights and who would thus effectively have some independent power to administer the tax law. We are concerned that such independent power (1) would not provide a balance between protecting the Government's and taxpayers' interests and (2) would open up dangerous potential for political abuse of the tax system. In addition, the Ombudsman, perceived as an independent authority, may be even less effective in working within the Service to resolve individual taxpayer problems and systemic problems.

STOP ACTION ORDERS

S. 850 provides that the proposed Ombudsman would have the authority to issue "stop action orders" in situations where the Ombudsman finds the taxpayer would suffer unusual, unnecessary, or irreparable loss as a result of "the manner in which the internal revenue laws are being administered"—a stop action order would delay for up to 60 days IRS action adverse to the taxpayer, except in jeopardy collection cases.

The meaning of this provision is not entirely clear. To the extent it is intended to provide the taxpayer with a right to challenge the unlawful application of internal revenue laws, appropriate challenge of both pre- and post-payment action already exist. Taxpayers are accorded pre-payment administrative appeal rights and may challenge a final administrative determination in the Tax Court (in a deficiency proceeding) or in the Court of Claims or U.S. District Court (in a refund proceeding). We do not believe that it would be appropriate to divide the existing authority with respect to the determination of substantive legal rights.

To the extent the "stop action order" provision is intended to establish limited equitable powers within the IRS, these powers already exist. Under existing procedures, Service officials (e.g., District Directors, Regional Commissioners, and the Taxpayer Ombudsman) have the authority to stay administrative action in cases of severe hardship to particular taxpayers. In exercising this authority, Service officials are guided by Internal Revenue Service policy and procedures which provide an automatic stop action system, at the taxpayer's initiative. For example, assessment does not occur until the taxpayer has exhausted all examination, appeals, and where appropriate, Tax Court channels for resolving the tax liability issue. Also, after the tax liability has been determined and assessed, taxpayer claims creating reasonable doubt as to the validity of the assessment almost always result in freezing action on the account while the claim is being investigated. The law and Service policy and procedures governing the collection process contain numerous safeguards to protect taxpayers' rights during the process, as I shall discuss shortly in connection with S. 850's provisions relating to collection of taxes.

In exercising discretion to determine whether and when to take various tax enforcement actions, Service officials are responsible for protecting both the interests of the Government and of taxpayers. However, granting additional, independent authority to an Ombudsman to issue stop action orders in certain situations by considering only taxpayers' and not the Government's interests could seriously impair the Service's ability to collect revenue.

TAXPAYERS' RIGHTS IN COLLECTION ACTIONS

S. 850 provides that the IRS could levy only after obtaining a court order (except where collection is in jeopardy) and that administrative systems for taxpayer appeals of liens and levies would have to be established within the IRS.

These provisions, if enacted, would severely impair the Service's ability to collect revenue and are, we believe, unnecessary in view of existing statutory and Service procedural requirements governing the collection of taxes.

Assessment of tax occurs when the tax liability has been determined. This determination can be made, for example, by the taxpayer's filing the return, by the taxpayer's agreement with IRS findings, by Tax Court determination, or by IRS findings with regard to taxes not under Tax Court jurisdiction.

The collection process begins after the assessment of tax—i.e., after the tax liability has been determined. Collection issues do not involve questions of whether the tax is owed, but of whether and how the taxpayers will pay.

Internal Revenue Code section 6321 provides that if any person liable for tax neglects or refuses to pay the tax after demand, a lien for the unpaid amount arises in favor of the Government on all of the taxpayer's property. (S. 850 would not affect the occurrence of the lien itself.) Section 6322 provides that this lien arises upon assessment. After the lien arises, the Government can file a notice of lien, which becomes a matter of public record and is an important means of safeguarding the Government's interest against other creditors.

A determination to file a notice of lien must be made within 120 days from the date the taxpayer delinquent account is received in the district, with an additional 45 days for individual accounts and 60 days for business accounts allowed if the case is assigned to a revenue officer. (The taxpayer will have been sent four computer notices before the case is sent to the district.) An Internal Revenue Service policy statement provides that: "A notice of lien shall not be filed . . . until reasonable efforts have been made to contact the taxpayer in person or by telephone and afford him/her the opportunity to make payment." After talking to the taxpayer, a determination may be made to not file the notice of lien. In the few instances where lien notices are filed improvidently or erroneously, the Service sends a letter to the taxpayer apologizing for the filing of the notice of lien and suggesting that the taxpayer might want to furnish a copy of the letter to creditors or other persons.

The Service may also levy upon or seize taxpayers' property. The law and Service policy and procedures provide safeguards to protect the interests of the taxpayer or other persons in connection with Service levies and seizures. For example, Internal Revenue Code section 6334 exempts certain property from levy; section 6335 contains requirements to protect the taxpayer in connection with the sale of seized property; section 6343 provides authority for the Service to release levy and return property; section 6337 provides for taxpayer redemption of property; and section 7426 provides for several civil actions by persons other than taxpayers in connection with levy and sale.

A unanimous Supreme Court in 1977 [1] generally upheld the Service's power to levy or seize without a court order while requiring a court order where a search or entry of private property was necessary to effect the seizure. Our procedures scrupulously adhere to the requirement for obtaining court orders as required by the Court's ruling.

Service policies and procedures once a taxpayer delinquent account is issued also provide the taxpayer with protections. For example, we have encouraged the use of installment agreements. First-time individual income tax delinquents automatically qualify for an installment agreement, without regard to their financial circumstances.

Other taxpayers who qualify financially may also be offered installment agreements. For example, if a business taxpayer is keeping current and not incurring further delinquencies with respect to trust fund taxes, our personnel are encouraged to consider installment agreements. Other policies and procedures require our personnel to consider other alternatives and to seek supervisory approval before taking certain forms of collection action.

Providing for an administrative appeal of a Federal tax lien notice or levy would unduly and unnecessarily delay the securing of the Government's interest in property; it is also unclear what the issue of the appeal would be, since the tax liability has already been determined prior to the collection process.

S. 850's proposal for obtaining a court order prior to levy would create an extreme administrative burden on the Service. Under this provision, the Service, to levy,

[1] *G.M. Leasing Corp.* v. *United States*, 435 U.S. 923 (1977).

would have to obtain from a Federal or State court,[2] an order based on the court's findings that the taxpayer has exhausted administrative remedies and that statutory requirements for levying have been met. During fiscal year 1980, the Service issued 611,000 notices of levy and effected 9,421 seizures. We believe the additional drain on collection resources that would be imposed by the court order requirement is unnecessary in light of current law and Service procedures providing protection for taxpayers prior to levy action.

The Internal Revenue Service shares the concern of the sponsors of S. 850 for protecting the rights of taxpayers in the collection process. However, we believe the collection provisions in S. 850 present several administrative problems while not providing taxpayer protection beyond what current law and Service policy and procedures provide.

ISSUANCE OF REGULATIONS WITHIN PRESCRIBED TIME LIMIT

S. 850 would require "initial final regulations necessary to implement the Internal Revenue Code provisions" to be issued within 18 months after enactment of the Code provisions.

In addition, it would require any initial final regulations "necessary to implement" code amendments or additions enacted after 1969 but before 6 months from the date of enactment of S. 850 to be issued within 36 months of enactment of S. 850.

If a regulation is not issued within the prescribed period, then the effective date of the regulation cannot be earlier than the date of publication of the regulation in the Federal Register and any reasonable position taken by a taxpayer with respect to an issue for which regulations have not been promulgated on time shall apply to that taxpayer, notwithstanding any subsequent regulations. (This would not apply to recurrences of the issue after the date on which regulations are published.)

This provision is of great concern to both Treasury and the Service because we share the responsibility for issuing tax regulations. We both believe that the enactment of this inflexible deadline provision would be highly detrimental to the tax regulations process.

We are very concerned that the 18-month deadline proposed by S. 850 would affect adversely the quality of tax regulations by taking away from the Service and Treasury the flexibility to issue regulations within time frames that take into account the complexity of the issues involved and the need for more prompt guidance in certain areas. Normally, at last one major piece of tax legislation is enacted every two years. There are often more than 50 regulations projects with respect to each major piece of tax legislation. An arbitrary time limit with respect to these and other regulations projects will force the Service and Treasury to devote time to regulations projects without regard to the relative importance of the projects. This may result in delays in the issuance of some regulations that should be issued in much less than 18 months as resources are diverted to the issuance of other regulations which could be delayed beyond 18 months without significantly harming tax administration. For example, the extreme complexity of the recently enacted windfall profit tax statute and the fact that the statute generally left to regulations the design of the system for administration of the tax required the Service to issue regulations covering the administration of the tax immediately. Accordingly, these regulations were issued on the day the windfall profit tax was enacted. Had there been a statutory deadline for issuance of all regulations, it might not have been possible to promptly issue the windfall profit tax regulations because of the diversion of resources to other projects.

With regard to the provision that, if regulations are not issued within the prescribed time frame, they must be prospective, it is the present practice to make legislative and administrative regulations prospective because such regulations present new rules of which the taxpayer has no previous notice. However, interpretative tax regulations are generally made effective as of the effective date of the underlying statute in order that administrative interpretations of the statute may be uniform and subject to the notice and comments procedures. We believe the present system for interpretative regulations is preferable to requiring an interpretative gap for the period between the enactment of the statute and the issuance of final interpretative regulations. There would be a great deal of confusion for both the taxpayer and the Service about how a Code section should be interpreted during this "gap."

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[2] If the proposed levy order were to encompass the merits of the assessment, we would question the legality of State court jurisdicition. However, as explained earlier, collection issues do not involve questions of whether the tax is owed, but of whether and how payment will be made.

We are extremely concerned about the other penalty for failure to issue regulations on time, i.e., that the taxpayer will prevail if he can establish that he has a reasonable basis for a position concerning an issue not covered by timely regulations. This could bestow substantial windfalls on aggressive taxpayers who are willing to gamble that regulations will not be issued in 18 months.

We are also concerned with the idea that nonretroactivity and giving credence to all "reasonable" interpretations is an appropriate sanction if regulations are not issued timely. The "penalty" that results does not apply to either the Service or Treasury but to all other taxpayers. Requiring them to suffer the consequence of a delay in the issuance of a regulation will not improve the rights of all taxpayers. Thus, we feel it would be a serious mistake to institute these "penalties" for regulations not issued on the prescribed schedule.

REDUCTION OF "REDTAPE" FOR INDIVIDUALS AND SMALL BUSINESS

S. 850 proposes that the present statutory requirement for filing declarations of estimated tax by individuals be eliminated. Under the proposal in S. 850, individuals would be required to make installment payments of tax in situations where they are now required to file declarations of estimated tax. Under current law, the declaration and installment payments of estimated tax for individuals are two separate requirements. We agree that elimination of the estimated tax declarations for individuals would simplify the administrative burden for taxpayers and the Service. We also agree with S. 850's proposal to raise the $100 floor in present law before a declaration is required to $300 before installment payments are required. The Service has recommended both of these estimated tax legislative changes in the past, as tax simplification measures, and we are pleased to see congressional support for these changes.

With regard to S. 850's proposal that employers not be required to furnish employees W-2 forms when employment is terminated in the middle of the calendar year, existing regulations under Internal Revenue Code section 6051 accomplish this. Those regulations provide that, if an employee terminates employment before the close of the calendar year, the employer shall furnish the W-2 at any time, but no later than January 31 of the next year; the regulations further provide that, if the terminating employee requests that a W-2 be furnished before January 31 of the next year, the employer must do so within 30 days of that request or 30 days of the last salary payment, whichever is later. This amendment to the regulations was made in 1979. We would, of course, have no objection to the proposed statutory requirement.

Mr. Chairman, this concludes my prepared testimony. I would be most pleased to answer any questions you or other members of the subcommittee may have.

Senator GRASSLEY. It is my pleasure now to call Thomas J. Donohue, president of Citizens Choice in Washington, D.C.

Thank you very much for your patience. I am sure you have testified before enough committees to know that usually the first testimony from the administration takes the most time, particularly with a new administration.

Mr. DONOHUE. Thank you, Mr. President. It is a pleasure to be here.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT, CITIZENS CHOICE, WASHINGTON, D.C.

Mr. DONOHUE. It is a pleasure to be here, Mr. Chairman, and to continue the discussions we have had in the past months. I might interject, before I say a word about my own testimony, that we have been working very closely with the new Commissioner, Mr. Egger. We find him to be a responsive individual, very concerned about the issues that you have brought forward.

I marveled as I sat in the back of the room though and thought how interesting it would be if we could have had a large cross section of American taxpayers observe our discussion this morning on complexity. Each time I look further into this, I find the system more and more self-defeating. It is so complex that we can't even

agree whether we are going to write a regulation in 18 months or 2 years. We have 2,500 pages of tax law, and five times that many pages of tax regulations. I often wonder why it is so difficult for the IRS to explain what the Congress meant in the first place. I think that is the basis of what I have to say this morning.

Mr. Chairman, I thank you for the opportunity to be here. As you know, as president of Citizens Choice, I represent more than 70,000 American taxpaying citizens who are working diligently on these issues.

Senator GRASSLEY. Your entire statement will be printed.

Mr. DONOHUE. Yes, I appreciate it.

Senator GRASSLEY. We would appreciate it if you could summarize in 5 minutes.

Mr. DOHOHUE. I am going to go for quite some brevity this morning.

Senator GRASSLEY. Thank you.

Mr. DONOHUE. Let me say that the majority of my comments, Mr. Chairman, are based on a study which you are aware of that Citizens Choice commissioned through the appointment of a national commission on taxes and the IRS, a study that took some 16 months and was led by 26 distinguished Americans from throughout the country.

In a sentence, our group learned that the American taxpayer is feeling increasingly alienated and frustrated by the pressure of an ever-increasing tax burden, and a tax system which they perceive to be both unfair and frightening.

It is clear to me that the results of this are the failure to comply, the opportunities to avoid taxes that continually crop up, and the feeling of fear and frustration that we find in many of our taxpayers.

Now, I am very encouraged by what you are doing here. I think this is a first and very important step with new people in the positions of power in the Senate, to put before the Congress and the American people a meaningful reform or a meaningful bill that protects their rights.

Let me say very briefly how we came to the conclusions I am going to sum up.

We held hearings in 10 cities around the country. We had a toll-free hotline. We solicited written testimony. We spoke with more than 3,000 people. Our hearings were particularly important, I think, because they were held out in the field, not here in Washington, and they weren't held by the Government, but by someone who is perhaps a little less threatening. We were able to bring to the discussion people who might not otherwise come out to visit.

The results startled us. People are frightened to death. They don't feel they have the same rights or the same privileges or protection as they have under the Miranda law. They think that criminals get a better cut, and they might have some fact in their concern.

Their fear is brought about in many ways by the complexity of the tax system. The feeling the people have is one of impotence, an inability to understand, to deal with or even to find someone who can help them to deal with it.

So, they react in two ways. You will be interested in this.

First of all, many citizens pay more taxes than they owe as a way of trying to avoid being brought into this unknown, frightful relationship with the IRS.

Then, as you have indicated, many citizens choose not to pay their taxes. They do that by avoiding it through the underground economy, or as we have found in plenty of places around the country, by joining organizations who claim that the income tax laws are unconstitutional.

Now the second major problem after fear, and as I said, perhaps the real thing that leads to the fear is the complexity of the tax system. In our tax commission report we call for a simplistic approach to taxes. Can we simplify the tax system?

We had a meeting yesterday with a group of individuals who are encouraging us to go forward with the Senate and the Congress, and try and really go for tax simplification.

Why—would anyone in this room not want to pay 7, 8, 9 percent of their income, forget filling out the forms, forget all the deductions, forget all the IRS and the lawyers and accountants. I don't think anyone would have a problem with that. The people who have a problem with it are the 650,000 lawyers in the United States, and all the accountants and all the people that you saw up here. There was $400,000 worth of salary sitting up in front of you this morning. Those people and all the people they represent write 11,000 pages of tax law for their livelihood—and it is getting pretty expensive.

Somehow, I just think it would be awful friendly of the Congress to go home and find out themselves the only people that would support that simplification, a small group, the taxpaying Americans in this country. You ask them one after another, and one after another they would tell you to go ahead and do it.

Let me sum up by saying that our recommendations are in two categories; those to the IRS and those to the Congress. What we ask the Congress to do is to be very sure that the laws that you pass are in fact clear and are articulated that way by the IRS. They take five pages to explain every page that you write.

Second, we are asking that you exercise restraint in the Congress in using the tax law to do every other thing you can think of. We have the IRS using the tax code as a tool to engineer changes in social policy, to keep track of what is happening in energy conservation, to keep track of what is happening in integration in schools. That adds to the 18 months, and it takes away from their primary responsibility to collect revenues.

We are also recommending to the Congress to be responsive to the IRS budget request for people to do their jobs. I am not saying add more money, I am saying, let's take a look at the budget, let's reallocate the funds to where they belong, and let's give the IRS the type of qualified people they need to deal with a tax system that they don't even understand.

The fourth thing we are asking the Congress to do is to take a very careful look at the frustration that is coming about in this country because of the windfall increases in taxes that the Congress never passes.

This year, $44 billion or $40 billion in additional revenue will come in, because people are moved into higher income tax brackets because of inflation.

If somebody in our office gets a 10-percent raise, they pay 16 percent more in taxes. The largest single increase in the household budget this year is 25 percent and that is for Federal taxes. I am here to tell you the political ramifications of that are unbelievable.

We are asking the Congress to work with the IRS to fully inform the taxpayers of their rights. I heard the gentleman from the IRS tell us all about their form 71's. You go around and ask the American people what they know about the ombudsman. You ask them what they know about their rights in a hearing. You ask them if they know they can go ahead and appeal. You ask them what it is going to cost and who is going to pay for it and they don't know and they are frightened.

We need to do something about it.

We are asking the Congress to move to provide full reimbursement for legal, accounting and other expenses to taxpayers who challenge the IRS and are successful in it, but have to spend the money to compete with them. Our present system discriminates unfairly against those who don't have adequate funds to hire attorneys. You heard how just in one IRS office we have 50 attorneys here and we have 100 there.

I encourage time limits. The taxpayer is under a time constraint. Citizens are given 10, 30, or 90 days to respond to IRS inquiries and demands for documents, yet the IRS is under no constraint to respond in any time frame. They move at their leisure which adds to the fear and apprehension of what is going on. I think the Congress needs to very, very carefully look at that.

I think the Congress should relax the requirements in many areas for voluminous records. We have great tables on things such as sales tax. We can have them in other things, for meals and entertainment and other questions. Congress should establish safe harbors where there are established ranges in which the deductions can fall. Then we don't have all this paper and all these accountants and all these—I mean, just to file the papers we send to the IRS we need warehouses. Who ever reads them?

Finally, we suggest the Congress establish very strict prospective applications of newly enacted laws. You know, it is amazing, if I go to court and challenge the IRS and I am successful, they won't appeal the ruling because they can contain that ruling within that jurisdiction.

If they go to court and challenge me, then they will apply that ruling if they are successful across the country. They pick their own terms as to which rulings they are going to use and which they are not.

I think that Congress ought to act on that.

Well, let me conclude, Mr. Chairman, that this bill, a Taxpayers Bill of Rights is a very nice beginning, but it is only a beginning.

The issues, Senator, that you have included in your bill and in some of your other bills are very timely.

Out there the American taxpayers are frightened and they are angry.

Thank you very much, Mr. Chairman.

Senator GRASSLEY. Thank you very much.

I have two or three questions I want to ask you, but first you have expressed an interest in something I frankly have yet to make my mind up about. I get questions from the grassroots, as obviously your organization does, concerning the gross income tax. Although you didn't refer to it as the gross income tax, I assume that is what you are referring to where you would have a lower rate of taxation, and simplified forms.

I would appreciate you and or your staff supplying any information you have on this to me so I could use it as a resource.

Mr. DONOHUE. Thank you, Mr. Chairman. We will work with your staff on that. We are now trying to do the basic econometrics and look at some simplified ways of doing that. We will get together with your staff and see what you folks already have and we will add what we have and see if we can share it with some of the members of the committee.

Senator GRASSLEY. Obviously, many people agree with you as with Senator Baucus, about the need for a Taxpayers Bill of Rights. In order to implement Senator Baucus' goals, we must deal with the issue of resources.

What, in your view do you consider the most important priority in this bill, recognizing the fairly limited resources we must confront.

Mr. DONOHUE. It is a point that we are all trying to cut down Government spending. But I think that Senator Baucus is very correct on the issue of the ombudsman. The present ombudsman is a lovely gentleman, who happens to be one of the fine career employees in the IRS. He has about as much power as—I am not sure if he has as much power as Mr. Egger's secretary.

He is capable of commenting on anything he likes, but he cannot stop a collection activity. He cannot by his own action even cause the IRS to pause for a minute while additional information or a quick breath is taken before an action goes forward.

I think the IRS has a good program in the resolution issue, but as was pointed out in the testimony today, most of the resolution questions come down to "Where is my check? It was due last week and it is not here yet."

I think that some independence, whatever form that takes, that allows the ombudsman at least a temporary ability to stop an IRS action so that others of superior authority might focus on the problem, is absolutely essential.

I think that the question of issuing regulations within 18 months is very important. Quite frankly, I have been amazed at how quickly the Congress can write legislation and how quickly agencies—and I spent 6 years in the Federal Government—can put things out when they have to. And 50 attorneys for the IRS are an awful lot of people. I would hold their feet to the fire on 18 months, quite frankly.

If there needs to be an exception, as the Senator indicated, that can be taken care of by the Congress. But what happens during that 18 month time limit is that the interest groups all get into a wrestling match with the IRS on how to best interpret the laws.

The special interest groups are the people that would be basically opposed to tax simplification. As you go forward on the ombuds-

man and go forward on the 18 months, and you go forward in your other bill, Senator, on reimbursement for those who petition the Government, I would like to see you add to that.

Why do we need some of this, anyway? How do we get rid of some of these voluminous regulations. There is no sensible man or woman who understands half of it.

Senator GRASSLEY. Then you see the creation of the ombudsman as the most important part of the bill; and second, the 18 month deadline?

Mr. DONOHUE. Yes. Senator, the other adjustments in the bill are refinements, going from $100 to $300. Those are certainly important and emphasizing taxpayer services and so on. I encourage those.

But I think the three most important issues are as follows: First, the ombudsman, because that gives the American people the feeling that there is somebody besides that tax collector who can at least stop the train for a minute. He may not do it but once a week or once a month, but he can do it. Second, the issue of causing these regulations to move forward quickly and perhaps more simply; and then the issue which I know the Senator is addressing in another bill is a reimbursement provision.

I know that some of my colleagues would take on the IRS on some of their less popular positions if they thought that if they won they wouldn't have to sustain all the cost of a long court battle. It is amazing. The IRS only has 50 attorneys to rewrite regulations, but they certainly have enough attorneys to keep certain people in court from now until forever, if necessary.

Senator GRASSLEY. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Donohue, I think all of us are interested in simplification. I agree that some people opposed to those efforts or categories that you mentioned.

I also suspect that a good number of people opposed to tax simplification are people in the middle and upper tax brackets to middle and higher tax brackets. I don't know if that is the case. I am just curious, based upon your present analysis, if you have any studies that show the theoretical tax versus the actual tax paid by various income tax brackets.

Mr. DONOHUE. That is a great question. Just as you have indicated at the beginning of your comments this morning, Senator, that you did an unofficial poll of your friends and colleagues about their feelings about the IRS, I have for some weeks been asking every upper income tax person that I know how they would like a 7, 8, 9, or 10 percent gross income tax; you just pay it, that's it. Universally, everybody said, "Great. Let's do it."

Obviously, there will be the question that the tax system has been used in this country for 40 years to reallocate income from those who have more of it to those who have less of it. There has been a graduated income tax schedule.

I think, in a simplification system, we might want to say that everybody under, say, $10,000 doesn't pay anything. There might be a 7-percent range for the up to $50,000 and $100,000, and maybe 8 percent, over that.

But, the fact of the matter is that the negative health of our economy today is brought about because the bottom 50 percent of wage earners in our country only pay 7 percent of the taxes. That is OK. The top 50 percent pay 93 percent and the top 10 percent pay a major portion of that.

One of the challenges to simplification would be that lots of folks would like to say, well, we ought to keep the people in the higher brackets paying. But this is just not good for investment, and it is not good for the economy.

But I haven't met anyone who, if you give them a reasonable number, would not give the Government more money than they need; who, if you give them a reasonable number, wouldn't buy it tomorrow morning.

I mean, we all have accountants, and we have lawyers, and we have tax shelters and all that sort of a thing just so that we can maintain some degree of our income.

Let me say further that this is not to suggest that we would do this with corporations, although that could be looked at separately.

There would be a big battle from the real estate people and the philanthropic world. But I think it could be demonstrated to those people that folks would still buy houses at a good rate. Folks would still contribute to universities and churches and the charities of their choice.

I believe we could go forward on this thing. I am not sure how much of it we are going to get, but it would be a mistake not to realize that there is only one major group of people ready to jump on this bandwagon right now, and that is everybody that voted for you the last time you went out.

Senator BAUCUS. Do you have any other views of this bill? What about the administrative appeal procedure for questioning cases. Does that strike you as helpful, relevant?

Mr. DONOHUE. Senator, as you probably know and as our study demonstrated, there are two experiences with the IRS. One is in your audit and in your general information gathering and exchange.

By the way, when you go across the country, the IRS has worked hard to do a good job on that and they are doing better all the time and basically they are decent, straightforward people. There is no question about it.

The horror stories often are blown out of sight. But, the fact is that all the extraneous issues are there.

There is the second dealing with the IRS and that is when they are in the collection business. I am here to tell you that is the place you have to look.

When you start talking about seizure of property, what the Commissioner said in a very offhand way, and I don't think he was clear enough, is that you need a court order to seize anything in your house, Senator. But if it is hooked to the outside of the house, if it is parked in the driveway, if it is in your bank, if it is with your real estate agent, if it is with anyone else, they don't need a court order to seize it.

Seizure often is indiscriminate. Seizure is without an opportunity to appeal. Seizure, basically the way it is done, is often termed by some people as un-American.

For example, good dear friends of ours got in a hassle with the IRS over $4,000 in an investment deal and the next thing I know, all her funds were seized at the bank and her house was under seizure.

So, it is only when you buy a Chevrolet, you recognize how many other people buy Chevrolets. It is only when I got into this study that I recognized how much of a problem our neighbors are having.

Senator BAUCUS. But, according to your commission, the major areas that need to be addressed with respect to IRS administrative actions, are, No. 1, collections.

Second, the time within which regulations are issued.

What would the other two or three be if there are other areas?

Mr. DONOHUE. If I were to characterize it, after having talked about fear and simplification, I think the taxpayer has to know what their rights are.

I think the IRS has to be held to reasonable time frames. I think that the taxpayer has to be reimbursed when he successfully challenges the IRS, and I think the Congress has to be clear and direct in the way they treat the taxpayer in terms of what taxes they are paying and how the laws that you pass which are often very reasonable, are described, written in regulations and enforced.

Senator BAUCUS. Thank you very much.

Mr. DONOHUE. Thank you very much.

Senator GRASSLEY. Thank you, Mr. Donohue. I appreciate your testimony.

Again, as I suggested to the previous panel, you may receive some questions from other members of the committee. We would appreciate you answering any such questions in writing. I look forward to recommendations you might have on the work of this committee or on this specific piece of legislation.

Mr. DONOHUE. Thank you, Mr. Chairman. Thank you for your support over the last weeks.

[The prepared statement of Thomas J. Donohue follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE, PRESIDENT, CITIZEN'S CHOICE, INC.

Mr. Chairman and members of the committee, I am Thomas J. Donohue, President of Citizen's Choice, a national grossroots taxpayers' organization. Citizen's Choice presently has 70,000 individual members nationwide representing all sectors of our society.

On behalf of Citizen's Choice and our members I want to express our appreciation for this opportunity to testify on the topic of a "Taxpayer's Bill of Rights."

My testimony will include some of the major conclusions of a 16 month investigation into the relationship that exists between taxpayers and their government recently completed by the Citizen's Choice National Commission on Taxes and the IRS.

What this Commission of distinguished national leaders learned from their investigation does not bode well for our nation unless changes are made soon. For, in a sentence, the message they uncovered was clear—the American taxpayer is feeling increasingly alienated and frustrated by the pressures of an ever-increasing tax burden AND a tax system which he perceives to be both unfair and frightening. It is clear that today's taxpayer feels he has few if any rights in our present complex and almost incomprehensible tax collection system.

It is also equally obvious to us that the government must act to reassure the taxpayers of their rights and institute long overdue reforms in the tax system if the federal government hopes to regain the confidence and respect of its citizens and taxpayers.

Toward that end, I am encouraged that your Committee has chosen to hold this subcommittee hearing. At the outset let me state that we believe substantive and

timely action on this issue is an absolute must if the Committee is seriously interested in improving the relationship between taxpayers and their government.

Citizen's Choice commenced its investigation into the relationship between citizens and their government in October of 1979 by establishing the Citizen's Choice National Commission on Taxes and the IRS. To carry out its exhaustive investigation, the Commission solicited the views of over 3,000 taxpayers by holding public hearings around the country, establishing a toll-free "Taxline" and by sifting through hundreds of letters, court documents and transcripts. Our Commission on Taxes and the IRS was chaired by David McCarthy, Dean and Executive Vice President of the Georgetown University Law Center.

During the subsequent 16 months, members of this Commission and the Citizen's Choice staff criss-crossed the nation, and logged tens of thousands of miles, holding public hearings in ten metropolitan regions across the nation, from Seattle to Tampa and Hartford to San Jose. Thousands of citizens attended these hearings and, along with the staff and commissioners, heard testimony from citizens representing all sectors of our society. Witnesses voiced their opinion not only about the rising tax burden and the way taxes are collected in this nation, but about their overall frustration with government.

Frankly, the depth of concern, the magnitude of the frustration and the level of anger and alienation which we found surprised all of us. Perhaps because Citizen's Choice went out to the people to hold our hearings, instead of holding them in Washington, and perhaps because we did not listen as a government agency but as a private taxpayers' organization, the public let us know exactly what was on their mind.

It became quickly apparent that the state of citizen-government relations is not well.

Although the purpose of our public hearings was to examine the relationship between the taxpayer and the IRS, it was obvious that the IRS was serving as a "lightning rod" for the taxpayers' overall frustration with the government—its complexity, intrusiveness, cost, and perceived infringement on taxpayer rights.

A recurring theme which arose at every public hearing we held was that of taxpayers going through our labyrinthian tax administration process with few assured "rights" to guide or protect them. A common analogy was made between the taxpayer and the criminal, pointing out that a large, well known body of criminal rights exists today although no similar set of "rights" or guidelines exists for the taxpayer. We found that most taxpayers have a much clearer understanding of what the 1966 "Miranda" warning is than of any specific rights they have as taxpayers dealing with the Internal Revenue Service.

You will understand then why we applaud the intent of S. 850 introduced by Senator Baucus, as a necessary first step toward reassuring taxpayers of their rights in the administration of the nation's tax laws. However we are concerned that this taxpayer's bill of rights does not go far enough in establishing the needed reforms that must be made to regain the taxpayers' trust in the tax system.

Allow me to briefly cover some of the major problems and recommended actions which the Citizen's Choice National Commission on Taxes and the IRS made in its final report, in the hope that the members of the Committee will see fit to include some or all of them in this or subsequent legislation.

THE PROBLEMS

(1) One of the Commission's primary aims was to investigate and determine the general, overall sentiments that taxpayers feel toward the tax system and the IRS. The most disturbing thing we learned was that the relationship between taxpayers and the IRS is almost totally based on fear.

The Commission found that this fear causes many taxpayers to deliberately pay more tax than they legally owed simply to avoid a traumatic encounter with the IRS. It appeared from the testimony that at least some IRS agents regard fear and intimidation as legitimate investigative tools. Many taxpayers reported their perception that the IRS acts on a "presumption of guilt"—that an agent regards a taxpayer as guilty of evasion until proved innocent.

A tax attorney with an extensive practice before the IRS put it this way when he testified at our hearing in Tampa:

"Essentially our first contact with the Service is: This person owes the taxes and should pay with whatever they have at the time, or this person has attempted to evade taxes or unlawfully failed to file a tax return. And immediately the burden is shifted to the taxpayer to prove otherwise. And that's a principle that is followed and practiced."

The notion that auditing agents proceed on a presumption of guilt was reflected in the testimony of many witnesses, including a member of Congress and a former IRS agent.

Other suspicions among taxpayers, CPA's and tax attorneys which add to this widespread "fear factor" include a common belief that IRS agents have a monthly or annual quota system. Many also believe that the IRS has sets of secret rules with which to decide particular kinds of cases—rules to which the public is not privy.

I wish to point out that taxpayers react to this fear in two distinct and quite opposite ways. As I've mentioned, there are a large number of taxpayers who are so intimidated by their tax system that they in effect purchase their civil rights—and their peace of mind—by paying taxes in excess of what they actually believe they owe, "just to be safe." Other citizens, smaller perhaps in number but greater in visibility and in their vocal expression, take the opposite tack. Spurred in part by a perception that the tax system is unfair, that cheating is rampant and that their chances of getting caught are slim, these taxpayers are taking on the "enemy" by joining the so-called "underground economy," or evading taxes in some other manner. The IRS estimate of some 26 billion dollars in lost revenue this year illustrates the magnitude of this problem.

Fear then has different effects on different citizens. For some, the prospect of an encounter with the IRS frightens them into overcompliance and overpayment of their taxes. And for others, fear of the tax system is viewed as a challenge, to which they respond by openly combating the agency responsible for its enforcement.

Citizen's Choice believes that both of these responses stem from the same cause—fear—and that they will not be corrected by sterner enforcement measures. Fear need not be a part of a well-designed tax system. Efforts at reform should be directed toward eradicating the problem at its source.

Now what might some of these reforms include:

OUR RECOMMENDATIONS

A short one-word description of the problem and its solution would be that the problem is complexity and the solution therefore must be simplification.

Our tax system is far too complex. Fear, uncertainty, inefficiency, inequity, and waste are all natural outgrowths of this excessive complexity. Our investigation disclosed that all of these defects exist in our tax administration system today. That alone should serve as an ominous warning to you that our tax system is rapidly approaching the point of unworkability.

I could speak at length about each of these but allow me to simply state them again and then I would refer you to our complete report for additional details. Our tax system's excessive complexity, which I'm sure I don't need to document to this Committee, is causing widespread Fear, Uncertainty, Inefficiency, Inequity and Waste. Citizen's Choice believes the only permanent and lasting solution to these problems is tax simplification on a massive scale. Tax simplification must be your long-term goal or these chronic problems in tax administration will continue to plague the nation.

Citizen's Choice recognizes that the fight for simplification will not be easy, because the beneficiaries of each particular complex provision of law will fight for its retention. (To say nothing about the holler that will come from accountants, tax attorneys, tax preparers, and IRS agents who would stand to lose their livelihood.)

Mr. Chairman, you can count on Citizen's Choice as an effective ally should you choose to take on this challenge which we feel you must if serious reform is ever to be made and the trust of the taxpayer regained.

There are several steps that can be taken in addition to that of tax simplification which would improve our present system of tax administration. The Citizen's Choice National Commission on taxes and the IRS made many recommendations to both the Congress and the IRS. Allow me to briefly cover a few of the major recommendations to the Congress:

RECOMMENDATIONS TO CONGRESS

(1) The Congress should strive for certainty in enacting legislation. This was stressed before the Commission again and again. For Congress, the best way to achieve directness and conciseness is to resolutely resist the temptation to leave difficult decisions to the IRS regulatory process. Congress, not the IRS is empowered to make these decisions, and when you fail to do so, you invite opportunities for error and temptations to abuse.

(2) Exercise restraint in using the tax system as a means of implementing non-tax policy. The use of the tax system as a tool to engineer changes in social policy is the major cause of confusion and complexity in the tax laws. Former IRS Commissioner

Alexander was most forceful on this point when he testified before our Commission in Washington last year. And I quote, "We are asking too much of our tax system now. The Internal Revenue Service can do a fairly good job of administering an income tax, but it can't do a very good job of administering both an income tax and the programs of the Department of Energy, of the Department of Human Resources, and the Departments that have responsibility for housing, for welfare, for all the things that we seek to encourage and seek to discourage as part of our national efforts. . . . these things clutter up an already too complicated Code."

Citizen's Choice believes the mission of the IRS is to collect revenue. It should not be forced to do the work of other agencies as well.

(3) Citizen's Choice believes the Congress should be responsive to IRS budget requests that reflect its need for increased levels of agent training and experience. This would directly help solve the nationwide problem of inconsistent IRS advice and raise the level of IRS agent expertise. We believe reallocation of resources within the IRS could provide a large portion of the funds necessary for this purpose. The IRS must make agent training a higher priority.

(4) Congress must do something about the "windfall" tax increases they receive by virtue of inflation pushing taxpayers into higher brackets. Citizen's Choice heard a great deal of testimony on this topic. The taxpayer is no longer fooled about these unlegislated tax increases and the Congress needs to act to ensure that increases only come about after deliberate legislative action. This is a must if the Congress wishes to put integrity back into the tax collection system.

(5) The Congress should fully and fairly inform taxpayers of their rights. I cannot overemphasize this point. As I mentioned earlier, the taxpayer today feels defenseless, impotent and at the mercy of the IRS in tax administration disputes. We found that if you ask a taxpayer if they believe the IRS infringes on their rights, they will either say a definite "yes" or say that they didn't know they had any rights to begin with!

The Congress has a responsibility to the taxpayer to require that they be fully informed of their rights during an IRS audit and that limitation be placed on the powers of the IRS and the examining agent. A type of "Miranda" warning for taxpayers so to speak. We encourage the Committee to closely investigate this issue and then give the taxpayer some solid information as to where they stand when it comes to dealing with the IRS.

I want to emphasize this point because there are a lot of nasty rumors about the IRS going around this country which serve to undermine the tax collection process. And the swift passage of a complete, effective "Taxpayers Bill of Rights" will go a long way toward restoring order to our tax system which so heavily depends on the cooperation of all American citizens.

(6) The Congress should move to provide full reimbursement of costs to those taxpayers who successfully contest an increase in taxes proposed by the IRS. At the present time many taxpayers find it cheaper to "pay up" whatever amount the IRS says is required than to incur the many legal and accounting costs which contesting the issue would require. Providing taxpayer reimbursement would also put the IRS on notice to choose carefully before hauling a taxpayer into a lengthy, oftentimes expensive court battle. Our present system discriminates unfairly against those who do not have adequate means to hire the attorneys and accountants necessary to face the IRS in court. Such a measure as we are recommending would put all taxpayers on a more equal footing in our tax administration process. This is such a critical issue that we hope separate legislation toward this end is drawn up quicly so that it can be enacted on its own merits. I should add that the Equal Access to Justice Bill, Public Law No. 96-481 which was signed into law last year, will do little or nothing to address this problem, but can serve as a prototype for a new bill that should be enacted in order to remedy this inequitable situation.

Citizen's Choice also makes several additional recommendations to the Congress in the final report of the Commission's investigation.

Briefly, we believe the Congress should:

(7) Establish and monitor the time limits that must be adhered to by the IRS in its dealings with taxpayers. Witnesses at many of the Commission's hearings, frustrated by the delays inherent in an IRS audit, were particularly aggravated by the disparity between the amount of time a taxpayer is given to respond to IRS notices and the amount of time it often takes IRS to respond to taxpayer inquiries, requests and submissions. Citizens resent being given only 10, 30 or 90 days to respond to IRS notices when the agency itself is under no constraint to respond promptly to citizens.

(8) Relax substantiation requirements in many areas to ease the burden and expense of voluminous recordkeeping. Citizen's Choice believes that the vast and unwieldly system of recordkeeping requirements appears unlikley to have a signifi-

cant deterrent effect on the citizen unalterably bent on beating the system. We also believe that tax laws which impose substantial burden and expense on large numbers of taxpayers should not be based on an assumption that all Americans will cheat if they can. Therefore, the substantiation and recordkeeping requirements of the tax law should be significantly relaxed.

(9) Congress should increase the number of "safe harbor" tax provisions in areas where precise figures are difficult to substantiate. These "safe harbor" provisions—minimum deductions, maximum amounts of income, or audit-proof standards such as the standard mileage deduction or the table of allowable deductions for state sales taxes—are excellent alternatives to involved substantiation requirements. Citizen's Choice emphatically agrees with the theory behind these measures and urges Congress to provide for simplicity and certainty by adopting "safe harbor" provisions in place of substantiation requirements wherever practicable.

(10) Provide for the strictly prospective application of newly enacted laws, unless the taxpayer elects otherwise. We have included this provision because our Commission found that in those cases where retroactive application of statute was mandatory, the public's confidence in the revenue system is seriously shaken. The IRS concurs with Citizen's Choice on this issue, as retroactive application adds considerably to its administrative burden and increases the complexity of a Code which, as we've already noted, is already far too confusing.

In addition to these ten recommendations to Congress, Citizen's Choice made 15 recommendations to the IRS, many of which could be implemented without an act of Congress. These recommendations can be found in the copy of the final report which is attached. Time restraints won't allow me to go into each of these in detail.

As I said at the outset, we are encouraged that this Subcommittee has met to hear testimony on the issue of a "Taxpayer's Bill of Rights." In our estimation such consideration is long overdue. S. 850 is a step in the right direction. Several of its provisions are contained in our Commission's final report. Now, for example, who can argue that the IRS Ombudsman needs to be given extra power and independence which that office today lacks? By definition, an obudsman requires such authority in order to effectively carry out its mandate. Similarly, the other provisions of S. 850 take some needed steps toward establishing an improved tax administration system.

However, to call S. 850 a "Taxpayer's Bill of Rights" mocks the term. A "bill of rights" implies a full and clear enunciation of what a taxpayer's rights are and that S. 850 fails to do. In order to strengthen the measure I hope the Committee will consider some of the recomn.endations which Citizen's Choice is suggesting.

In closing, I would urge you to remember that it is the taxpayer upon whom our entire elaborate and mammoth government structure depends. The American taxpayer pays the bills, fills out the reports, and this year will hand over to the U.S. Treasury hundreds and hundreds of billions of their hard-earned dollars. And by almost any standard, the American taxpayers' record puts the rest of the world to shame. We have fewer tax evaders and a higher degree of compliance than any other people.

It is the responsibility of Congress to gurarantee that the environment in which this tax administration and revenue collecting takes place is one in which the taxpayer is treated with respect and with the full measure of protection under the law that they are due as American citizens. Citizen's Choice is concerned that this environment does not presently exist * * * that the U.S. taxpayer has been taken for granted. We have observed with serious misgivings the many warning signs on the horizon. And we therefore urge the Congress to take the necessary steps to shore up this critical relationship between the taxpayer and their government. The implications would be grave indeed if this critical relationship is allowed to continue to deteriorate.

On behalf of the members and staff of Citizen's Choice, I offer to this Subcommittee and to any of its members in particular, our assistance in any way you might find it helpful toward reaching our common goal of a more effective tax administration system.

Allow me to close by quoting from the Statement of Principles of the IRS:

"Tax administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration."

We look forward to working with you toward this end.

Citizen's Choice

A Summary of the Commission's Report

The Citizen's Choice National Commission on Taxes and the IRS is a panel of attorneys, business leaders, educators, and tax specialists organized to conduct an extensive year-long investigation into the current state of the relationship between taxpayers and the Internal Revenue Service. The Commission was assembled by Citizen's Choice, Inc., a national grass roots taxpayers' organization with more than 70,000 members, in response to its members' complaints about tax administration. Through a series of hearings held in ten American cities, as well as written submissions and information gained from a nationwide telephone hotline, the Commission explored taxpayer attitudes toward the IRS and its tax administration practices. Although concerned with the problems of all taxpayers, the Commission took special note of the problems of individuals and small businesses, since these taxpayers often lack the resources to see that their problems are corrected. The Commission limited its inquiry to matters of procedure and practice; issues of substantive tax policy, though of great interest to many taxpayers and to members of the Commission, were outside the scope of the Commission's investigation. The Commission then held a number of meetings at which findings were discussed and conclusions were drawn. This report is the result of those meetings. An earlier draft was submitted to the IRS itself for comments and suggestion; the Service responded with many helpful facts and observations, some of which have been incorporated into the report. The final report is thus a distillation of facts and opinions drawn from a broad variety of sources.

The Commission found that the overwhelming attitude toward the tax system was one of fear. Taxpayers are frightened at the tax laws and the IRS because they do not understand the law and are unsure of their rights in dealing with the IRS. The primary cause of this fear, the Commission concluded, is the almost unbelievable complexity of modern tax laws. People fear what they do not understand, and the tax system is too intricate and confusing to be readily understandable. Such a system is uncertain, inefficient, inequitable, and wasteful.

The primary conclusion of the Commission is that massive tax simplification is urgently required if tax administration is to be improved. The problems generated by excessive complexity simply will not yield to any less drastic solution. The Internal Revenue Service is generally an efficient and well-run agency, but no organization can administer so grossly complicated a tax system without gradually assimilating some of the problems of the system it represents. The myriad social policy decisions currently being enforced through the tax system also turns the IRS into a "lightening rod" for all manner of citizen complaints about their government, whether or not connected with revenue matters.

The Commission did find a number of specific problems which, although caused by complexity, are susceptible of some improvement through the adoption of short-term measures until simplification can occur. These problems include:

- the difficulty of obtaining consistent, accurate advice from the IRS
- low levels of expertise among examining agents and taxpayer assistance personnel
- improper conduct by examining agents during audits
- lack of knowledge about taxpayer rights
- undue delay and expense in dealing with the IRS and complying with the tax laws
- abuses in the collection procedures of the IRS
- taxpayer confusion over inconsistent court positions and retroactive laws, regulations, and rulings
- targeted audits
- miscellaneous incidental administration problems

The Commission offers suggestions to both Congress and the IRS for alleviating these problems until simplification takes place.

Recommendations to Congress

1. Strive for certainty in enacted legislation.
2. Exercise restraint in using the tax system as a means of implementing non-tax policy.
3. Be responsive to IRS budget requests that reflect its need for increased levels of agent training and experience.
4. Reexamine the tax rate system to ensure that changes in tax rates are effected only after deliberate legislative action.
5. Share with the IRS the responsibility for fully and fairly informing taxpayers of their rights.
6. Provide full reimbursement for costs to taxpayers who successfully contest an increase in taxes proposed by the IRS.
7. Monitor the time limits adhered to by the IRS in its dealings with taxpayers.
8. Relax substantiation requirements in many areas to ease the burden and expense of voluminous recordkeeping.
9. Increase the number of "safe harbor" tax provisions in areas where precise figures are difficult to substantiate.
10. Provide for the strictly prospective application of newly enacted laws, unless the taxpayer elects otherwise.

Recommendations to the IRS

1. Increase the proficiency level of examining agents and taxpayer assistance personnel by imposing higher threshold requirements, intensifying existing training programs, and making pay scales competitive.
2. Adopt and adhere to a reasonable set of time limits on transactions with taxpayers.
3. Formulate a comprehensive, written description of the taxpayer's audit rights and distribute it at the beginning of every audit.
4. Develop a document that carefully explains why the IRS is not obligated to follow court decisions other than those of the United States Supreme Court. Warn agents to be particularly patient with taxpayers in this area.
5. Establish internal controls to eliminate unnecessary audits in consecutive years, and to ensure the impartiality of audit selection.
6. Establish procedures for taxpayers to obtain simple, prompt mini-rulings on their questions of law, reduced to writing and signed by an IRS representative.
7. Relax rigid substantiation requirements when there is no reason to suspect fraud.
8. Establish administratively determined "safe harbors" in rulings and regulations whenever practicable.
9. Continue efforts to simplify forms and clarify the accompanying literature.
10. Extend the institutional policy against retroactive rulings and regulations to cover all but the most extreme cases, unless the taxpayer elects otherwise.
11. Revamp administrative collection procedures to eliminate institutional pressures against compromise agreements and extended payment arrangements.
12. Institute an effective system of grading cases according to difficulty, and agents according to ability; then adopt a system of random matching based solely on these two criteria.
13. Step up efforts to publicize the tax system and to educate the public on basic questions of tax administration.
14. Make a particular effort to publicize especially advantageous provisions of the tax law applicable to large numbers of taxpayers.
15. Publicize the existence and function of the IRS ombudsman.

The Commission believes that these suggestions will streamline and improve the present system so that the tax simplification the nation so urgently needs can occur sooner and faster. That simplification must come to restore balance, fairness, and confidence to the American system of tax administration.

Additional information about Citizen's Choice may be obtained by writing the organization at 1615 H Street, N.W., Washington, D.C. 20062 or by calling (202) 659-5590.

Senator GRASSLEY. Next I have the opportunity to invite to the witness stand, Senator Eugene McCarthy, of the National Taxpayers Legal Fund, Washington, D.C.

It is a pleasure to honor a former Member of this body to the witness stand. Over the last 11 years you must have done this quite frequently. However, this is my first opportunity to welcome you, and even though we represent different political parties, I have had an opportunity to observe you during at least your last 6 years in the U.S. Senate.

I think of you as a brave person, one who is willing to take a stand, regardless of the political consequences. America is better for people like you.

Mr. MCCARTHY. Thank you very much, Mr. Chairman. It sounded like a nominating speech. I appreciate that very much.

STATEMENT OF HON. EUGENE McCARTHY, NATIONAL TAXPAYERS LEGAL FUND, WASHINGTON, D.C.

Mr. MCCARTHY. Thank you, Mr. Chairman, Senator Baucus.

I am here to speak for the National Taxpayers Legal Fund. I should apologize. I was on this committee for 12 years. I don't think we ever held a hearing on this subject matter, possibly because we weren't as aware of it as we are now and possibly because the abuses, at least that some of us consider abuses, were not as numerous or as evident.

I am sure in your term of service you have been surprised to find what the Internal Revenue explains was congressional intent, especially if you thought you knew what you were putting in the bill when you wrote it, and then found 18 months or sometimes later than that, a regulation out of IRS telling you what you really had in mind.

Our organization is primarily concerned with taking up individual cases. It was established before I became a director, sort of a Civil Liberties Union action for taxpayers.

According to our report, we were getting about eight complaints a week. Three out of the eight were considered pretty valid.

Around the country, largely through volunteer lawyers, something like 500 cases a year, on the average have been processed.

We anticipate or expect that we were falling far behind, largely because many people didn't know about the organization, also because the staff was very limited.

Recently, there was an article in Parade magazine—we didn't approve of everything that was in it, but the response was overwhelming in terms of the number of letters and calls that came in to the organization which suggests the very thing that has been said here.

There are many taxpayers who don't feel they have any defense or any recourse.

We continue to do that work, but also concluded we had to really broaden our efforts to get to the base of the difficulty, and, as part of that effort, to support Senator Baucus' bill.

We agree with what Mr. Donohue said, about what we consider the three principal, important provisions in the Baucus' Act and are hopeful it will pass.

There are one or two points, I don't say information, not really a correction, but as we listened to the Internal Revenue Service testify, we note they stop short with 1980 in terms of seizures.

They were quite right in saying that seizures did decrease between 1975 and 1980, but they more than doubled in 1980 over 1979, which lends support to the judgment that actually the IRS adopted a new policy of sort of intimidation or aggressive action with reference to seizure.

I think they ought to be asked to explain themselves because when you are dealing with an agency, at least one of its spokesmen a few years back said they have a right to enforce their assumptions. That is a very extensive power to claim. I think they invoked that when they were talking about collecting from restaurant employees. They were going to assume that every waiter and waitress had earned, I think, 20 percent more than they reported.

The burden of proving that you hadn't earned the 20 percent more was on the employee. They could make a case, perhaps, for evasion, but to announce as a principle of operation the right to enforce your assumptions, goes beyond this. It is comparable to saying that you are really guilty before you can prove your innocence.

If we accept the underlying operation of the Internal Revenue Service rests on this assumption, I think you have to accept that it may have a very strange impact upon the whole attitude and disposition of the people of this country.

Because you are talking about an agency that deals with more citizens than any other one. If you tolerate or encourage or permit a progressive abuse of the principles of the Constitution, I think that eventually something happens to society.

One would like to have the Internal Revenue Service be the most trusted agency of Government because it deals so intimately with the property rights of the people.

It is not that now. There are many reasons for it.

We find that the advice from H. R. Block is trusted more than the Internal Revenue Service. Of course, H. R. Block is the most trusted man in America next to Walter Cronkite. They actually operate in a different range. It may be easier for Block to establish his credibility because he is set off against the Internal Revenue Service, than is the case of Walter Cronkite who operates in a somewhat different order.

The second point relates to what the IRS people said. In fact, if the problem resolution program does not even keep statistics on numbers and types of tax problems dealt with, is, I think, proof of the need for an independent ombudsman.

I was recalling when it was proposed that we set up a General Accounting Office to look over the departments and agencies of Government, the general argument against it was, we have an adequate internal audit. Practically every agency and department of Government said, "We don't need it. We don't need anyone looking over our shoulders."

Well, we now have accepted that the General Accounting Office is a vital part of the administration of this Government, an instrumentality for checking on the agencies and the departments.

It seems to me it is just as important, possibly more important, as long as this attitude of mistrust exists and continues to grow, that the ombudsman idea, the idea of the independent ombudsman, at least more independent than the problemsolvers inside the Service now are, that that should be pressed very strongly by the committee.

But I would like to add three or four other things to indicate that what you are proposing here is really quite modest, that the National Taxpayers Legal Fund would propose for future consideration.

One is a more aggressive and firm stand against the seizure of property pertaining to a taxpayer's source of livelihood.

To quote an ancient Irish law, whenever you quote Irish law now, you always say it is ancient. I don't know why. But, they did have a law which said you couldn't take in settlement of property dispute, a civil case, a man's harp or his book or his sword or his plow. The plow is essentially the instrument by which he made his livelihood.

I think it is necessary for Congress to lay down some more specific regulations with respect to the seizure of property relative to a person's livelihood than those procedures and principles which are now in force by the Internal Revenue Service, and enforced in different ways, in different jurisdictions.

Second, we propose that the Government be required to pay excessive legal and administrative costs to taxpayers who succeed in their tax actions.

This gets you into the realm of relativity, but it is not beyond some kind of reasonable determination, especially when it involves relatively small amounts of money in which the legal cost rise to a point where they are greater than the actual amount of tax payment involved.

I don't think this is likely to be adopted, not in the immediate future, but it would not be a bad idea if the IRS and other Government agencies were required when they went into court, into a State or a Federal court, to force them to hire outside counsel.

So, you then have lawyers on both sides who you first of all would know what they were paying them, and you would have a break between the agency lawyers who make a career out of particular cases.

You could take it up to the point where it goes to court, but then we ought to move it into the general realm of the legal practice of the country.

In any case, the other point of paying taxpayers who succeed in tax actions when excessive costs and expenses can be determined is one that I would hope that at some time your committee might consider.

We have some points with reference to privacy, too, which relate to the Bill of Rights and the Constitution.

I would like to suggest for some consideration in the future forcing the IRS investigators to inform third party record holders such as banks, that taxpayers have a statutory period in which to protest IRS summons of their records, in court of law.

This relates to what Mr. Donohue spoke about, how they can seize anything, practially, which is not inside your house, in your

bank or in your front yard and possibly in your garage if the door is open. No one has quite established what rights one has to property in a garage, especially if it has wheels.

It is a whole new order of law that is part of our mobile society, that hasn't been quite properly worked out.

We propose some attention be given to provide for prompt release of liens and levies on property after tax disputes have been resolved.

This, again, gets back to what Mr. Donohue spoke about where the IRS likes to talk about all they do is to help you before the tax is assessed. Then, once that is done, then you are into the no-man's land in which the Bill of Rights and due process get to be a pretty cloudy operation.

This would relate to that, the question of the release of liens and levies after disputes have been resolved.

To require notice to a taxpayer of levies placed on property belonging to or currently in the hands of third parties. That notice should be prompt and immediate and they should have some time to challenge it, as we said.

Then, to establish procedures in taxpayer interviews, allowing taxpayers the right to have an interview conducted at a reasonable time and place, the right to record the interview and the right to be informed at the onset of the interview, of the options that you have of remaining silent and having an attorney present.

I think this may be one of the most serious procedural matters. The IRS can move quite easily from a civil proceeding to a criminal one. It can start as a civil action and at some stage with a kind of hydromatic shift, it gets into a criminal action.

The person who came in as though, as though acting under civil procedures, finds himself having spoken in an interview and so on without legal counsel, often told he is now in a criminal proceeding without the possibility of backing up to protection he otherwise might have invoked.

So, our position is a rather comprehensive one. We are here today to urge the committee to act at least on what is in the Baucus bill.

It would be a breakthrough. It would be a warning to the IRS and it might establish a base for additional legislation if it becomes necessary.

I think it would be helpful in restoring the confidence and trust of people in the equity, and if not the justice, of the Internal Revenue laws.

Thank you very much, Mr. Chairman and Senator Baucus.

Senator GRASSLEY. Senator Baucus, I will call on you for any questions.

Senator BAUCUS. Thank you, Mr. Chairman.

Gene, I want to thank you very much for your statements. I think you are correct in pointing out that this bill covers only a few of the problems that have to be addressed. The question of presumption and reasonable attorneys' fees are two among many areas you suggested we are looking at that are not included in this bill.

I have introduced another bill that addresses the attorneys' fees problem, which I should mention. You did point out many other areas we have to address.

I just want to thank you for taking the time to come. I appreciate it very much.

Senator GRASSLEY. Yes.

Mr. MCCARTHY. Thank you again for holding these hearings.

Senator GRASSLEY. I have a question of a very general nature, which you brought up when you reemphasized the point, that if the IRS challenges you, you are guilty until you prove yourself innocent.

As you know, I feel this should be changed. How did we ever get to the point where this practice is the norm? Is it necessary for the voluntary aspects of our Revenue Code to work?

Mr. MCCARTHY. Well, it is a hard question. They sort of got to it by a series of court decisions that sustained their procedures.

In effect, you almost have a different system of law or principles.

Senator GRASSLEY. Was it meant to be a different system or did it merely evolve into that procedure?

Mr. MCCARTHY. Well, we sort of slipped into it as the code was extended and became more and more complicated.

Then, the argument was you have to have it this way in order to enforce the law. You won't have voluntary compliance on the basis of patriotic good will or a sense of obligation.

So, you have to progress——

Senator GRASSLEY. Have we ever tried to reverse the burden of proof to see if it would be feasible?

Mr. MCCARTHY. Well, we did in the early stages, but as the code became more complicated and tax exemptions were allowed and so on, the possibility of evasion, the pressure of evasion and the tax rate was increased and applied to more and more people. I don't know just when it happened. All of a sudden, it was sort of there. It happened at night more or less. You assume that people had to be intimidated if they are going to pay their taxes.

You have the other question, of course, which is outside the range of this hearing as to whether or not we ought not to move away from a system of tax laws which gives the Internal Revenue so much authority, quite arbitrarily. We put it on them. Some of it they have taken to themselves. I don't mean to say they have been modest.

But, through the allowance of exemptions and special tax treatment, you have in the Internal Revenue Service a bureaucracy which has some power to interfere and intrude and make decisions about every aspect of life.

People decide whether to marry or not on the basis of tax consequences; whether to have their parents live in the house with them or not on the basis of the tax consequences.

The IRS decides what a true religion is. I mean, they make distinctions that the Spanish Court of the Inquisition would not even have come close to touching. These people are really refined theologians down there. I mean, they get into snake charmers and everything else.

They decide what is culture and what is art and what is education. They have the defense that Congress has passed laws which

allow them to make these interpretations, but they go beyond that in many cases, at least beyond what I think is congressional intent.

So, you back up from what you are talking here into a whole question of philosophy of government, philosophy of society and the nature of bureaucracy.

I think that the time has come when we ought to be concerned about it. We should have been concerned about it earlier, as we should have been concerned about what you are talking about here today.

As to whether or not you can give to a bureaucracy that much control to interfere with the general culture of society, as much as we have given to them. And, once you start to give it to them, they begin to expand it.

You reach a point of the old principle where the power to tax is the power to destroy. When you get people hooked on tax deductions and exemptions, the power to deny a tax deduction is the power to destroy.

In many areas, we are into that range right now. The IRS says, "We are going to take away your tax deductions." You say, "We will die if you do."

As Mr. Donohue suggested, he thought that maybe, if you just allowed some kind of standard deduction, that people would still contribute to the church or to charitable things even though they didn't get a tax deduction for doing it.

It relates to the point that was implicit in your question: How do you motivate the taxpayers? What motivation do they respond to?

You say that people won't give to charity unless they get a tax deduction. Is that a good thing or should we say, you give to charity even though you don't get a tax deduction?

In fact, you would think that a charitable contribution would be the one that you didn't want a tax deduction.

Senator GRASSLEY. The latter would be more ideal.

Mr. MCCARTHY. That's right.

Senator GRASSLEY. The more people giving because they want to give would be the best situation.

Mr. MCCARTHY. But we encourage them to give for baser reasons, you see.

Senator GRASSLEY. Do you see anything wrong with putting limitations on when rules have to be promulgated?

Mr. MCCARTHY. Well, it is the old principle that justice delayed is justice denied. It seems to me that regulations delayed come to the same principle. I would think that if they can't get a regulation out in 18 months they ought to [illegible] Congress to change the law.

Senator GRASSLEY. From your past experience, would you have had problems supporting this when you were a Member of the Congress?

Mr. MCCARTHY. Not at all.

Senator GRASSLEY. Thank you very much.

Senator BAUCUS. Thank you very much.

Mr. MCCARTHY. Thank you both very much.

[The prepared statement of Hon. Eugene McCarthy follows:]

PREPARED STATEMENT OF EUGENE J. MCCARTHY, CHAIRMAN OF THE BOARD, NATIONAL TAXPAYERS LEGAL FUND

I am Eugene J. McCarthy, Chairman of the Board of Directors of the National Taxpayers Legal Fund. The National Taxpayers Legal Fund is a non-profit, tax-exempt organization founded in 1972 to protect the economic liberties of Americans.

We commend the Chairman of this Subcommittee for undertaking these very timely and necessary hearings on a bill of great services to the American people, a bill designed to put American taxpayers on a more equal footing with the Internal Revenue Service.

Under present economic conditions, the use of unfair, premature and arbitrarily applied collection precedures by the IRS represents an additional burden for the business and individual taxpayers in communities already suffering from high taxes, inflation, and recession. For too long the Internal Revenue Service has used, and abused, powers granted to no other agency of the government. The unfortunate victim of their abuses has all too often been the individual taxpayer, who has been unable to stand up against the IRS because of their virtually unlimited power. Senator Baucus' bill will go a long way in rectifying this situation.

Various versions of the taxpayers bill of rights have been introduced in both the House and the Senate in the past, but to the best of my knowledge there has never been a hearing in any committee of the Senate to discuss the bill or the numerous taxpayer complaints that have led to the bill being introduced.

There was a hearing before the Senate Subcommittee on Oversight of Government Management of the Committee on Governmental Affairs chaired by Senator Levin on July 31, 1980 that examined the impact of IRS collection practices on small businesses. The findings of that committee were shocking. It revealed the excessive and unnecessary use of discretionary forcible collection powers by the IRS. It showed that alternative collection methods were frequently ignored. It also showed that contrary to stated national policy, and with no basis in taxes recovered, the IRS emphasizes closed-case seizure statistics to evaluate its personnel and collection efforts. Senator Levin stated that the number of IRS seizures had risen over 44 percent during 1980. In that hearing Vincent L. Connery, National President of the National Treasury Employees Union, stated:

Several times in the past decade, we have come before Congress to testify how this pressure to close cases and meet statistical quotas has been a widespread concern in the IRS. Besides the devastating affect such a policy has on the taxpaying public, it is an affront to the competence and professionalism of IRS personnel and forced countless qualified, conscientious workers out of government service.

A month before Senator Levin held his hearings, I testified before the Subcommittee on Oversight of the Committee of Ways and Means in the House of Representatives on May 20, 1980 in hearings that also dealt with the problem of IRS harassment of the American taxpayer. These hearings also revealed that there was widespread pressure on IRS agents to seize property, that IRS policy was not evenly enforced, and that there was little the average American could do to protect himself.

There seems to be no evidence that this sorry situation has changed. The offices of the National Taxpayers Legal Fund were flooded with letters and phone calls complaining of IRS abuse after an article on the subject appeared in the April 12th Parade Magazine. The problems that Senator Levin dealt with show no sign of going away, and there is no reason to beleive that they will so long as the IRS is given such extraordinary powers.

As the law currently exists, there is almost nothing the IRS cannot do to collect taxes. The National Taxpayers Legal Fund believes that taxpayers are entitled to all of the rights guaranteed by the U.S. Constitution, particularly rights of due process, when dealing with the impact of government policies on their lives. These rights are basic to the American ideals of liberty and the worth of the individual. These are rooted in common law extending back a thousand years. But today many of these rights are non-existent when the lone taxpayer is challenged by the IRS. The taxpayer is presumed guilty until he can prove himself innocent. The taxpayer is denied a trial by jury in tax courts. The taxpayer is denied equal protection under the law and the right to be represented by an attorney and the right not to give self-incriminating statements.

There is a solution to the problem of IRS abuse, however, and that is to place constraints upon what they can do. Senator Baucus' thoughtful and constructive bill will help to do just that and I would like to comment upon his six-point plan to restore some of the most elementary forms of due process to tax cases.

One of the most important points in Senator Baucus' bill is the creation of an independent Office of Ombudsman. The office of independent ombudsman is sorely needed. If such an office is to surpass the symbolic and ineffective role served by the

current office of ombudsman, then the authority of this office must be explicit. The IRS is likely to counter this provision with the claim that an ombudsman already exists. This is true. However, the current ombudsman is anything but independent and the Problem Resolution Program has not worked. Two years ago the Ways and Means subcommittee on IRS oversight conducted a study on the effectiveness of the PRP program and found it to be deficient. Project director Mark Wincek warned in the published committee report that if the IRS did not improve the program, steps would have to be taken to create an independent ombudsman. It has now been over four years since the program was created and it is evident that it is still ineffective. Such an office as independent ombudsman would need careful Congressional oversight to insure that the office remains both independent and objective.

One other problem is evident with the establishment of an office of Ombudsman. Senator Baucus' bill currently requires the taxpayer to file an application to be eligible for a Stop Action Order. The requirement is asymetrical, since there is no requirement that the IRS notify the taxpayer of possible eligibility for the taxpayer assistance order. The bill should insist the application form remain simple, containing only economic data to establish hardship, as well as a notification requirement.

These are small problems, however, when viewed in the overall context of the bill which has many good and strong points. Senator Baucus' fairness to the taxpayer and the IRS is to be commended.

One section of the bill that deserves to be singled out for special praise is that which requires a court order before seizing any citizens' property for nonpayment of taxes. This one section alone will go a long way in stopping one of the most frequently abused and powerful collection tactics that the IRS can currently employ.

We also endorse Senator Baucus' efforts to clarify the tax code and reduce redtape for both the businessman and average taxpayer alike. Section 6 that deals with elimination of delays in rulemaking is another step forward for the taxpayer. We have fequently found that not only are taxpayers ignorant of the law but so are the IRS field representatives as well. We have found that it is not uncommon for one taxpayer to have received numerous, contradictory pieces of advice from different IRS field representatives.

Similarly Sections 7 and 8 of the Senator's bill will also help to solve some common problems between the tax paying public and the IRS. Both sections will not only help the overburdened taxpayer but will also help the IRS to cut down on its own load of paperwork.

While we strongly support Senator Baucus' bill there are a number of areas that are untouched by it. Based upon an analysis of cases screened by NTLF over the past three years, amendments dealing with the following abuses should become part of the taxpayers bill of rights:

Interest lost on tax money wrongfully collected by the IRS.

Lack of uniformity in enforcing the tax laws such that certain states are subject to disproportionately higher levels of enforcement than others.

Successive audits of individuals in the absence of probable cause.

Awarding court costs to prevailing taxpayer.

Automatic presumption of taxpayer guilt upon "mere suspicion" on the part of the IRS, rather than based upon a true standard of probable cause.

These are only a handful of the problems that have arisen between the public and the IRS.

Although we have stated some reservations about Senator Baucus' bill, let me close only by saying that it is most certainly a large and decisive step in the right direction. As Senator Baucus noted when he introduced this bill, the complexity of the Tax Code and the arbitrary administration of the tax laws have undermined the faith that taxpayers have in their government. Aside from the economic benefits that his bill would bring, such as less waste and increased voluntary compliance, the real blessings of this bill are less tangible, but no less real, and that is a large measure of justice for the beleagured American taxpayer.

Senator GRASSLEY. Our last witness is George Anderson, certified public accountant, from Helena, Mont.

Mr. Anderson.

STATEMENT OF GEORGE ANDERSON, CERTIFIED PUBLIC ACCOUNTANT, HELENA, MONT.

Mr. ANDERSON. Thank you, Mr. Chairman.

A voluntary compliance system for payment of income taxes is completely dependent upon the psychological acceptance by the taxpayer as to the fairness of the system.

During the past few years the protest movements and the emphasis by the media on the "horrible examples," have caused the U.S. taxpayer to feel unsure regarding the workings of the system.

It is therefore imperative that the Internal Revenue Code be written and interpreted in a manner which will impart to taxpayers a felling of security as to their rights.

Senator Baucus' Taxpayer Bill of Rights contains important features which will act to assure taxpayers that they are protected from overzealous actions by individuals in the IRS.

Present law, tax law, is exceedingly complex in most respects. In order to be fair to all taxpayers, a certain level of taxpayer assistance must be provided by the IRS.

The IRS is currently reallocating resources to the audit function from the taxpayers' assistance area because of the lack of funds.

Both programs should be maintained in a self-assessment program, and Congress and the administration are urged to adequately fund both.

The IRS has made an effort to establish the taxpayer ombudsman and problems resolution programs.

In general, these new programs have been helpful but they have not been in existence long enough to determine whether an independent ombudsman would be more effective from the taxpayers 'viewpoint.

A too-powerful ombudsman could potentially disrupt the legitimate work of the IRS.

However, in order to be completely effective in a bureaucracy, such an individual must be able to cross divisional lines, cut red tape, and be able to intervene for the taxpayer without fear of reprisal.

Congress is urged to give the present IRS program careful consideration in the design of a more independent ombudsman in order to assure that the program will aid taxpayers without causing disruption.

Senator Baucus has also introduced the Taxpayer Protection and Reimbursement Act which would also help provide the taxpayer with an advocate.

The combination of both these programs could prove very important in the proper representation of taxpayers before the IRS.

Senate bill 850 contains many provisions that will assure the taxpayer of fairer treatment by the IRS.

Unless taxpayer are assured of fair treatment from the taxing authorities, the self-assessment program will further deteriorate.

This country can ill afford the problems that have arisen in other nations where the taxpayers have become completely disillusioned with the self-assessment system.

This subcommittee is therefore urged to act favorably upon the provision contained in Senate bill 850.

Thank you very much.

Senator GRASSLEY. Thank you for a very good statement. Due to time pressures, we must conclude this hearing at this time. I hope

you would respond to any questions the members may have to submit to you.

Mr. ANDERSON. Yes, sir. Thank you.

Senator GRASSLEY. Thank you very much.

Senator BAUCUS. Thank you very much.

[Whereupon, at 11:42 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The prepared statement of George D. Anderson follows:]

PREPARED STATEMENT OF GEORGE D. ANDERSON, CPA

A voluntary compliance system for payment of income taxes is completely dependent upon the psychological acceptance by the taxpayer as to the fairness of the system. During the past few years the protest movements and the emphasis by the media on the "horrible examples," have caused the U.S. taxpayer to feel unsure regarding the workings of the system. It is therefore imperative that the Internal Revenue Code be written and interpreted in a manner which will impart to taxpayers a feeling of security as to their rights. Senator Baucus' Taxpayer Bill of rights contains important features which will act to assure taxpayers that they are protected from overzealous actions by individuals in the IRS.

TAXPAYER SERVICE

Present tax law is exceedingly complex in most respects. In order to be fair to all taxpayers, a certain level of taxpayer assistance must be provided by the IRS. The IRS is currently re-allocating resources to the audit function from the taxpayers' assistance area because of the lack of funds. Both programs should be maintained in a self-assessment program, and Congress and the Administration are urged to adequately fund both.

TAXPAYER OMBUDSMAN

The IRS has made an effort to establish the taxpayer ombudsman and problems resolution programs. In general, these new programs have been helpful but they have not been in existence long enough to determine whether an independent ombudsman would be more effective from the taxpayers' viewpoint. A too-powerful ombudsman could potentially disrupt the legitimate work of the IRS. However, in order to be completely effective in a bureaucracy, such an individual must be able to cross divisional lines, cut red tape, and be able to intervene for the taxpayer without fear of reprisal. Congress is urged to give the present IRS program careful consideration in the design of a more independent ombudsman in order to assure that the program will aid taxpayers without causing disruption.

Senator Baucus has also introduced the "Taxpayer Protection and Reimbursement Act" which would also help provide the taxpayer with an advocate. The combination of both these programs could prove very important in the proper representation of taxpayers before the IRS.

APPEAL OF IRS COLLECTION CASES

There should be an administrative appeal procedure for contested collection cases, such as would be provided by Senator Baucus' bill. The potential harm from an error in a collection case is too great not to provide full taxpayer protection.

The necessity of obtaining a court order before seizing property for nonpayment of taxes could cause potential maneuvers through the administrative and judicial processes that could unnecessarily delay and possibly jeopardize the government's legitimate efforts to collect taxes. The Supreme Court decision in G.M. Leasing Corp. v. United States, 435 U.S. 923 (1977), protects taxpayers by requiring a court order where a search or entry of private property is necessary to effect a seizure, and there are other protections against unwarranted searches and seizures. The administrative appeal procedure which would be provided by Senator Baucus' bill would also help assure a full hearing of the contested issues prior to seizure.

REGULATIONS BACKLOG

Congress is increasingly passing to the Treasury and the IRS the responsibility for developing important details in the tax law through regulations. This has caused increasing delays in the issuance of regulations in sensitive areas. Taxpayers and their advisors are increasingly faced with having to make decisions as to the interpretation of new Code sections without the benefit of regulations having been promulgated. IRS and Treasury should be provided with adequate funding and be urged to issue high-quality regulations on a timely basis.

The approach in Senator Baucus' bill has great merit, particularly the concept that regulations should not have retroactive effective dates. Taxpayers must make tax decisions when entering into transactions based on present law; retroactive changes of law are unfair and completely disruptive.

The only onus upon the IRS under the proposed legislation for failing to issue a regulation within the time required is the acceptance of the taxpayer's position if it can be properly supported. The taxpayer would be charged with the burden of proving the reasonableness of the position taken by him when regulations have not been timely issued.

REDUCTION OF REDTAPE FOR INDIVIDUAL TAXPAYERS

The threshold dollar amounts for filing and paying estimated income taxes should be raised. Inflation has forced more individuals to deal with estimated taxes and the accompanying redtape. The present estimated tax filing and paying procedures are unnecessarily complex and formal, and the texts for being exempt from penalties for underestimation are incomprehensible to the ordinary taxpayer. This bill will exempt more small taxpayers from the requirement of filing and paying estimated taxes through the simple expedient of raising the required dollar amount that triggers the need for filing an estimate.

The IRS should be urged to further study this area with the idea of simplifying present procedures.

REDUCTION OF REDTAPE FOR SMALL BUSINESS

The Treasury and IRS have already adopted the basic positions contained in this bill, simplifying procedures for issuing W-2's to departing employees. (Reg. Sec. 31.6051-1(d) (T.D. 7656; Nov. 28, 1979)). Senate Bill 850 would codify such procedures. The increased utilization of computers and electronic equipment in processing payrolls and Federal reports makes the issuance of interim data and reports of this nature expensive and difficult. Procedures which will reduce paperwork and redtape for small business are of increasing importance.

SUMMARY

Senate Bill 850 contains many provisions that will assure the taxpayer of fairer treatment by the IRS.

Unless taxpayers are assured of fair treatment from the taxing authorities, the self-assessment program will further deteriorate. This country can ill afford the problems that have arisen in other nations where the taxpayers have become completely disillusioned with the self-assessment system.

This Subcommittee is therefore urged to act favorably upon the provision contained in Senate Bill 850.

[By direction of the chairman the following communications were made a part of the hearing record:]

PREPARED STATEMENT OF LOU M. HATFIELD

Our great Constitution of The United States (Art 1, Sec. 8, Cl. 1) specifically states "The congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States. (Art. 1, Sec. 7, Cl. 1) "All bills for raising revenue shall originate in the House of Representatives." (Art, 1, Sec. 9, Cl. 4) "No capitation or other direct tax shall be laid———"

The provisions guaranteed by our great constitution, to the citizens of the United States, automatically certify the department of IRS, and all its activities, as an organization operating in a totally criminal activity. The fact is documented that the subversive acts of this government created, criminally oriented mob, has been loosed upon the citizens of the United States to harass, plunder, physically and financially destroy, and in some questionable cases which have already been heard of record, murder has surfaced. There is no doubt in the mind of any citizen, who has ever received the unlawful rath of the gangster mob, that it must be put to death; not just be put under additional restrictions which mean nothing to a criminal.

The subject of the hearing on The Taxpayers Bill of Rights contains points to be considered by all. The mere fact that the bill will provide certain protection for the citizens does not mean that these provisions will be obtainable to a person. For instance: "Provide for the awarding of attorneys fees in cases brought against a

taxpayer by the IRS and won by the taxpayer"—The problem in this is, as always, the financial ability of a person to purchase a lawyer, and the fear instilled in lawyers who do represent taxpayers. They are reluctant (refuse) to take a case in which a criminal mob will retaliate by attacking the lawyer. This is against our constitutional guarantee of "Equal justice under the law". A provision should be written into the law that provides a percentage to a lawyer, as does the Texas Workmans Compensation law.

"Limit investigation by the IRS to only those laws directly under the authority of the IRS". By their own rules and regulations the IRS has made everything their law and subject to their authority. Would an investigation be before or after charges are filed against a taxpayer? The IRS is not known for being fair, or even lawful, in any of their actions. Certainly any law should prohibit interference on a persons job, and under NO circumstances should IRS be allowed to get any documents from a personnel file of any employee of any business. Provisions should be made to prosecute an employer who does so by means of personal conversation or by copies of any forms from such personnel files. Is there nothing sacred?—"Provide that you can set a reasonable time and place for interviews with IRS agents." Under no circumstances should IRS be allowed to call or enter upon an employees job site. All contacts should be outside a job.—" "Discourage the IRS from compiling and using "enemy lists" and from selective auditing, prosecution and other harassment of citizens." Discourage? The only way a thug can be "discouraged" is to meet with force. Discourage is the opposite of courage. Lawlessness has always been courageous. We must ask 'By what means will the IRS be discouraged?' As for discouraging prosecution; no case should ever be allowed to be placed on a court docket for hearing without the taxpayer having counsel. (equal justice under the law) All enemy lists, and information collected by the IRS on any taxpayer, falling under The Taxpayers Bill of Rights, should be expunged from all records. Such information should be forbidden ever to be used against any citizen of the United States. Upon passage of The Taxpayers Bill of Rights, all cases reported by the abused taxpayers of this nation, should be investigated and recompense should be in order where there is documented evidence that the IRS has acted in seizing anything from a citizen outside the provisions of the Constitution of the United States. Statutory law is no law at all, if it is not in accordance with the constitution. IRS should be prohibited from making their own law. Our constitution provides that our congress go this.

There is documented evidence, in an IRS memorandum, dated 2-2-73, from the Intelligence Division of IRS, Los Angeles, Ca., of a conspiracy by the IRS, to totally interfere with the life and activities of any person who opposed or acted against the IRS in any way. It was their plan to interfere with "state and local laws ——— to file civil cases (not being covered by the provisions of the constitution as in counsel for criminals) ——— wage a campaign to educate U.S. attorneys, federal judges, with the importance of prision sentences (tampering with courts) ——— to follow up cases of admitted or known false? W-4 or W-4E's, to advise employers of responsibilities (this is precisely why IRS should be prohibited to go into personnel files under any circumstances) (the responsibility of an employer is to pay a person for his labors) ——— use state taxing agencies willing to cooperate on enforcing laws of tax rebels.

State laws, taxing or otherwise, are no business of any agency of the federal government. It is only the responsibility of states to write laws in the constitutional framework of the U.S. Constitution. (Amend. 10) "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

If any Taxpayers Bill of Rights is ever passed and, investigations ever start on the illegal and unethical practices of the IRS, I hope to be first in line with a case. My case is a case that has never been heard because I have tried for 14 years to get counsel and lawyers will not even talk to me. IRS was directly responsible for me losing my job and I have not worked for three years. Knowing their plans, as outlined herein, I think it would take very minimal effort on the part of a competent attorney to provide that IRS, through local authorities, was the cause of an ambush and seizure of my homestead, in violation of state laws, and the cover up of their deed by the influences they had on the offices of the Dallas District Attorney and the Dallas County Sheriffs' Dept., attorney and the courts.

To further their unlawful actions, the above documented memo shows the IRS would further use their unlawful tactics to ——— "inform tax consultants and their client-employers of their "duties" on suspected false exemption cases ——— consider requesting legislation or an IRS published ruling (here is where IRS makes law, in violation of the constitution) ——— to require employers to file with service centers of a copy of amended W-4 or W-4E forms. (this would have to come from a

personnel file) ——— use Circular E, the Employer's Tax Guide on Withholding, to inform employers of responsibilities on suspected false exemption cases ——— use trade journals to reach employers for the same purpose. (in all of this, the taxpayer is forced to pay for his own destruction) Ask yourselves, "How wide is the conspiracy to undermine and destroy hard working citizens, in violation of their constitutionally guaranteed protections. The IRS also has invaded banks, tried to take over schools and churches.

The job that I lost, as a direct result of the IRS and their unlawful acts and unlawful pressures on my employer, was a job I had held for twelve years. I was payroll clerk and manager of the payroll department. I have had many enside views on the activities of the IRS. May I say, for the record, that the above does not cover all the areas in which the IRS violates the law. When I went to the Texas Unemployment Commission, on being forced off my job, to apply for work and to claim unemployment benefits, my former employer lied to the commission. According to the rules published in their own manuals, furnished to employers, and stating the statutory laws concerning "voluntary separation" from the job and, "forced separation" I proved through the appeals processes, that I was, in fact, forced off my job. The Texas Unemployment Commission upheld their decision under the Internal Revenue Code, plainly stated in their decision and completely out of their jurisdiction. This cost me an eight week penalty, (which I think was paid to the IRS) in excess of $700.00. This does not cover the problems encountered in the TEC office while looking for work. Also, when I filed a complaint with the Labor Board, under the Fair Labor Standards Act, against my former employer, I was notified that they were nine months behind in their investigations. Under the rules of the Labor Board, a person only has two years to file against an employer in court. At the end of the nine months delay I had to write and question if they had ever conducted an investigation. What they drew up as a report looked like something hatched from the papers of my complaint. The Labor Board completely failed in their responsibilities, as set out in their rules. The question must be ask, "Did IRS also have its thumb on the Labor Board?" It is a subject for investigation. Why have all these costly agencies of the government if IRS is allowed to be the supreme law of the land, operating as a government of itself.

There is also a long story, and a long period of time involved, when the postal services refused to rent me a post office box, in a neighborhood where I had lived for 27 years. This was a new branch office site and had an employee who had been transfered from a branch where I had previously had a box rented for several years. I had canceled my rental at the first post office, which was miles away, and had tried to rent closer to where I had lived for so many years. IRS had continuously plundered my mail. At that time I had no residential address. This was because of the aforementioned questionable influence the IRS had on local officials in which I was ambushed on the way to work at 7:00 A.M. on January 31, 1973 and my homestead was unlawfully seized by the Dallas County Sheriffs' Dept. NO COURT ORDER WAS INVOLVED. This is the tactics used by IRS and other agencies of the federal government. It was my homestead. I have not, since that time, although I have continued constantly, been able to obtain counsel. I tried for at least six months to rent a post office box but never got the box. I reported their actions to my representative. Nothing was ever done. I am certain IRS was exerting pressure on the P.O. to provide them with a residential address. There are many other questionable areas of unlawful interference in activities of my life, believed to be the acts of IRS.

It is the inalienable right of a person to live in peace. It is our right to be secure in our persons, houses, papers, and effects, against unreasonable searches and seizures. Any state constitution cannot be in conflict with the United States Constitution. When government paid thugs have no respect for law at any level, and are allowed to escape punishment, then we must have new people in office. Obviously our representatives are in violation of their oath to office, or they would certainly put to death the department of IRS. From much evidence which will flow in response to the June 2, 1981 hearings held on the Taxpayers Bill of Rights, and the June 16, deadline for getting complaints in by writing, we all pray that eyes will be opened to the seriousness of this endeavor. For many years the oppressed have cried out. The elected representatives have not heard. Some grounds have been gained in some states and at least a few representatives have lent an ear, in Washington. We who have suffered so much at the hand of the "enemy within" have served our country as meritoriously as if we had served bearing arms on a battle front in a declared war. Many have served prison sentences unjustly, because of this enemy. While the proposed Taxpayers Bill of Rights is not enough, it is a start.

The IRS is not the good guy in a white hat. The IRS is the skull and crossbone symbol of death. Must it be the nation that dies?

Thank you.

PREPARED STATEMENT OF JEFFREY L. ZARN

The Internal Revenue Service has taken upon itself to declare that anyone who has taken a vow of poverty is a Tax Protestor. (IRS Manual Supplement 9G-93)

Tax issues arise when religious members, who are subject to vows of poverty and obedience and, thus, without total control over the receipt or disposition of their income, are directed by their religious order to accept employment with third parties.

Although there is no definitive answer by way of statute or case authority, the evolution of the issue has produced three alternative theories:

(1) The individual has no income because by the vow of poverty and obedience he has made a valid anticipatory assignment of income.

(2) The individual member has both income and a charitable contribution.

(3) The individual member has income only if the compensation is for services he performed which are unrelated to the tax-exempt purposes of the religious order. (An anology to the unrelated business tax imposed upon tax-exempt organizations)

Current U.S. Treasury Regulations quoted below support the vow of poverty concept:

31.3401(a)(9)—1(b)(5) states: "If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry."

31.3401(a)(9)—1(c)(3)(d) states: "Service performed by a member of a religious order, in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his eccestiastical superiors."

These regulations have been on the books since October 25, 1957. The Revenue Rulings recently issued by the IRS on this subject flatly contradict their own Treasury Regulations. No Revenue Ruling can supersede a Treasury Regulation, so any Revenue Ruling in contravention of these Regulation, so any Revenue Ruling in contravention of these Regulations is null and void. Also it should be noted that Revenue Rulings only represent the position of the IRS on a given fact situation and they do not bind the courts. There is no Code section or case law which explicitly provides support for the approach of the Revenue Rulings. To follow the most recent rulings of the IRS places little relevance upon the strength of the moral contractual obligation existing between the religious member and the religious order by virtue of his voes of poverty and obedience. Although the vows are voluntarily taken, once they are made they bind the member to obedience to his superiors and transfer to the order any rights to the receipt and disposition of any income earned as a member. This control over income and the disposition of its benefits has been a fundamental criteria since Harrison v. Schaffner in 1941 and should not now be superceded by a relatedness of duty test which has no case or Code support.

The Internal Revenue Service has crossed the line of the "wall of separation between Church and State." Revenue Rulings 79-132, 77-290, and 76-323 have the "primary effect" of inhibiting religion and fostering "excessive government entanglement." These rulings can only have a "diversive political potential" which will divide the people of this nation along political lines over religious questions. (Lemon v. Kurtzman, 403 U.S. 602)

I believe it is also interesting to note that the IRS Code does not define "income," "church" or "Inurement."

Will you please answer the following questions:

(1) It is the intent of Congress to deny much needed income to religious orders from members who work outside the order?

(2) Are Treasury Regulations 31.3401(a)(9)—1(b)(5) and 1(c)(3)(d) still in effect?

(3) Do IRS revenue rulings supercede these Regulations?

(4) Is it the intent of Congress to allow these Revenue Rulings to unduly burden the practice of religion when weighted against the common good?

(5) Do you agree that the Church today is faced by a scheme of comprehensive regulations which vests the IRS with total control to determine what is a valid religion?

Let me conclude by saying it matters not constitutionally whether a Church has a million members or is a Church of One Member; whether it has 14 principles or two; whether its members hold a service or a meeting in a church, synagogue, or

home; whether they listen to hymns and prayers or simply sit and meditate. As to this Church or that religion, the constitution, in the spirit of the Voice addressed to the disputing rabbis of the Talmud, says "The words of both are the words of the living God * * *."

INTERNAL REVENUE CODE ENFORCES QUASI CONTRACT

The Internal Revenue Code is a constructive or quasi contract which is enforced pursuant to the common law precept of assumpsit. Whenever the Government confers a benefit or privilege a quasi contract is struck whereby the recipient is obligated to make restitution in the form of Federal Income Tax. This may sound strange, but anyone who has reflected upon the matter will agree that the Internal Revenue Code reads like a contract. Words and phrases such as obligation, liability, incur, good faith challenge, duty to perform a certain act, bad faith intent, etc. are examples of expressions which denote a contractual relationship and coincidentally prescribe the Internal Revenue Code. To apprehend the full import the key word is assumpsit, which is derived from a Latin verb which means: "I promise to undertake an obligation." A practice which the common law courts of England adopted from Roman Civil Law, assumpsit is a strictly civil action in equity to recover a fixed sum which is owed where either a breach of promise or an evaded obligation has severed a contractual relationship, where the action does not involve a claim for damages. Whenever a taxpayer is charged with a crime, however, the Government must then resort to a jury trial, since assumpsit does not impart criminal procedure.

In *Chapman* v. *First Insurance Co. of Hawaii* 255 F. Supp. 710, 712 (1966) the court said: "Assumpsit is an action of equitable character founded upon contract. In order to support an action of assumpsit there must be a contract, express or implied in law * * *" Unlike a contract "implied in fact", which is founded upon a mutual assent of the parties, a contract "implied in law" or a quasi contract is founded upon the receipt of a benefit which would be inequitable to retain, in whole or in part, without the consent of the benefactor. The concept is set forth in *Bloomgarden* v. *Coyer* 479 F.2d 201, 211 (D.C. Cir., 1973) as follows: "Thus, to make out his case, it is not enough for the plaintiff to prove merely that he has conferred an advantage upon the defendant, but he must demonstrate that retention of the benefit without compensating the one who conferred it is unjustified." As an indispensable requirement the recipient must perform some voluntary act consonant with the benefit conferred before a quasi contract can become a binding obligation. Voluntary is the key word. The principle is well defined in *Beatrice Foods Co.* v. *Gallagher* 197 N.E.2d 274, 283 (1964) when the court stated: "In a quasi contract obligation the principle upon which it rests is equitable in nature—it is an obligation similar in character to that of a contract, but which arises not from an agreement of the parties but from some relation between them or from a voluntary act of one of them, * * *"

The obligation to abide by the statutory requirements of the Internal Revenue Code in every particular, including all civil and criminal liability, prescribes the terms of the constructive of quasi contract. This implication can be readily inferred from *United States* v. *O. Frank Heinz Construction Co.* 300 F. Supp 396, 400 (1969) wherein the court said: "In the case of contracts implied in fact, the contract defines the duty, while in the case of constructive (quasi) contracts the duty defines the contract * * * The only essential element of such a contract is the receipt of a benefit which would be inequitable to retain." Moreover, in *Fayette Tobacco W. Co.* v. *Lexington Tobacco B. of T.* 299 S. W. 2d 640, 643-644 (1957) the court said: "The acceptance of the benefit of the Act by the appellants creates an obligation to abide by the controls, which is implied by law and is variously called and implied or quasi contract * * * A right is created not by any promise or mutual asset of the parties but is imposed by law on the party irrespective of, and sometimes in violation of, his intention.* * * a contract implied in law was defined as a legal fiction invented by common-law courts in order to permit a recovery by the contractual remedy of assumpsit in cases where, in fact, there is no contract, but where the circumstances are such that under the law of nature and immutable justice there should be a recovery as though there had been a promise." Moreover, in *Dunn* v. *Phoenix Village, Inc.*, 213 F. Supp 936, 951-952 (1963) the court said: "Quasi or constructive contracts (Commonly referred to as contracts implied in law) are obligations which are imposed or created by law * * * They rest solely on a legal fiction. * * * The basis of liability under a quasi or contructive contract is the benefit* * *" Put more succinctly in *Bloomgarden* v. *Coyer*, supra, at 210, the court said: "The quasi-contract, as we have said, is not really a contract, but a legal obligation closely akin to a duty to make restitution."

The Internal Revenue Code is 'law merchant' codified, taxing government created and conferred benefit subject to quasi contractual obligations. Law merchant origi-

nated as a separate body of law, the law of custom peculiar to mercantile transactions alone. Lex Mercatoria or law merchant became infused with the common law of England during the Sixteenth Century and evolved to Colonial America, where it was accepted. On this subject the principal is set forth in *Bank of Conway* v. *Stary* 200 N.W. 505, 509 (1924) wherein the court said: "The lex mercatoria was not, like the common law, the custom of a place or territory; it was the recognized custom of merchants and traders. * * * It is nevertheless inaccurate to say that the law merchant lost its identify entirely and became wholly assimilated with the common law when its administration was assumed by the king's courts. Through its principals were adopted into the common law * * * the law merchant still remained a body of rules applicable to a certain class of transaction, and independent parallel system of law, like equity of admiralty."

No one is under law merchant jurisdiction as an incidence of birth; one must avail himself of it by some voluntary act of the requisite kind. Law merchant is practiced, for example, when voluntary application is made for a vendor's license, a legal fiction created in law which confers the benefit of permitting mercantile transaction. The vendor becomes thereafter obligated to pay whatever else the law may require. A corporation, a fictitious person or legal fiction, is another example of a benefit created in law where the quasi contractual obligation may thus impose taxes, requirements, and controls. To accept the benefit and evade paying for it is, of course, theft. Law merchant jurisdiction arises from voluntarily acceding to a government created benefit, obligating the beneficiary to abide by the requirements and taxes incurred. In this connection the Supreme Court in *Flora* v. *United States* 362 U.S. 145, 176 (1960) said: "Our system of taxation is based upon voluntary assessment and payments, not upon distraint."

An income tax liability arises from a voluntary act alone and cannot be compelled. The Internal Revenue Code states that a tax liability must be incurred; i.e., "incur" means the responsibility for the act which imparts the liability. The requirement to make a return of income and pay an income tax is founded upon the quasi contractual obligation to make restitution for a benefit rendered—i.e., no benefit, no obligation. Wages and salaries, however, are not derived from a government created benefit subject to a quasi contract, since the common law right to work is protected by the Constitution, a first priority contract between the Government and the people. Therefore, there is no requirement to either make a return of income or pay a Federal Income Tax where wages and salaries are concerned. A wage earner or salaried employee may voluntarily file a return of income and thereby incur the quasi contractual obligation of the Internal Revenue Code, paying whatever tax is assessed, which could have been otherwise averted altogether had the incurer not filed and thereby denied the IRS jurisdiction. Law merchant, not common law, is the prevailing law of the Internal Revenue Code. The IRS admits this fact in its *Legal Reference Guide for Revenue Officers,* IR Manual 8(21)4, p. 58(10)0-200, which affirms as follows: "In any case not provided for in this Act * * * the Law Merchant shall govern."

Pecuniary Compensation Derived From Salaried Employment Is Not a Proper Subject From Whence to Exact a Federal Exise Tax

A. In two noteworthy decisions the Supreme Court adjudged the meaning of income as it pertains to the 16th Amendment.

1(a) From *Merchants' Loan & Trust Co.* v. *Smietkans* 255 U.S. 509, 519 (1921) the Supreme is quoted as follows:

"There can be no doubt that the word (income) must be given the same meaning * * * in all of the Income Tax Acts of Congress that was given to it in the Corporation Excise Tax Act (of 1909). * * *" 41 S. Ct. at 388

1(b) In *Bowers* v. *Kerbaugh-Empire Co.* 271 U.S. 170, 174 (1926). The Supreme Court is quoted as follows:

" 'Income' has been taken to mean the same thing as used in the Corporation excise Tax Act of 1909 (36 Stat. 112), in the Sixteenth Amendment, and in the various revenue acts subsequently passed." 46 S. Ct. at 451

It becomes obvious, therefore, that income subject to taxation under the Corporation Excise Tax Act of 1909 and under the 16th Amendment is the same.

B. The Corporation Excise Tax Act of 1909 was adjudicated in *Flint* v. *Stone Tracy Co.* 220 U.S. 107 (1911), 31 S. Ct. 349, wherein the Supreme Court said:

"The tax under consideration * * * may be described as an *excise* upon the particular privilege of doing business in a corporate capacity, i.e., with the advantages which arise from corporate or quasi corporate organization * * * *the requirement to pay such taxes involves the exercise of privileges* * * *" (emphasis added)

In the Flint case, supra, the Court held that a government granted privilege is a proper subject from whence to exact an excise tax whereby the value of the privilege thus conferred may properly be measured by the income derived from it. The exercise of an inalienable or common law right however, is not a government granted privilege from whence excise tax may be exacted.

C. The history of the enactment and subsequent ratification of the 16th Amendment discloses beyond doubt that the intent and purpose was to tax income derived from government granted privileges, particularly corporate activities, and profits arising from the business of trading commodities and other capital assets. In *Pollock* v. *Farmers' Loan & Trust Co.* 157 U.S. 429; 158 U.S. 601 (1895) the Supreme Court had declared the federal income tax act of 1894 unconstitutional for want of apportionment because income and property (capital) were indistinguishable, and an excise tax cannot burden property for want of due process. Later, in *Spreckels Sugar Ref. Co.* v. *McClain* 192 U.S. 397 (1904), the Supreme Court affirmed that Congress has the power to impose an excise tax on income arising from the government granted privilege of incorporation. Having suffered defeat in the Pollock case, supra, Congress was apparently unaware it could indirectly tax corporate profits.

The foregoing can be verified from the pages of the Congressional Record (Senate) of 1909 as follows: June 16, S-3344; June 17, S-3377; June 28, S-3900; June 29, S-3935; June 30, S-3976; July 2, S-4043.

During the debate which ensured the Senate frequently adverted to the Spreckels Sugar Case, supra, as a standard upon which to pattern the 16th Amendment. Consequently, the 16th Amendment, S.J. Res. 40, and a corporation excise tax act, H.R. 1438 (36 Stat. 112), were introduced on June 28-29, 1909.

The Corporation Excise Tax Act of 1909 defines income as a profit or gain analogous to the bottom line of a corporate ledger. It is important to note that the word "income" has the same meaning in both the Corporation Excise Tax Act and the 16th Amendment.

The express purpose of the 16th Amendment was to avert once and for all the issue presented in *Pollock* v. *Farmers' Loan & Trust Co.*, supra: i.e., under the 16th Amendment income and property (capital) are not synonymous.

D. In *Stanton* v. *Baltic Mining Co.* 240 U.S. 103 (1916) the Supreme Court said:

"16th Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged." 36 S. Ct. at 281

E. Moreover, in *Eisner* v. *Macomber* 252 U.S. 189, 205 (1920) the Supreme Court said:

"The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the amendment was adopted."

F. The Supreme Court in *Brushaber* v. *Union Pacific R.R.* 240 U.S. 1 (1916) confirmed that the 16th Amendment empowers Congress to lay and collect an income tax (not a direct tax) subject to the explicit rules and requirements of Article I, section 8, of the Constitution; i.e., the words "income" tax and "excise" tax are synonymous under the 16th Amendment.

G. Whatever constitutes a proper subject from whence to exact an excise tax, therefore, is a limitation upon the taxing power conferred under the 16th Amendment. Congressman not arrogate the power to select the subjects of an excise tax. In *Flint* v. *Stone Tracy Co.*, supra, the Supreme Court defines the proper subjects from whence to exact excise taxes as follows:

"Excises are 'taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.' " 31 S. Ct. at 349

The pecuniary compensations which natural persons derive from salaried employments, wages, and occupations are conspicuously absent from the foregoing enumeration of proper subjects of excise taxes.

H. Federal appellate court in *American Airways* v. *Wallace* 57 F. (2d) 877, 880 (6 Cir., 1932) said:

"The terms 'excise' tax and 'privilege' tax are synonymous."

I. Explaining the nature of the federal income tax, the Supreme Court in *Morgan* v. *Commissioner* 309 U.S. 78 (1940) said:

"State law creates legal interests and rights. The federal revenue acts designate what interests or rights, so created, shall be taxed." 60 S. Ct. at 426

J. It is well settled that the "liberty" inherent in the 5th Amendment protects ones God-given, inalienable 'right to work' and to earn a livelihood; *Butcher's Union Slaughterhouse Co.* v. *Crescent City Live-Stock Landing Co.* 111 U.S. 746 (1884); *Allgeyer* v. *Louisiana* 165 U.S. 578 (1897). "The restraint imposed upon legislation by

the due process clauses of the two amendments (5th and 14th) is the same"; *Heiner* v. *Donnan* 285 U.S. 312, 326, (1932).

K. No excise tax may be imposed upon a right secured by the Constitution; *Grosjean* v. *American Press Co.* 297 U.S. 233 (1936); *Murdock* v. *Pennsylvania* 319 U.S. 105 (1943).

In the Grosjean case, supra, the state of Louisiana had imposed an excise tax upon the daily circulation of newspapers whereby the number of newspapers sold was a measure of the amount of the tax. The Supreme Court adjudged that the "liberty" secured under the due process clause fully protects the inherent right to circulate newspapers. should the excise tax become prohibitive, the Court reasoned (297 U.S. 245), the underlying right to circulate newspapers would be destroyed. Needless to mention, the Supreme Court found the aforesaid circulation tax wanting in due process and therefore unconstitutional. Morever, the Court held that no license can be required where the exercises of rights secured by the Constitution are involved.

In the Murdock case, supra, the Supreme Court adjudged that an excise tax imposed upon the right to distribute religious literature is unconstitutional. The Court reasoned that an excise tax imposed upon a right would control or suppress its enjoyment.

Both the Grosjean and Murdock cases, supra, exemplify that the free exercise of a constitutional right cannot be made a proper subject from whence to exact any sort of excise or privilege tax. That would include the 'right to work' and to derive a livelihood. The matter is, therefore, settled!

L. In *Sims* v. *Ahrens* 271 S.W. 720 (1925) the Supreme Court of Arkansas said:

"These decisions apparently settled the law as definitely as repeated decisions of the same question can settle anything, that the state cannot tax, for revenue purposes, occupations which are of common right." (emphasis added) 271 S.W. at 724

This decision is noteworthy, since the court reviewed and relied upon most of the foregoing case citations presented (above) before arriving at its conclusion.

M. In *Goodrich* v. *Edwards* 255 U.S. 527 (1921) the Supreme Court defines income as follows:

"* * * (T)he definition of 'income' approved by this court is: The gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through sale or conversion of capital assets. Eisner v. Macomber 252 U.S. 189, 207." 41 S.Ct. at 391

The gain derived "from labor" contemplated in the Goodrich case supra, and in previous and subsequent cases where the phrase is used, means the actual gain or profit derived from contracting the services of laborers or employees. Moreover, the pecuniary considerations or compensations which natural persons derive from salaried employments, wages, and occupations are not included in the aforementioned definition of income.

N. Adverting to *Eisner* v. *Macomber* 252 U.S. 189 (1920) the Supreme Court is quoted as follows:

"* * * (I)t becomes essential to distinguish between what is, and what is not 'income' * * * Congress may not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone, that power can be lawfully exercised." (emphasis added) 40 S.Ct. at 193

From the foregoing it is apparent that Congress may not proclaim as income the compensation received for labor or services rendered.

O. In *Bowers* v. *Kerbaugh-Empire Co.* 271 U.S. 170 (1926) the Supreme Court said:

"* * *(I)ncome may be defined as gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital* * * And that definition has been adhered to and applied repeatedly." 46 S.Ct. at 451

P. Federal appellate court in *United States* v. *Ballard* 535 F.2d 400, 404 (8 Cir. 1976) said:

"(Income) imports * * * something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; *conveying rather the idea of gain or increase arising from corporate activities.*" (emphasis added)

In Ballard, supra, the court adverted to *Stratton's Independence* v. *Howbert* 231 U.S. 399 (1913), an early case involving corporate profits wherein the Supreme Court propounded its definition of 'income' as the profit or gain derived from capital, from labor, or from both combined.

Q. The Supreme Court of Pennsylvania in *Laureldale Cemetary Assn* v. *Matthews* 47 A. 2d 277 (1946) said:

"Reasonable compensation for labor or services rendered is not profit." 47 A. 2d 280

R. The Supreme Court of Virginia in *Oliver* v. *Halstead* 86 S.E. 2d 858, 859 (1955) said:

"There is a clear distinction between 'profit' and 'wages' or compensation for labor. *Compensation for labor cannot be regarded as profit* * * *" (emphasis added)

S. U.S. District Court in *So. Pacific* v. *Lowe* 238 F. 847 (1917) said:

"The true function of words 'gains' and 'profits' is to limit the meaning of the word 'income' * * *"

T. U.S. District Court in *Conner* v. *United States* 303 F. Supp 1187 (1969) said:

"*Whatever may constitute income, therefore, must have the essential feature of gain to the recipient.* This was true when the sixteenth amendment became effective, it was true at the time of the decision in Eisner v. Macomber, supra, it was true under section 22(a) of the Internal Revenue Code of 1939, and it is likewise true under section 61(a) of the Internal Revenue Code of 1954. If there is no gain, there is no income." (emphasis added) 303 F. Supp. at 1191.

U. Speaking through Mr. Justice Pitney, the Supreme Court in *Coppage* v. *Kansas* 236 U.S. 1 (1915) said:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. *Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property.* If this right be struck down or arbitrarily interferred with, there is a substantial impairment of liberty in the long-established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money." (emphasis added) 35 S. Ct. at 243.

The Coppage case, supra, confirms that labor performed or a service rendered is the property of the worker who produced it. That essential feature long settled by case law that income must be a profit or gain is lacking where personal liberty is expended and where the resulting labor performed is 'exchanged' for its value in money or other forms of property. Therefore, pecuniary proceeds derived from common law occupations—i.e., wages, salaried employments, etc.—cannot be income.

CONCLUSION

The 16th Amendment imposes an excise tax pursuant to Article I, section 8, of the Constitution. That an excise tax is an imposition upon a government granted or created privilege is too clear for debate. Income is properly defined as the gain or increase derived from either disbursements of accrued capital or the sale of capital assets, from the employment of laborers, or from a combination thereof, and that definition has never been assailed and was the understood and accepted meaning of income underpinning the 16th Amendment when that amendment was ratified.

Case law repeatedly confirms that under the 16th Amendment income and property cannot be the same. Moreover, it is well settled that the term income must be construed to mean profit or gain which diminishes neither life, liberty, nor property. Income therefore, rests outside the constraint of the due process clause. Consequently, income or its propagation may arise from a government granted privilege or quasi-privilege, since it has been long settled that the due process clause protects only natural rights and affords no protection where government granted privileges are involved. But where no privilege can be identified, there can be no income and, consequently, no tax.

The central and controlling issue which must be resolved, therefore, is whether a pecuniary consideration derived from the inalienable "right to work", arising from the common law and expressly protected by the liberty inherent in the 5th Amendment is income within the context of the 16th Amendment.

An Excise Tax Burdens Articles of Consumption

The great weakness of the Confederation, which had preceded the Constitution, had been its inability to raise revenue to support the Government. Great embarrassment had followed as a consequence of this inability. Therefore one of the principal objects of the new government was to establish an equitable system of federal taxation, but great difficulties in accomplishing this were immediately encountered. The states with navigable waters, harbors and ports were unwilling to relinquish their revenues derived from duties and imports, whereas the inland states were equally unwilling to surrender real and personal property as objects of federal taxation. Many of the smaller states feared that the larger and more powerful states would ultimately exact a disproportionate tax burden from the smaller and less powerful ones. The states endowed with harbors and ports were fearful that the

new government would exact disproportionate taxes from duties and imports. It was feared by the advocates of a new government that the effort would fail. After many lengthy debates, however, a compromise was subsequently reached by agreement that Congress would impose direct taxes by apportionment among the states according to their representation. In exchange for the concession that direct taxes shall be apportioned, the states with the navigable waters consented that the new government be given the power to tax duties, imports, and excises, and regulate commerce, provided "all duties, imports, and excises shall be uniform throughout the United States." Without this essential concession over taxes, the Constitution would not have been ratified. Therefore, the matter of federal taxation is one which cannot be taken lightly. A perusal of the debates which preceded ratification of the Constitution discloses that an excise tax is one which burdens articles of consumption.

In the 21st number of The Federalist, Alexander Hamilton is quoted as follows:

"Imposts, excises, and, in general, all duties upon articles of consumption, may be compared to a fluid, which will, in time, find its level with the means of paying them. The amount to be contributed by each citizen will in a degree be at his own option, and can be regulated by an attention to his resources * * * It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed,—that is, an extension of the revenue * * * If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. *This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them.*" (emphasis added)

Again in the 36th number of that work, Hamilton is quoted as follows:

"The taxes intended to be comprised under the general denomination of internal taxes may be subdivided into those of direct and those of the indirect kind . . . And indeed, as to the latter, by which must be understood duties and excises on articles of consumption * * *"

From The Federalist, Hamilton, paper 21, it is learned that an excise tax is likened to a fluid. If the tax becomes oppressive, consumption is reduced, resulting in a dimunition of the tax revenue collected. An excise tax which defeats this basic precept of natural law offends the intent and purpose of Article I, section 8, of the Constitution, since the framers of the Constitution intended this fluid concept to act like a hydraulic brake in constraining the taxing proclivity of Congress. Therefore, an excise tax may be described as a voluntary imposition where the citizen pays no more than he pleases, whereas a direct tax is one where each person pays what the imposer of the tax pleases. An indirect or excise tax is one which is demanded from one person in the expectation and intention that he shall indemnify himself at the expense of someone else: That is, the burden of the tax shifts from the person upon whom it first falls to another person who volunteers to incur the imposition.[1]

In *Patton* v. *Brady* 184 U.S. 608 (1902) the Supreme Court said:

"Turning to Blackstone, vol. 1, p. 318, we find an excise defined: 'An inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption.' This definition is accepted by Story in his Constitution of the United States, sec. 953. Cooley in his work on Taxation, page 3, defines it as 'an inland impost levied upon articles of manufacture or sale, and also upon licenses to pursue certain trades, or to deal in certain commodities." Bouvier and Black, respectively, in thieir dictionaries give the same definition." 22 S. Ct. at 496

Therefore, an excise tax is an imposition upon articles of consumption, or an excise tax may be exacted in the form of a license which permits a person to engage in the business of buying and selling or trading articles of consumption. It is important to consider that an excise tax is not an imposition upon the fruits of ones labor.

Reflecting upon the subject of excise taxes, the Supreme Court in *Maine* v. *Grand Trunk Ry. Co.* 142 U.S. 217 (1891) said:

"The tax * * * is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the state of Maine* * *. The designation does not always indicate merely an inland imposition or duty on the consumption of commodities, but often denotes an impost for a license to pursue certain callings, or to deal in special commodities, or to exercise particular franchises."

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[1] In a case involving personal federal income tax, the Supreme Court in *Flora* v. *United States* 362 U.S. 145, 176 (1960) said: "Our system of taxation is based upon voluntary assessment and payment, not upon distraint."

In *Maine* v. *Grand Trunk*, supra, a state was affirmed to have the power to exact an excise tax upon the income of a corporation created under the laws of that state. The Court, it is worth noting, held that the aforementioned excise tax was not upon corporate income per se, but rather the thing actually taxed was the corporate privilege granted whereby the value of the privilege thus bestowed was measured by the amount of income derived.

An excise tax, however, cannot be imposed upon the wages, salaries, or pecuniary compensations which a natural person derives from the inalienable right to work. The supreme court of Oregon in *Redfield* v. *Fisher* 292 P. 813, 819 (1930) said:

"The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individuals' right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed."

Moreover, in *Bank of Commerce & Trust Co.* v. *Senter* 260 S.W. 144, 148 (1924) the Supreme Court of Tennessee said:

"Whether the tax be characterized in the statute as a privilege tax or an excise tax is but a choice of synonymous words, for an excise tax is an indirect or privilege tax."

Speaking upon the subject of natural rights, the Supreme Court of Nebraska in *Hanson* v. *Union Pacific R.R.* 71 N.W. 2d 526, 546 (1955) said:

"We also think the right to work is one of the most precious liberties that man possesses. Man has as much right to work as he has to live, to be free, to own property, or to join a church of his own choice for without freedom to work the others would soon disappear. It is a fundamental human right which the due process clause of the Fifth Amendment protects from improper infringement by the federal government. To work for a living in the occupations available in a community is the very essence of personal freedom and opportunity that it was one of the purposes of these amendments to make secure. Liberty means more than freedom from servitude. The Constitutional guarantees are our assurance that the citizen will be protected in the right to use his powers of mind and body in any lawful calling. Smith v. State of Texas, 233 U.S. 630, 34 S. Ct. 681, 58 L.Ed. 1129, L.R.A. 1915D, 677, Ann.Cas 1915D, 420* * * ."

Deliberating upon the extent of federal taxation, the Supreme Court in *Spreckels Sugar Ref. Co.* v. *McClain* 192 U.S. 397 (1904) confirmed that Congress has the plenary power to lay and collect excise taxes from the same state created entities and corporations that are similarly taxable under a state's revenue jurisdiction. Through the Spreckels Sugar case, supra, the Supreme Court had provided Congress with a standard for constructing an income tax law which would withstand a constitutional challenge. The subsequent result was the simultaneous enactment of the Corporation Excise Tax Act of 1909 and the approval for ratification of the 16th Amendment. Under the Corporation Excise Tax Act, a federal excise tax extended to those same state created corporations which are valid subjects of excises under state law as corroborated and adjudicated in *Maine* v. *Grand Trunk*, supra. Where a state is precluded from imposing an excise tax upon a subject situated within its jurisdiction, the federal power to impose an excise tax upon that same subject is wanting. There is no such thing as an internal excise tax which Congress may impose but which is denied to the states where the subjects of the tax may be found. Moreover, unless a federal excise tax is applicable to the same subject wherever found throughout the United States, the tax cannot be sustained as uniform and must be null and void on that account. In this connection several state supreme courts have rejected the notion that a state may impose an excise tax upon a salary, wage, or other pecuniary compensation derived from a common law occupation. This single issue alone is sufficient to conclude the matter in favor of the proposition that a common law occupation is an improper source from which to exact a federal excise tax, and unless this court is fully prepared to overrule the various decisions of the state supreme courts which have exempted common law occupations, this proposition must prevail.

There is no room for doubt that the word income has the same meaning in both the Corporation Excise Tax Act of 1909 and the 16th Amendment, since Congress passed both with the Spreckels Sugar Case, supra, as its guide. When the income tax issue was before the United States Senate in 1909, President William H. Taft, in a special message to Congress, urged enactment of a corporation excise tax law and adoption of an income tax amendment, which the President deemed necessary to avert disputes of a constitutional nature. As outlined in the speech by the President the intent and purpose was to tax corporate privilege and simultaneously control the propensity for corporate abuse by auditing and regulating corporate activities in a manner which the law permits. In his speech to Congress, President Taft said:

"The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U.S. 397) seems clearly to establish the principal that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the federal power without apportionment according to population." Congressional Record (Senate): June 16, 1909; 3344, 3345

A former state law judge, then federal circuit judge, college law professor, and in later life Chief Justice of the Supreme Court, President William H. Taft in his said speech to Congress declaring that the intent of the income tax law was to tax profits or gains arising from corporate privilege must certainly carry legal weight.

Later, when the Corporation Excise Tax Act of 1909 was attacked on constitutional grounds in *Flint* v. *Stone Tracy Co.* 220 U.S. 107 (1911), the Supreme Court said:

"The statute now under consideration bears internal evidence that its draftsman had in mind language uised in the Spreckels Case, and the measure of taxation, the income from all sources * * *"

31 S. Ct. at 355

Shortly after ratification of the 16th Amendment the United States Senate discussed the intended meaning of income as follows:

"Mr. FLETCHER. I should like to inquire whether the Senate means to state that Congress can not by statute define what shall be regarded as an income tax?

Mr. CUMMINS. I do not think so, Mr. President. The word 'income' had a well-defined meaning before the amendment of the Constitution was adopted. It has been defined in all the courts of this country. When the people of the country granted to Congress the right to levy a tax on incomes, that right was granted with reference to the legal meaning and interpretation of the word 'income' as it was then or as it might thereafter be defined or understood in legal procedure. *If we could call anything income that we pleased,* we could obliterate all the distinction between income and principal." (emphasis added) Congressional Record (Senate): August 28, 1913; 3843

When the 16th Amendment was submitted to the states for ratification, the contempleted meaning of income at that time was from the definition developed in *Spreckels Sugar Ref. Co.* v. *McClain,* supra; in esse, a tax upon corporate privilege. Certainly the word 'income' as employed in the 16th Amendment cannot now be given an expanded definition so as to include wages, salaries, and compensations derived from common law occupations. Moreover, taxes imposed upon proceeds, wages, and compensations derived from common law occupations cannot be shifted to another but, rather must be paid directly by the one upon whom the tax first falls. The incidence of the tax clearly does not shift. A tax which burdens the fruit of ones labor must be direct and, therefore, improper under the 16th Amendment. The Supreme Court has undertaken great exertion to proclaim that the tax imposed by the 16th Amendment is an indirect one, and the proper subjects of it involve profits derived from government created privileges wherein the source of the income is the privilege bestowed.

The 16th Amendment empowers Congress to lay and collect a tax on income from whatever source derived—not on the source but "from" it. Income has been defined by the Supreme Court as profit derived "from" capital, "from" labor, or "from" both combined. The tax is, therefore, conditioned upon two elements: the source and the income derived from it. That the tax reaches income as a proper subject while leaving its source untouched is clear, since the source is an improper subject of the tax. Therefore, if a tax on income is imposed upon the wage or salary derived from a common law occupation, then it cannot be taxed, since the source cannot be diminished. If the source is the common law occupation, then the wage or salary derived cannot be income according to the definition of income set forth by the Supreme Court.

PREPARED STATEMENT OF PRESTON R. HOGUE

Early in 1979 Mid South Oil Company, headquartered in Little Rock, operated a couple of dozen convenience stories and gas stations in Arkansas, Louisiana, and Texas with nearly 200 employees. With the supposed gasoline shortage that occurred at that time, its main gas supplier fabricated a reason to discontinue supplies and took advantage of the higher prices available from selling on the uncontrolled spot market.

Deprived of its legal gasoline allocation, Mid South began to falter and fell behind in paying creditors, including the Internal Revenue Service. The owners brought in a number of other consultants and me in order to try to save the company and the jobs and investments that it represented. With wide public support, and the conscientious efforts of a few dedicated employees within the Department of Energy, we were able to take the case to Washington and to restore a fuel supply but not the prior credit terms. Some creditors, especially the next two largest gas suppliers, used the opportunity to illegally tighten the screws on Mid South, but most of the

creditors were very supportive and encouraging. The Little Rock office of the IRS, in particular, took the rather large FICA payments that had accumulated before we become involved with the company and gave us a long-term workout arrangement which was faithfully met.

The gasoline suppliers continued to jockey Mid South, withholding its allocations and changing credit terms at will, and the appeals to DOE proved frustrating and useless. The fight to save the company became a fulltime effort, and I entered into negotiations to buy it from the rather desperate owners. Numerous representatives of Mid South worked in Little Rock, Dallas, and Washington and were sent from office to office, city to city, and filled out endless designated forms and reports, only to be told they were the wrong ones. All the time the profit margins were severely limited by the price control laws that were applied to small businessmen with much attendant publicity but defied with impunity by the large oil companies. Mid South's complaints of price gouging earned the bitter resentment of two or three of its largest suppliers * * * and no doubt the appreciation of its customers.

Despite unprecedented public and political support, Mid South was unable to overcome the opposition of the oil companies and the indifference of DOE, and it filed for reorganization under Chapter 11 of the Federal Bankruptcy Code in April 1980. Since that point it has continued to operate under the supervision of the court in Little Rock and a creditors committee. The judge turned over the operation and accounting of the company for several months to a minority group from Louisiana but later removed them. A court-appointed examiner carefully investigated the history and situation of the company in the autumn of 1980, and he raised questions as to the real ownership and management of Mid South. Finally, in the spring of 1981 the court appointed a trustee to liquidate the company, after it became apparent that the opposition of the big oil companies would thwart any efforts toward reorganizing or restructuring Mid South. This is the present status.

One of the largest creditors of Mid South is once again the IRS. Under the Bankruptcy Code it has priority claims to the assets of the company. Notwithstanding the history of Mid South's relationship with the IRS, the Dallas office began aggressive efforts in May to charge me personally for the tax liabilities of Mid South. A collection officer told me that I was liable for the penalties whether or not Mid South paid the taxes. He said further that I had no choice but to pay them and then to sue the government in order to regain the money if I did not owe it. The week that we were in Washington conferring with attorneys for the Federal Trade Commission, among others, regarding the abuses of the big oil companies, the Dallas office filed liens against my property in Arkansas and Texas.

The prompt payment of claims to the creditors of Mid South, including the IRS, is dependent upon the successful disposition of company assets and their distribution through the court. We are working diligently with the court-appointed trustee in order to do this and to raise as much money as possible for all creditors. The arbitrary actions by the IRS have seriously interfered with our efforts, to the detriment of all creditors and investors. We cannot find the best prices for the company and its assets if all our time is spent in trying to reason with the IRS and to protect our property from unjustified seizure.

In addition to the previous successful workout agreement between Mid South and the IRS, a subsidiary of Mid South has at present an instalment workout arrangement pending the successful conclusion of the sale or liquidation of the company. As far as I know, no effort has been made by the IRS against any real assets of the companies or against any of the many individuals involved other than me personally.

This example of the difficulties encountered by one small company and one small businessman may demonstrate some of the difficulties faced by the IRS and the difficulties that it imposes upon others. The complexities of the governmental regulation, as attested to by Mid South's frustration in appealing to DOE and then later with the IRS, are a heavy burden to the small businessman in America.

In particular, the methods and adversary attitudes assumed too often by the IRS are discouraging and frightening. The idea, real or imagined, that the taxpayer is guilty until proven innocent—"pay and then sue to get it back if you don't owe it; you're liable for the penalty even if the company pays the tax"—is not conducive to a fair, voluntary citizen-supported tax system. The apparent violations of constitutional guarantees of due process and of other Bill of Rights freedoms are counterproductive when viewed in the light of too many IRS practices.

Legislation that recognizes the problems of and the manifold responsibilities of the Internal Revenue Service is sorely needed. Just as much is needed legislation that provides for a more reasonable and equitable procedure for tax distribution and tax collection.

FILER'S,
GEOLOGICAL MATERIAL FOR TEACHING,
Yucaipa, Calif., June 6, 1981.

ROBERT LIGHTHIZER,
Chief Counsel, Committee on Finance,
Washington, D.C.

DEAR SIR: I wish to relate some of my own experiences with the IRS. I was astonished at the overbearing and degradation I was submitted to. I was not allowed to use a tape recorder although it has been ruled that we are allowed to do so.

Two agents came to my place of business in September, 1980. I turned on the tape recorder and was told I could not use one. When I told them I was within my constitutional rights to do so, they told me no interview would be permitted. When I refused to turn off the recorder they walked out, even though I held out my records for them to examine. They sent me a bill for $5,500 without even looking at my books. I made arrangements with them to go to their office for an interview (a 60 mile round trip). The amount was reduced to about $1,900 which I haven't paid yet. One of the agents told me I had been stalling around, even though the agent himself had postponed the meeting for two months.

I object to the unconstitutional way I was not allowed to use a tape recorder and the arrogent manner I was treated.

Yours truly,

RUSSELL FILER.

PREPARED STATEMENT OF THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

The National Society of Public Accountants welcomes the opportunity to express its views regarding S. 850, the Taxpayers' Bill of Rights.

The National Society of Public Accountants is an organization of over 17,000 practicing accountants located throughout the country. There is a public accountants' association in each state affiliated with the National Society.

The members of the National Society are, for the most part, either sole practitioners or partners in moderately-sized public accounting firms. NSPA members provide accounting, auditing, tax preparation, tax planning and management advisory services to individuals and to small- and medium-sized business firms. Members of NSPA are pledged to a strict code of professional ethics and rules of professional conduct.

We are indeed pleased that Senator Max Baucus has sponsored S. 850, a bill to amend the Internal Revenue Code of 1954 to provide greater protection for the rights of the taxpayer.

As he so aptly stated, this Taxpayers' Bill of Rights Act "would put American taxpayers on a more equal footing with the Internal Revenue Service."

We strongly support, in particular, the provision eliminating the requirement that employers send W-2 forms to employees within 30 days after termination rather than before January 31 of the next calendar year. This would certainly alleviate some of the paperwork burden on small businesses as well as larger business enterprises. A 1979 survey conducted by the National Society showed that it costs employers more than $293 million each year to issue duplicative W-2's to employees who have misplaced them during the year.

We feel some concern, however, regarding the necessity to remove the requirement that individual taxpayers make declarations of estimated tax. So often the estimated tax voucher serves as a cover document for identifying the remittance of the estimated tax installments. For example, the voucher would show the name and address of the taxpayer as well as his or her social security number. This invaluable source of identification is important to the Internal Revenue Service, especially since many taxpayers fail to include this information on their checks or money orders. We believe such lack of identification could result in endless IRS-taxpayer correspondence. As a matter of fact, practitioners feel so strongly about this point, that they would supply the taxpayer-client with a nonofficial version of the form for his or her convenience. While it is true that many voucher forms currently filed when no payments are necessary are useless and discarded by the Service, there are countless situations where such a form serves as the only source of identification for proper credit to the taxpayer's account.

All in all, the provisions of S. 850 "would help restore the taxpayers' faith in the equitable administration of the tax laws by insuring that taxpayers and the Internal Revenue Service are aware of their respective obligations." And hopefully this would lead to increasing voluntary compliance with the tax laws thereby benefitting the public and the IRS.

PREPARED STATEMENT OF REV. HEBER JENTZSCH

The purpose of this report is to bring to the attention of the Congressional Hearings the potential for abuse that lies within the Internal Revenue Service's new classification of an old project entitled "Tax Protestors".

The concern is that the IRS is using the excuse or cover of enforcement to hit individuals who in no way should be on the 'Tax Protestor" list category. The result of this action is an enormous cost to the country in lost production and in terms of created animosity and hate and the loss of millions and millions of dollars to the taxpayers in terms of having to defend against injustice without compensation.

Therefore in order to show such a strong statement as the above to be real, we are attempting here to utilize a very simple and sophisticated system with which to present it for perusal.

The situation as defined here is a key word and means a major departure from the ideal scene. This requires another definition, ideal scene. And that is "the entire concept of an ideal scene for any activity is really a clean statement of its purpose." For example, it could be said that the purpose of this country has always been life, liberty, and the pursuit of happiness.

And so, on to the situation. Situation: The Internal Revenue Service officers in top management levels, under the guise of enforcement are using IRS power to hit individuals and organizations for what appears to be an unexpressed or hidden political motive not based on, and anti to the Constitution.

Policy: "Policy means the principal evolved issue by top management for a specific activity to guide planning and programming, and authorize the issuance of projects by executives which in turn permit the issuance and enforcement of orders that direct the activity of personnel in achieving production and viability." (Modern Management Technology Defined, by L. Ron Hubbard.)

Policy that the IRS is operating upon is contained in this report. It is from the Department of the Treasury, IRS Report on the Study of Illegal Tax Protestor Activity, dated March, 1979.

According to the aforementioned source the IRS has defined protestor as "An illegal tax protestor is a person who advocates or participates in a scheme with a broad exposure that results in the illegal underpayment of taxes."

So one of the policies that the IRS is operating upon which has to be counter to the policy of the country and to the Constitution, that in effect, the terrorizing of the taxpayer must occur if he is to pay his taxes. Nothing could be further from the truth in examining, for example, the Commissioner of the Internal Revenue's reports, one can see that hundreds may not pay their taxes while millions upon millions do pay their taxes, and all voluntarily.

I have attached the above IRS report to bring out some of the following information for view.

According to the definition of protestor, the IRS has greatly violated this definition, and used it to list all kinds of people who should not be so listed, as well as attacking the number of people under the guise of attacking, "Tax Protestors."

For example, one such list is from 1973 to 1974. It shows a permanent list of people who do not meet the classification as given by the IRS of "Tax Protestor." Such names as John Wayne, Frank Sinatra, former leader of the Black Caucus, Congressman Augustus Hawkins and his aide, Mr. Knox, the Mayor of Los Angeles, Tom Bradley and his wife, Doris Day is listed twice, Barbara Hutchinson, who had testified before Congress of IRS harrassive practices, is listed, the Church of Jesus Christ, which may or may not be the Mormon Church, the Worldwide Church of God, Mr. Howard Jarvis of Proposition 13 fame, Reverend Heber Jentzsch of the Church of Scientology who had written of IRS abuses, and many, many more. See the attached list.

There are of course, a number of other lists, several listed as tax protestors. Senator Joseph Montoya of New Mexico was listed as a tax protestor according to hearings before the "Select Committee to Study Governmental Operations with respect to Intelligence Activities of the United States Senate." IRS, October 2, 1975.

In the early IRS policy report, we found that the IRS indicated that they were not interested in the policy protestor. According to the IRS, all protestors are an example of policy protestors. Though the IRS indicates that such individuals are not covered in that report, a heretofore unknown document has emerged that shows individuals listed as tax protestors from 1966.

Again, the list is of interest in that it contains folk singer Joan Baez, professor and writer Noam Chomsky, who has written about the illegal intelligence actions of the FBI's Cointelpro operations, or counter-intelligence program aimed at black minorities and certain political groups. Several writers and ministers as well as teachers are included in this list attached.

The IRS would argue that this is no longer the case and that they cleaned themselves up some years ago. However, there is another area that shows the IRS may have used an intelligence program known as Project Ace to go after attorneys under the guise that they have violated tax laws. It is possible this program was used by the IRS to knock out some civil rights attorneys. See the attached article.

Another program which is still highly secret, was designed to go after political contributors in the first half of the seventies here in Southern California. According to one agent, this was designed to hit media and other major contributors. This project was known as Project Snowball, and according to the IRS it hit a number of political contributors, thus chilling Congressional zeal in wanting to rein in the IRS. See the attached article.

THE PROBLEM

The question is how big is this problem of tax protestors? According to the IRS' 1979 report, the IRS identified some 7,661 tax protestors. About 30 percent claim Constitutional basis for their filing incomplete or no returns. 75 percent of those examined by the IRS earned under $15,000 per year. And a portion of that, 75 percent, earned between $15,000 and $25,000 per year.

The IRS indicated that only 30 people could be classified as leaders in the tax movement. They proposed to set up a major watch system of these 30 people with their treasury enforcement computerization system (TECS). These are not rich people, but these are bordering on the edge of the low income groups for the most part.

In addition, these people are an extreme minority in the scheme of the national tax collections picture.

The IRS also alleges that churches are illegally established for tax purposes and names some 140-50 entries who might be illegal in terms of churches.

In the light of the $25,000 top and the under $15,000 bottom figures on tax protestors, this is an extremely small amount of monies. In addition, given all of the churches who have been listed as tax protestors in the past, this would appear to be a blatant attack on religious organizations under the guise of preserving the tax laws. It would also appear that lawyers and men of repute as statesmen and politicians and writers and performers have all been listed under the guise of tax protestor for the purpose of discrediting and bringing down the God-fearing and good-named people of the country, who have assisted in bringing some happiness and some life and liberty to the American people.

The IRS has asserted in their own documents that they do not want to chill the First Amendment rights of the people, however, they often contradict themselves. And they then proceed to indicate this can be accomplished (through surveillance) with wiretaps, infiltration into groups (churches?) and all manner of such activities. It is a chilling action for the IRS to attend meetings and to follow those who they think are tax protestors while allowing actual criminals and actual major crimes to occur, in tax crimes or tax courts without taking legal action. The IRS has bypassed Congress with its special settlement actions to the tune of $100 billion a year in lost income, which is in violation of Congress's mandate that the IRS must—that is, the IRS must go through Congress in order to subsidize any activity. Only Congress can subsidize. The hidden secret agreements, the secret rulings done by top-level management amounting to $100 billion a year, is a bypass of Congress in its right of subsidy and that $100 billion is far in excess of what is being obtained from the common working man or the 7,000 so-called tax protestors.

I have attached documents hereto from the IRS attacks on Heber C. Jentzsch as an individual. The IRS has indicated that there is no attempt to chill First Amendment rights or First Amendment guarantees of free spech and assemply. Yet you will see through a number of these documents that are listed here, that the IRS indeed has kept extensive watch on individuals, such as the person mentioned here, and attempted to chill his rights of free speech. See attached documents, 3, 5, 5a, 6, 8, 11, 11a, 11b, 11c, 11d, 11e, 12, 14, 14a, 16, 18, 19, 23, 24, 25, 25a, 26, 27, 28, 29, 29b, 30, 34, 35, 38, 43, 46, 46a, 47, 48, 49, 50, 50a, 64, 64a, 65 and 66.

You will see from the documents that I was entered into the IRS intelligence files around 1972, when the IRS showed an entry of monitoring the private correspondence of commedian Steve Allen. Mr. Allen had written to me as a member of the Church of Scientology to trace down the vicious and unsubstantiated rumor regarding people rowing boats off the coast of Malibu, California, church boats, and the fact that someone suspiciously thought they were practicing night landings. As if six people in a rowboat might take over the coast of California! The concept was absurd, but the IRS had such a document. My private correspondence sent to Mr. Allen is mentioned by the IRS, and these are part of their files on myself.

In 1973 I toured the Northeast states handing out information to the general public on IRS intelligence practices, of illegal wiretaps, bugging, and illegal seizures of property without due process of law. This created a furious confrontation in Spokane, Washington, and as you will see from the documents, on October the 10th or 11th in 1973, an article from Yakima, Washington was sent to IRS intelligence in Los Angeles, California, and an immediate search was done on me, as you can see from the attached documents finding out from the Department of Motor Vehicles in the State of California all possible information.

From that point on, there is a progression that can be seen through the documents of IRS surveillance; attending meetings that I spoke at, watching for radio shows and recording the events of that; any meeting that was held with any individual within the Internal Revenue Service, any confrontation, any kind of demonstration of protest was entered. Any type of meeting that I attended was covertly infiltrated by Internal Revenue Service agents. That is, indeed, a chilling First Amendment attack by the Internal Revenue Service.

In 1974 the reports pick up on me again. I do not, of course, qualify as a tax protestor per the definitions. However, there is great at odds conflict in terms of that definition in the IRS own manual on how to handle tax protestors, a person who complains about IRS practices, a person complains about and asks for his Constitutional rights, a person who may ask to record the meetings with the IRS, a person who brings someone else with him to be a witness with the IRS in a confrontation over payments, can be classified as a tax protestor.

Not to take up the issues of tax protestors, per se, but again, the actual issue of tax protestors is one separate issue. But the using of that name as a designation to clobber and attack individuals of high stature in the society, and to attack bona fide churches and church members for their contributions is an enormous danger to the First Amendment, the rights of free speech, and Fourth Amendment and Fifth Amendment rights.

The culmination of IRS surveillance on me could well have happened in Mexico City when I was there in 1974, June and July with my wife, with Yvonne Jentzsch. What ensued was a nightmare of terror and an attempt to put my wife and I in jail when we were seized by agents from Gobernacion. And they indicated as they grabbed my wife in Mexico and myself at a private party that we had no Constitutional rights. They indicated that there was no particular error in our papers. We were hauled off and interrogated. We were taken away from our friends. Our friends' lives were threatened by Gobernacion agents.

And finally, through an intervention of friends of mine from the Vice-president's office in Mexico City, only then were we released. And this was after investigators from the Vice-president's office found documents in Gobernacion that had been sent from this country on me as a person.

The only possible agency that could have sent those documents as you will see in the attached documents on myself, had to be the Internal Revenue Service, who was maintaining a close watch and extensive file on me as an individual because of my church affiliation and my outspoken attempts at reform on the Internal Revenue Service.

The fact that the IRS, referring back again ot the main report, would usurp Constitutional rights through the guise of going for enforcement on tax protestors must be analyzed, right or wrong. On page 38, they would require the employer to withhold on the W-4 regardless of the guilt or innocence of the person, until the District Director rescinds or modifies, or the District Court overturns or modifies. Notice the difference is the court would have to overturn, the District Director would have to rescind. The employee is prohibited from filing a new W-4 for one year after the date of the District Director's determination, whether he has children or not. He has no right according to that proposed law for a chance of determination.

This means the District Director has the power to determine before justice is done, and can hold the taxpayer wages before a court hearing. That is, one is guilty until proven innocent in the eyes of the Internal Revenue Service.

The cost of protecting oneself from this kind of incursion is enormous, since most kinds or most cases are those identified as tax protestors, are in the $15,000 a year bracket or under category. You can see this on page 39 of the IRS report.

Further, the District Director wants to impose a $500 fine and his decision is presumed to be correct. Then the person has to prove, with the burden of proof on the taxpayer, that the error was due to a good faith mistake. In this type of warfare the IRS can make an immediate $500 penalty or approximately the gross salary for two weeks. Lawyers' fees and time off work could cost another minimum of $2,000, or $83 per week, or one-third of the salary for two weeks. Lawyers' fees and time off

work could cost another minimum of $2,000, or $83 per week, or one-third of the salary of the individual targeted by the IRS.

In effect, the IRS establishes employers as a work force for the IRS and causes them to be identified as IRS employees and enforcers, thus limiting the production of the employees, as his boss really becomes an IRS staff worker, working for the IRS.

It also means that a person loses a guarantee of one-third of his salary per week, plus more in penalties, if the IRS summarily disallows a deduction given, making the percentage go up to 40 and even 50 percent perhaps, before the person has been to court. If he prevails in court (assuming he can risk the money), he still loses, as he is out his work time for cost, lawyers' fees, etc.

The denial of due process is staggering. Any mistake could then be obsecured, as IRS has enormous economic and para-Constitutional powers far exceeding any granted by Congress. This totally puts the taxpayer at effect, with no rights, and collapses the innocent with the alleged guilty.

On page 39, on No. 4, legislation is requested by the IRS to exonerate the employers from all liability to the employees, and impose an absolute bar of a lawsuit against the employer or any other person with respect to the employer's compliance, with the regulations and or directions of the District Directors. Then government can intervene on behalf of the employer.

This means that the taxpayer could never sue government or employer for destroying and confiscating their earnings and earning capacity. They could only sue to get their money back.

The arrogance and the destruction of Constitutional rights of individuals by the proposed legislation is beyond description, and is contemptible in a free, democratic society.

Further, in section 4, page 39, if the employee should make a determination that he should receive his just monies and sue the employer against the already repressive statutes recommended, the IRS wants the employer to receive attorney's fees against the employee. This means that the IRS wants to set up an absolute system of control over the employee, the employee band, such as the feudal system of vassals and servants to a lord or master with no Constitution or gurarantee rights usurped by a rapacious IRS bureaucracy.

The subject next is churches. Under page 40, section 170 cases. If the IRS summarily decides a church is not a church (thus having powers even Congress does not have, prohibition of the First Amendment), they can deny the contribution of an individual to his church.

If the individual makes the contribution, and does so expecting return, the IRS determines this should not be allowed.

If one then assisted Jesus by giving him food and a place to rest because the felt the grace of God would then fall upon him, his house an those who dwell in it, because he felt it was his spiritual duty, and that he would receive reward for assisting, he could not claim his contribution under this proposed law.

Further, it says, in effect, that he who gives to a church and claims spiritual benefit from that giving should not (indeed as written), cannot claim such a deduction.

This denies the most basic factor of spiritual and physical exchange so much a part of our society.

IRS enters a new concept. The expectation of return, without defining what that return could be, leaving a broad area to be attacked by any person who has bias.

The alleged church scheme on page 41 indicates 460 returns were identified under alleged church schemes. Identified is the key word here. However, verified is more important to determine is this problem real?

The scene is that this is not verified, and IRS is expending large resources and plans against religions in general, and including religious groups in the attack, such as those listed in the enemies or tax protestor lists of 1973 and '74, and the one with Senator Montoya.

Forcing churches to file statements claiming church status for tax purposes sets up excessive entanglement of government into religion. It violates the Walz decision and First Amendment rights. There are currently plenty of laws on the books for prosecution of actual abuses.

On page 41, part 3, the proposal to use computers for identifying excessive charitable contributions, and deductions and their characteristics, could proliferate into broad violations of separation of Church and State. Again, this has happened in the past, giving the IRS powers over churches never granted by Congress.

The cost to churches, even if all legitimate churches, would be enormous, especially if there is no guarantee of return. Certainly the churches need to preserve their

Constitutional rights. Encroachment by the IRS, and the guilty until proven innocent syndrome, is again present here.

Political attacks on the Fifth Amendment are planned by Internal Revenue Service, if all allow to encroach on these areas. Page 42.

TECS, or the Treasury Enforcement Computerization System would keep track of tax protest leaders, though admittedly this is only 30 people.

The taxpayer in this document is always guilty until proven innocent. According to page 45, part 3, once a taxpayer is identified codes are placed in TECS. Notice this means anyone who asserts a Constitutional right, anyone who brings his lawyer as a witness to the IRS meeting can be so classified.

IRS enforces the burden of proof on the taxpayer, denying him his Constitutional rights. IRS even goes so far as to say on page 52, it recommends a stay of compliance must be filed with the court and the taxpayer has the burden of proof. If he loses, the IRS recommends no appeal rights. If the IRS loses, they get appeal rights. That is unconstitutional.

This puts the taxpayer out of the protection of the Constitution and places the burden of proof on the taxpayer, all radical changes in law.

In addition, the cost to the taxpayer is increased and increased budget demand will also result.

Therefore, a taxpayer needs a Bill of Rights which will give him appeals. For as it stands, a taxpayer has no appeal rights. And the IRS concept of this can only be other ideological sources, and parallels the Communist ideology. The IRS completely denies the rights of appeal, and removes due process from the taxpayer.

(1) There is a need for a separate court away from the Internal Revenue Service with judges having no prior involvement with the Internal Revenue Service, either as an agent or as a lawyer in any way, shape or form, except in having heard cases. But not a part of the IRS tax system.

And they should hear the tax protestor type cases to determine their validity or nonvalidity. It should be run on civil and Constitutional law, and exact laws and procedures. It should hear the cases in question impartially.

(2) A reward of fees and other costs to any taxpayer should be made, who prevails in the above court setting, and who prevails against the IRS or any officials of the IRS who have violated his Constitutional and civil rights.

(3) Remedies of personal fines against any IRS employee who abuses the process of the Constitution and takes any corporation or individual to court, or seizes without due process of law any property belonging to any corporation or individual.

(4) Investigate the current cost of these enforcement programs against 7,600 people as opposed to running the normal tax collection functions.

(5) Trim the waste actions out of the IRS and all personnel involved who would be wasted in that area and reassign them to other governmental agencies.

(6) Make an investigation, and have it done on the top level of management going back as many years as necessary, perhaps 1952, 3 or 4 to determine who, what individual has initiated programs attacking various segments of the society and who have proposed actual oppressive laws and handle accordingly for individuals who usurp power without Constitutional authority.

PREPARED STATEMENT OF JAMES P. TUCKER, JR., MANAGING EDITOR, THE SPOTLIGHT

Mr. Chairman and members of the committee, I am James P. Tucker, Jr., Managing Editor of The Spotlight. I appreciate this opportunity to submit for the record the views of Liberty Lobby's 30,000-member Board of Policy, as well as approximately a million readers of our weekly newspaper, The Spotlight.

I would be very surprised if well in excess of 90 percent of our members and readers do not share our view that radical tax reform is long overdue, judging by every indication of mail, phone calls and personal expressions. The same could be said of listeners to our daily radio broadcasts and weekly TV program viewers.

It is heartening to see how support has increased, year by year, since May, 1977, when I had the pleasure of addressing a House Ways and Means subcommittee about the brutal abuse of citizens inflicted daily, and as a matter of policy, by the IRS.

To my knowledge, I first uttered the term "Taxpayer's Bill of Rights" at those hearings in 1977. Before the week was out, we heard from several senators and representatives, asking for recommendations. It was our pleasure to comply.

In the four years since, the need has increased. The IRS has in no way cleaned up its act. You can be sure that somewhere now:

A widow is being emotionally brutalized;

A working man is being bullied; and

IRS agents are frightening a working girl into agreeing to pay another hard to borrow $100.

IRS agents are like country sheriffs of a bygone era. Their job security, status and income are reflected in a type of "quota system." If the agent scares enough taxpayers into paying more money he has done well. If he uses a lot of time without bringing in the scalps he is disciplined.

How do I know this? Because IRS agents have told me so and because secret IRS internal memos, which I have obtained and would be happy to share with this committee, make this fact explicitly clear.

Nobody knows better than the members of this committee the comprehensive provisions contained in the Taxpayer Bill of Rights measure introduced in both houses, so I take none of your time belaboring each item. We are for all of them and the more you can do the better it will be.

In line with the administration's search for economy, I suggest greatly reducing the IRS's vigilante budget so that random audits are impossible and only in cases of probable cause—such as the millionaires who pay no taxes at all—could IRS have the manpower to pursue a taxpayer.

You could consider so reforming the tax laws that every taxpayer's obligation is explicit and reasonable enough so he is not driven to digging his way through a mountain of credits and deductions simply to keep his income tax liability from being unbearable. This would reduce any supposed need for the IRS to have its own gestapo stomping on the rights of middle class, taxpaying, patriotic, God-fearing Americans.

Four years ago, I told the House subcommittee the tragic story of William Smiley, of Salem, Va., who was a cheerful, happy family man until he was confronted by two IRS agents. Ten minutes later Smiley was dead of a gunshot. I was never permitted to interview the two IRS agents, although they knew the widow and daughter wanted me to. And the horror stories still continue.

I once received a machine copy of a handwritten letter from a Minneapolis busboy to President Jimmy Carter. It could move the most hardhearted among us to tears. He hadn't always been a busboy. For 10 years, this man had a thriving trucking business. He was buying several big rigs as they all do, financing their purchase and making heavy payments from his revenues.

To avoid hiring extra staffers to serve as federal tax collectors, he would say to each individual driver: "You are an independent contractor. You will use my truck to deliver this furniture from A to B, buying your own gas and meeting your other expenses. I am subcontracting this job to you for this fee. You will make your own arrangements on federal income taxes, Social Security and whatever." The future busboy reported his income after the usual and legal operating expenses were accounted for.

This situation was undisturbed for years, until the IRS swooped down upon him declaring that his "contractors" were, in fact, employees. They said he was liable for all the income and Social Security taxes that should have been deducted all those years.

They wiped him out. He had no money or other skills. So, the last I heard of him, he was still a busboy. Now, how much tax do you think the government is getting from this busboy compared to what he paid while a businessman?

There are many more such busboys in the land today. I could take up more of your time than you would tolerate telling you horror stories. Nor are LIBERTY LOBBY and The SPOTLIGHT your only source. Recently the Sunday supplement Parade had a cover story on taxpayer abuses. True, every incident appearing in Parade had previously been reported in The SPOTLIGHT, but we are glad to have any help at all in making the Congress and the country aware of the IRS abuse of our civil liberties.

The IRS: Snoops in our mail and into our bank accounts; intimidates our employers; and Infiltrates—in the role of downright spies—patriotic and civic groups.

We have carried photographs of IRS spies snooping, under false identities, on private, patriotic meetings.

Before I testified four years ago, I was anonymously warned that I would regret such a step. Similar telephone threats were received by Mrs. Smiley and her daughter, who appeared at my side to confirm my account of the tragic death of their husband and father.

In a quarter of a century of paying income taxes, I had never been audited. But then I understood how I was to "regret" my testimony. Two weeks after testifying, I received the first audit notice of my life—for the year 1975. I am still in the process of being audited for 1976, 1978 and 1979, so it's obvious that I've made the political hit list of the IRS.

This has been most educational. The first notice, of course, summons me like a dog to the whistle to appear at an office on a certain day and time with particular documents. After an exchange of vigorous correspondence, they finally understand that they must follow the law: Congress has legislated, in the IR Code, that interviews between IRS agents and taxpayers will be "at a time and place of mutual convenience." Well, my office is more "mutually convenient" because I have productive work to do and there is no reason for me to have to deduct cab fare to an IRS office when the agents can travel on their expense accounts.

They, they always object to the tape recorder, but they are never able to show me where an act of Congress forbids the taxpayer from using a tape recorder. Nor can they explain why they object to a tape recorder. But I always insist, and ultimately prevail. But many taxpayers are as afraid of IRS bullies as they are of street muggers and are so intimidated.

In the 1975 case, I was completely vindicated but not until they tried to nick me for $1,400; then $1,000, then $500, then $165 and finally $55. Never would I consent to pay even $55 to get the monkey off my back.

Finally, an IRS attorney sat in my office as we went over stipulations. We stipulated to the point where the government would owe me money before I called that to the attorney's attention and agreed to prove one small item. A week before I was to go to trial, the lawyer called and agreed to find no deficiency.

Regardless of a stated policy of the IRS not to raise the same points the following year in which the taxpayer had prevailed the year before, for me this policy was parked. They are harassing me year after year.

But I will yield not one bit in telling this angry nation the truth about the "voluntary" federal income tax and its "collection specialists."

Mr. Chairman and members of the committee, I leave you with a final thought:

Congress created this monster and Congress must kill it or you will see the "tax revolt" turn into a political revolution.

Thank you again for this opportunity to submit our statement for the record.

Prepared Statement of Stephanie Greene

I object strongly to the following abuses of my civil rights by two agents, specifically, Judy Demarco and District Director, W. H. Connett:

(1) On October 27, 1980, per telephone conversation with DeMarco, regarding audit of 10-14-80, and per her instructions of procedures to follow, I requested an Informal Conference;

(2) Sent confirming letter requesting Informal Conference, dated October 29, 1980, Certified/Return Receipt Requested #P26 9666308; (This was ignored.)

(3) Received letter dated December 23, 1980, adjusted/revised tax liability, which stated "Please reply within 10 days from date of this letter." This was not received in a timely manner because of Christmas holiday mailings;

(4) My response of January 2, 1981 Certified/Return Receipt Requested #P24 4792647 was made in a timely manner as I did not receive the letter until December 31, 1980 due to slowness of Christmas mail. My response was timely and, again, requested an informal hearing which I was entitled to as due process of law; (This was ignored.)

(5) Received form letter 1020 (DO) (7-77), dated January 13, 1981, from DeMarco which stated in pen that "I no longer have your case, your case was closed unagreed 01-06-81 due to your not responding." (This did not say where my case was at the present time. Also, my response was sent in a timely manner, see paragraph 4.);

(6) I responded on January 16, 1981 with letters, Certified/Return Receipt Requested #P24 4793426 and #P24 4793427, to both DeMarco and Connett affirming my position of answering in a timely manner and again referring to my original request of October 29, 1980 and further request of January 2, 1981 for an informal conference to which I am entitled as due process of law; (This was ignored.)

(7) Received Ninety-Day Section letter, dated April 10, 1981, from Roscoe L. Egger, Jr., Commissioner, by W. H. Connett, District Director.

In all above instances the informal conference which I am entitled to as due process of law has not been honored to date. The above mentioned public servants have violated my civil rights and constitutional rights.

What disciplinary measures, fines, penalty, imprisonment and corrective measures will these public servants receive as violators of my rights?

What recourse do I have against these public servants?

Also, when will I receive my informal conference as due process of law allows?

Thank you and I await reply from you.

UNITED AUTO WORKERS,
INTER-OFFICE COMMUNICATION,
June 11, 1981.

To: Sheldon Friedman.
From: Lydia Fischer.
Subject: Taxapyers' Bill of Rights Act (S. 850).

Dick Warden has passed on a request for a reaction to (S. 850), introduced by Senator Baucus (D-Montana) and others. As the title suggests the intent is to protect taxpayers from financial or economic loss due to IRS action which may be later proved to be unwarranted, to provide better service to taxpayers, and to make the system less burdensome to taxpayers in some instances.

The proposal appears to be a worthy effort of only limited interest to us. Its most powerful features—the creation of an independent Ombudsman's Office, and the requirement and the IRS obtain a court order before seizing a taxpayer's property—seem unlikely to affect many of our members. Some of the provisions would be helpful: the improvement in the taxpayer service program, and a couple of procedural changes.

Here is a brief account of most of what the bill would do and my comments—

(1) Direct IRS to maintain and improve its taxpayer service programs: This is good, particularly when Reagan is trying to chisel away at these programs as part of his budget-cutting effort.

(2) Replace the current Office of Ombudsman, which depends on the IRS Commissioner, with an independent Ombudsman: This is good, because it makes the Ombudsman able to stand on his/her own feet vis-a-vis the IRS, and the Administration as well, as a six-year term is proposed.

(3) Authorize the Ombudsman to issue "Stop Action Orders" if a taxpayer is to suffer irreparable loss as a result of IRS action: This seems adequate but of main benefit to the self-employed (small-businessmen, professionals, etc.).

(4) Direct the IRS to establish an administrative appeal procedure to deal with disputed collection cases: O.K.; now only appeal possible is after disputed payment is made. Beneficiaries same as in (3) above.

(5) Seizing a taxpayer's property by the IRS would require a court order: (4) above seems to be a fallback position in the likely event that (5) is amended out of the bill (as the authors think likely) because it would be too burdensome.

(6) The ceiling for tax due before quarterly estimated payments are made would be raised from $100 to $300: O.K., as most of the taxpayers affected are lower income taxpayers, particularly those receiving small pensions.

[Whereupon, at 11:42 a.m., the hearing was adjourned, subject to the call of the Chair.]

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