

**NOMINATION OF JOHNNIE McKEIVER WALTERS TO BE  
COMMISSIONER OF INTERNAL REVENUE SERVICE**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**  
NINETY-SECOND CONGRESS  
FIRST SESSION

—————  
JULY 30, 1971  
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**EXECUTIVE PROCEEDING**

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Printed for the use of the Committee on Finance



U.S. GOVERNMENT PRINTING OFFICE

76-856 O

WASHINGTON : 1972

5361-10

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# NOMINATION OF JOHNNIE McKEIVER WALTERS TO BE COMMISSIONER OF INTERNAL REVENUE SERVICE

FRIDAY, JULY 30, 1971

U.S. SENATE,  
COMMITTEE ON FINANCE,  
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 2219, New Senate Office Building, Senator Russell B. Long (chairman) presiding.

Present: Senators Long, Anderson, Talmadge, Byrd, Jr., of Virginia, Nelson, Bennett, Curtis, Miller, Jordan of Idaho, Fannin, and Hansen.

Senator TALMADGE. Senator Bennett, while we are waiting for the chairman, do you mind if we proceed?

Senator BENNETT. No.

Senator TALMADGE. We are honored to have the two very distinguished Senators from South Carolina with us: the senior Senator, Senator Strom Thurmond, and the junior Senator, Senator Ernest Hollings. You may proceed, Senator Thurmond.

## STATEMENT OF HON. STROM THURMOND, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman, it is an honor and a pleasure for me to introduce to this committee the Honorable Johnnie M. Walters, who has been nominated by President Nixon to be the Commissioner of the Internal Revenue Service.

Johnnie Walters was born near Hartsville, S.C., and is married to the former Donna Lucille Hall of Michigan, and the father of four children.

In 1942 Mr. Walters was graduated from Furman University with an A.B. degree and received his LL.B. degree from the University of Michigan in 1948.

From 1942 until 1945 he served in the U.S. Army Air Forces, attaining the rank of first lieutenant, and receiving the Air Medal with clusters, the Purple Heart, and the Distinguished Flying Cross.

Mr. Walters is a member of the Michigan bar, the New York bar, and the South Carolina bar.

From 1949 to 1953 he served in the Legislative and Regulations Division, Chief Counsel's Office, of the Internal Revenue Service in Washington, D.C.

He resigned as assistant head of the division to serve in the taxation division of the legal department of Texaco, Inc., in New York City from 1953 to 1961.

Mr. Walters resigned as assistant manager in order to enter into the private practice of law in Greenville, S.C., with the firm of Geer, Walters & Demo, specializing in tax law.

In 1969 he withdrew from the law firm upon President Nixon's appointing him to be Assistant Attorney General, Tax Division of the Justice Department, where he served until the present date.

He is a member and past president of the Rotary Club of Greenville, S.C., member of the board of directors of the United Fund of Greenville, and a member of the Greater Greenville Chamber of Commerce, as well as being a member of the American Bar Association, tax section; the South Carolina Bar Association; and the Greenville County Bar Association.

He is, therefore, highly qualified to hold the important position of Commissioner of the Internal Revenue Service. He is qualified by his native intelligence and ability, by his extensive and successful experience in the field of tax law, and by his service to the people of his community, his State, and to the United States.

I heartily endorse his nomination to this committee.

Senator TALMADGE. Thank you.

Senator Hollings.

#### **STATEMENT OF HON. ERNEST F. HOLLINGS, U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator HOLLINGS. Mr. Chairman, my senior colleague has covered the waterfront with his very splendid presentation and introduction to the committee and, for the sake of time, I think I will just file my statement, which duplicates, in many instances, Mr. Walters' distinguished record.

I only add I really got to know him as the president of the Greenville Rotary Club. That is what he was when President Nixon nominated him as Assistant Attorney General in charge of the Tax Division.

He has had outstanding service working for years back. As one member of your committee mentioned only a moment ago, he met him working with the tax section of the American Bar Association some years ago, approximately 20 years ago, and he was with the Office of the Chief Counsel in the Legislative and Regulations Division of the Internal Revenue Service; he served as secretary-treasurer of the South Carolina Regional Special Liaison Tax Committee, and most recently now has been doing an outstanding job as Assistant Attorney General.

I enthusiastically endorse him by way of character, by way of capacity, and by way of dedication. I don't know of a finer citizen and we are proud to have him as a South Carolinian. I am sure we join in that, Senator Thurmond and myself.

(Senator Hollings' prepared statement follows:)

#### **PREPARED STATEMENT OF SENATOR ERNEST F. HOLLINGS BEFORE THE SENATE FINANCE COMMITTEE ON THE NOMINATION OF JOHNNIE McKEIVER WALTERS**

Mr. Chairman, I count it a real privilege to appear today on behalf of Mr. Johnnie McKeiver Walters. His record is a distinguished one which superbly qualifies him for the post to which he has been nominated.

Mr. Walters public service began when, upon graduation from Furman University, he entered the United States Army Air Forces. In the war he participated

in 50 combat missions, and his courageous efforts earned him the air medal with clusters, a purple heart, and the Distinguished Flying Cross.

After the war, Mr. Walters pursued his education further, and in 1948 received his law degree from the University of Michigan. In that same year he was accepted to the Michigan Bar, and in subsequent years to the bars of New York and South Carolina, and the American Bar Association Tax Section.

Throughout his professional career, Mr. Walters has been intimately involved with tax law. His knowledge of it runs deep, and his experience wide. He spent four years with the Office of Chief Counsel in the Legislation and Regulation Division of the Internal Revenue Service. He became assistant head of that Division. In 1953 he resigned that post to go to work for the Taxation Division of Texaco. Eight years later he gave up his post as Assistant Manager to go into private practice. While practicing in the firm of Gerr, Walters & Demo, Mr. Walters also served as Secretary-Treasurer of the South Carolina Regional Special Liaison Tax Committee. He later served as its Chairman. In January, 1969, he was appointed Assistant Attorney General for the Tax Division of the Department of Justice. He was working in that position when President Nixon nominated him as Commissioner of the Internal Revenue Service.

Throughout his career, Johnnie Walters has been an outstanding civic leader. While a resident of Greenville, South Carolina, he served as President of the Rotary Club there. He was a member of the Greater Greenville Chamber of Commerce. He served on the Committee for Total Development of Greenville. And he was board director of the Greenville United Fund and the Greenville Rotary Club. All the while, he found time to devote to his fine family.

Mr. Chairman, Johnnie Walters has shown by performance that he has the qualifications necessary for the high trust which has come his way. I know that he would discharge his responsibilities as Commissioner of the Internal Revenue Service with distinction to the bureau and great credit to himself. I enthusiastically urge you to consider favorably his nomination.

Senator TALMADGE. Thank you.

We will include in the record the biographical sketch of Mr. Walters. (The biographical sketch of Mr. Walters follows:)

**JOHNNIE McKEIVER WALTERS, ASSISTANT ATTORNEY GENERAL, TAX DIVISION,  
DEPARTMENT OF JUSTICE, WASHINGTON, D.C.**

**Born.**—December 20, 1919, near Hartsville, Darlington County, South Carolina, son of Mr. and Mrs. Tommie Ellis Walters.

**Education.**—Public elementary schools in Lee and Darlington Counties, S.C.; Hartsville High School, Hartsville, S.C. 1938; Furman University, Greenville, S.C., A.B. 1942; University of Michigan, Ann Arbor, Michigan, LL.B. 1948.

**Experience.**—1949–53 Legislation and Regulations Division, Chief Counsel's Office, Internal Revenue Service, Washington, D.C., resigned as assistant head of the division; 1953–61 Taxation Division, Legal Department, Texaco, Inc., New York City, resigned as assistant manager; 1961–68 private practice, specializing in tax law, Greenville, S.C. (Geer, Walters & Demo), withdrew January, 1969 upon President Nixon's appointment to Assistant Attorney General, Tax Division.

**Bar admissions.**—Michigan 1948; New York 1955; South Carolina 1961.

**Bar organizations.**—American Bar Association, Tax Section; South Carolina Bar Association (delegate to the Southeastern Regional Special Liaison Tax Committee, secretary-treasurer, 1965–66, chairman, 1966–67); Greenville County Bar Association.

**Civic organizations.**—Rotary Club of Greenville—president, 1968–69; Greater Greenville Chamber of Commerce; Committee for Total Development of Greenville; Board of Directors of: United Fund of Greenville, Symphony Association, Little Theatre of Greenville; Rotary Club of Greenville.

**Military.**—U.S. Air Force 1942–45, separated as first lieutenant; 50 combat missions from Italy; Air Medal with clusters; Purple Heart; Distinguished Flying Cross.

**Family.**—Wife, Donna Lucille Hall Walters of Michigan (married 1947). Children: Donna Diane (1952), Lisbeth Kathern (1954), Hilton Horace (1955), and John Roy (1957).

Senator TALMADGE. You have come exceptionally well recommended, Mr. Walters. Do you care to make a statement?

**STATEMENT OF JOHNNIE McKEIVER WALTERS, NOMINEE TO BE  
COMMISSIONER OF THE INTERNAL REVENUE SERVICE**

Mr. WALTERS. Nothing except, Mr. Chairman, to say I hope I can live up to what you heard.

I have no prepared statement. If you would like for me to answer questions, I will be pleased to respond as best I can.

Senator TALMADGE. I have a couple of questions, and I imagine other members of the committee do also.

For many years IRS agents have been asserting the accumulated-earnings tax as a bargaining—or harassment—issue in their audits, assessing large deficiencies in an effort to force taxpayers to settle other issues on their tax returns. The casebooks are full of unusual situations regarding this tax.

In your judgment, how should Internal Revenue agents conduct their audits, and what do you think of using the accumulated-earnings tax as an audit device?

Mr. WALTERS. Mr. Chairman, I think, first, that the Revenue Service has a high responsibility to audit returns and to do a good job, but only in a reasonable, fair, equitable way, and to collect all taxes due, and no more.

Now, as to using section 531 on the accumulated-earnings tax as an audit device, we do not believe that any particular thing should be used as a device. However, section 531 should be audited, just as other sections are. It is a very difficult provision, as you all know. You get into the subjective questions as to how much money does a taxpayer or a business need to conduct his business, and many other questions, but that is one.

I think we should administer section 531 in a reasonable, vigorous way. I do not believe we should abuse it, sir.

Senator TALMADGE. Under the law, tax returns are required to be kept confidential by the Internal Revenue Service, but there are procedures for allowing other agencies of Government, with a proper interest, to gain access to tax return information.

One agency which widely uses tax returns in its work is the Justice Department.

I have in my hand a newspaper account which refers to a member of the Justice Department task force investigating organized crime in Detroit who was caught slipping credit information from tax returns to a friend who wanted the information for his business. The account notes that the Justice Department was so unconcerned that it merely admonished the offender not to do it again.

Having come from the Justice Department, which seeks the use of tax returns, what is your attitude about how the Commissioner of Internal Revenue should react to widescale requests from agencies of Government outside the Treasury Department for tax return information?

Mr. WALTERS. Mr. Chairman, that is a very serious question. I think all of us—I know this committee is, I know the Committee on Ways and Means is, and all of us who are in responsible positions—are concerned with the disclosure of information from tax returns.

Let me say, as you know, I am still with the Justice Department. I still have a good bit of input down there. We are not familiar with this particular case you mentioned. I would like to know more about

it and will look into it, because insofar as I have been able to determine, the Department does not tolerate the disclosure of confidential information, and in this case, if we have the facts, I would certainly like to pursue it, because it is the kind of thing that I know the Attorney General, and I also know the assistant in charge of the Tax Division, is vigorously opposed to it, and we would be glad to pursue it.

As to the release of information from returns to other governmental agencies, we doubt we have too much leeway if it is requested in an official, responsible way.

More bothersome probably is the fact, as you know, that we now release information to State officials in connection with their duties and responsibilities as tax officials. This presents problems, but it is done lawfully, and there is little we can do about it.

Senator TALMADGE. Mr. Chairman, I desire to insert this newspaper article into the record so that Mr. Walters will have access to it for further information.

(The newspaper article referred to follows:)

[From the Washington Post, Mar. 25, 1971]

#### TAX RETURNS ACCESSIBLE TO SNOOPERS

(By Jack Anderson)

An estimated 72,379,400 Americans will file their income tax returns next month confident that their financial secrets are safe with the Internal Revenue Service. The confidentiality of tax returns, after all, is protected by federal law.

Yet among government gumshoes, tax returns have become more popular than wiretaps or peekaboo mirrors for prying into the private affairs of individuals. With a minimum of ceremony, snoopers from a long list of federal, state, and local agencies can check into almost anyone's finances at the nearest Internal Revenue office.

Any federal agency can obtain access to tax returns upon the written request of the agency head. The Social Security Administration, as a matter of routine, receives data from every tax return. The Justice Department must merely certify that a taxpayer is under investigation to see what he has filed. Any U.S. attorney anywhere in the country can call upon the regional IRS office for tax returns.

In Detroit, a member of the Justice Department's task force investigating organized crime was caught slipping credit information from the tax returns to a friend who wanted the information for his business. The Justice Department was so unconcerned that it merely admonished the offender not to do it again.

#### CONGRESSIONAL SNOOPING

Committees of Congress, with the chairmen's approval, can also obtain tax returns. These have been used in the investigations of the Senate Government Operations Committee, House Select Committee on Crime and even the notorious House Internal Security Committee (formerly and better known as the Un-American Activities Committee).

The financial secrets that congressional investigators pick up from the IRS are often handled carelessly. Information has been leaked, for example, from Internal Security Committee files to right-wing organizations.

On the local level, 45 states participate in formal information-sharing agreements with the IRS. Internal Revenue furnishes computer tapes to California and New York, for instance, with information from the federal returns of every taxpayer in those states.

A California official with access to this information was caught peddling data about individual taxpayers to a private credit investigator. And in New York, at least two private investigators attempted to bribe tax officials to get credit information.

There have been reports, difficult to pin down, that the tax returns of candidates for high office have been slipped to their political opponents. Attorney General

John Mitchell has asked for the returns of a number of politicians. So far as we could learn, however, the politicians were involved in legitimate Justice Department investigations.

#### WHITE HOUSE REQUESTS

The White House has admitted requesting the returns of nine individuals. The purpose was to check on President Nixon's own appointees, including candidates for the Supreme Court.

A spokesman correctly stated that the White House has never asked to see the returns of candidates or officials who have run for elective office. What the spokesman didn't mention, however, is that in addition the nine returns the White House has requested summaries of tax investigations. These have included at least two prominent political figures.

Details were furnished the White House, for example, on an investigation into the tax returns of Gerald Wallace, brother of Alabama's Gov. George Wallace. The summary alleged that Gerald had omitted legal-fee income from his tax returns for 1967 and 1968.

After deducting large losses from his cattle farm, he reported a total taxable income of \$109,944 in 1967 and \$65,980 in 1968. The investigation involves George Wallace, who shared partnership in a Montgomery, Ala., law firm with his brother during both years.

Gerald Wallace was only three years out of law school when his famous brother first became governor of Alabama in 1962. Although Gerald has seldom appeared in court, he has funneled huge sums of money through the law office.

The IRS also furnished the White House with a summary of a tax investigation of West Virginia's Gov. Arch Moore, whose taxable income for the 1962-67 period allegedly should have been \$131,000 more than the \$45,000 he reported.

There is no evidence that the White House has used tax information for political purposes. Reports have reached the IRS, however, that various governors have taken advantage of their access to federal tax returns to embarrass political opponents. One Southern governor was reported to have threatened his political enemies with exposing their tax returns. None of these reports, however, has ever been verified.

Senator TALMADGE. Are you willing to work with our committee staff and the staff of the Joint Committee on Internal Revenue Taxation, to provide a system to preserve the secrecy of tax returns?

Mr. WALTERS. Yes, sir. I would like to just add this comment.

As you may know, we have already been in conferences with the staff to some extent, and it is an ongoing project. We do believe that the Justice Department should have access to returns in connection with the performance of their official functions in actually prosecuting lawbreakers. Possibly there has been some abuse in the past; although, frankly, none has been clearly pointed out to us. If there are abuses, I am sure the Department will correct them.

Senator TALMADGE. Thank you, Mr. Walters. I have no further questions.

Mr. Chairman, we took the liberty of proceeding, in view of the critical situation on the floor of the Senate.

The CHAIRMAN. It is good that you were here to do that.

Senator TALMADGE. I may say that, in your absence, Senator Thurmond and Senator Hollings, the Senators from South Carolina, made very eloquent and strong statements in behalf of the nominee.

The CHAIRMAN. Thank you. I am glad they did that.

As you know, you have a great deal of information over there which is not just Government information, but information which can work a great deal of injury to individuals. Under the law, there is a duty not to release confidential information about people.

You are aware of this publicized case where the White House staff member involved, Mr. Clark Mollenhoff, was in a politically oriented job and was not involved in investigative work.

If you are confirmed as Commissioner, what would be your attitude on this matter, knowing as you do that the backbone of our self-assessment system of taxation is taxpayer confidence in the confidentiality of what he discloses on his tax return?

Mr. WALTERS. Mr. Chairman, I think that we should do all we properly can to preserve the confidentiality. I am aware through the press, and otherwise, of the Clark Mollenhoff incident and I think it was distressing. My information is, however, and I was not privy to any of this, that the returns that he saw, which I believe were nine or 10, were properly requested and properly justified. I have not seen any of that correspondence, but I have been informed that is true. I think even in that kind of situation, though, it should be kept to an absolute minimum.

The CHAIRMAN. Let me say something that happened, Mr. Walters. We get into some complicated tax matters, and here is one that comes to my mind. I am not asking you to make a decision, I am describing a problem of, let's say, how the Sears & Roebuck people handle a bulk-sum settlement under their retirement plan. In the Tax Reform Act, the House handled it one way and the Senate handled it another way. We sit down in conference, and that is one time when we permit the Treasury people to be in the room to advise us what their views are on these complicated matters which they are going to have to administer and interpret.

So we proceed then to work out a settlement and work it out the best way we can. Now, then, someone from Justice gets involved in this matter, in some lawsuit, and they will be suing the taxpayer. Later they come up with some decision on an isolated set of facts where we say that is not what we intended at all. Now, we're not trying to reverse this court decision, but at least it ought to be confined to the facts of that case.

We well recall what was intended and we tell the Treasury. If the Secretary wasn't in the room, as he sometimes is, the Under Secretary and Assistant Secretary who is in charge of the drafting is and they know. When the matter develops into an issue we may have to remind those people how we agreed upon that—the House position was this and the Senate position was this, and we agreed on doing it this way and that decision ought to be confined to the facts.

Meanwhile, some fellow who pleads the lawsuit, he is too proud of his victory, he thinks it ought to be expanded to cover everything, but he wasn't there at the time we agreed to it, he didn't hear the discussion, and didn't know what we had in mind at the time we drafted it.

So we go around and around and around. It takes about 5 years to resolve it, and we finally may have to write another act of Congress to say what we thought we said the first time.

How would you propose to handle that kind of a situation?

Mr. WALTERS. Let me say I hope that kind of situation doesn't arise. I would think, I would hope that when we get into difficult areas where there is ambiguity as to what is intended and what should be done, that at least we will be able to talk with the staff of the Finance Committee and Ways and Means, and the Joint Committee, and see if we can't resolve it without the kind of ongoing civil war that you describe.

The CHAIRMAN. I hope, before you get so far out on the limb that you can't come back to the tree that you departed from—like "Freddie, the Flying Squirrel" in the cartoon, who sets out for another tree that isn't there; he has to reverse himself in midair and come back, which is very difficult—that you would at least talk with people who handled that thing to begin with, and see if you could arrive at some understanding of the congressional intent. We will work sometimes, as we did on the last big revenue bill, work 20 hours around the clock and then wind up reaching agreement, after an all-night session, by daybreak, and then expect boys like Tom Vail, over here, and Larry Woodworth to try to draft all of these things into technical language at breakneck speed. When you draft like that it sometimes happens that some nimble mind can construe that more than one way. As often as not the Government thinks the burden is on it to make the taxpayer pay the most money even though they know it is not always right—sometimes it is and sometimes it isn't.

So if we can communicate before you get way out there in left field, it seems to me we might save ourselves a great deal of make-work projects.

Mr. WALTERS. I was going to say I agree with the chairman. I would hope that we would do that and do it freely without any great formality.

The CHAIRMAN. That gets me down to the biggest make-work project in government today. We have repealed most of the excise taxes. We made one big mistake in repealing them. We failed to require the excise tax branch to dismiss or transfer out of the Division 75 percent of the personnel in view of the fact they only had one-quarter of the work to do. So with nothing better to do, those people over there in the Excise Tax Division have undertaken to start rewriting all of their old regulations, some of them 50 years old, going back—they are going back and rewriting them, starting the ball game all over again.

Even if they don't have anything to do, we have better things to do than spend our time trying to untangle the mess after they repeal or rewrite or reinterpret a law or a construction that has been placed on it 50 years ago.

If you can't use those people down there in more profitable work, I think you ought to let us know.

What can we expect with regard to rewriting all of those old excise tax regulations?

Mr. WALTERS. Well, Mr. Chairman, may I broaden my answer a little rather than just answering that specific question?

The CHAIRMAN. Yes.

Mr. WALTERS. I could not agree more that that should be looked at and just within the last week it came to my attention that this was a situation and I am very disturbed about it already. I put it on a list of things that I expect to examine into as promptly as we can, to see just what is the situation, and if we can transfer some of those people to the income tax side of the Revenue Service, we would like to, because, as you and this committee are so well aware, our audit capabilities have been decreasing in a frightening way in the last few years and we should shift those people over to take up some of that slack, if we can. I assure you, sir, we will look into that.

The CHAIRMAN. Frankly, you see, when we undertake to try to correct or try to put it back the way it was, we have to wait for a House-passed bill and then we are accused of "decorating a Christmas tree" when all we are trying to do is really put the law back the way it was before they started tinkering.

Any further questions, gentlemen?

Senator BENNETT. Realizing that we are looking at maybe 5 minutes of time, I just raise this one, and it is as old and as serious as the one the chairman has raised, and that is the question of auditors' quotas, auditors' production records.

As a taxpayer, I have been a victim of that kind of bugaboo and every new Commissioner who is confirmed tells us that no such thing exists, and there is no problem.

These men just go out and do the best they can. But the taxpayers, through years of experience, are convinced that auditors are judged by the amount of deficiency they are able to assess. Can you do anything to eliminate that, either the charge or the fact?

Mr. WALTERS. Senator Bennett, let me say I have been hearing for years also this is not a factor and, if confirmed, now I should be able to find out if that is true or not. I would hope that it is not, but let me say the broader problem you point up is that taxpayers should not be harassed. I could not agree with you more.

I think, of course, collecting taxes is a very difficult job. At times you have to take actions that are difficult, but I do not believe taxpayers should be harassed, and we will do all we can to prevent that kind of thing.

Senator BENNETT. Well, I don't want to fill up this time with personal stories. The first experience I ever had with the IRS was to settle my father's estate, and the agent finally told our attorney flatly, "It will cost you more than \$20,000 to settle the estate. We don't think we have a very good case, but if you want to save time and trouble, pay us \$20,000." That is the way that estate was settled.

More recently a corporation with which I am connected was held dangling for 5 or 6 years because it followed the advice of an earlier examiner—they changed examiners on us—and the second examiner refused to permit us to follow the practice the first examiner had insisted upon, and we had to wait until enough circuit courts finally agreed with us before the examiner abandoned his position.

There are all kinds of ways by which this spirit of "get what you can" seems to be in force, and I don't think that that is wise.

In fact, the mayor of Salt Lake City openly announces, "If you have tax problems bring, them to me"; then he publicizes them in the paper, and then he sends the letter to me, asking me to straighten it out.

Mr. WALTERS. I have heard of his procedure, sir.

Senator BENNETT. So I hope you are going to look at the policy by which the agents are operating.

Mr. WALTERS. We will, sir, and I get the point you are raising, and I agree with it, sir.

Senator BENNETT. It is as much as the traffic will bear. That is often it.

The CHAIRMAN. Senator Curtis.

Senator CURTIS. Mr. Chairman, I am satisfied. I would take a moment just to raise this point: Do you feel that taxation should be by statute and not by regulations?

Mr. WALTERS. Yes, sir; definitely.

Senator CURTIS. And if you find a deficiency in the statute where something should be taxed, in all good morals and conscience, and consistent with other treatment, you feel that that should be brought back to Congress to impose the tax, rather than propose the tax by regulation?

Mr. WALTERS. I do, sir.

Senator MILLER. For the record, I do want my colleagues to know that I have known Johnnie Walters for about 20 years. He came into the Internal Revenue Chief Counsel's Office shortly after I left, but my contacts with him over the years were through the section of taxation of the American Bar Association. Everything I knew about him was just tops, and I want to commend you for the fine job you have done as head of the Tax Division of the Department of Justice. I have nothing but praise for the job you have done.

I would like to ask a few questions. One is this: As you know, there have been suggestions made, and I think some of them have emanated from the section of taxation from time to time, that the litigation before the Tax Court should be handled on the Government's side by the Tax Division of the Justice Department rather than by in-house counsel of the IRS. Do you have any opinion on that?

Mr. WALTERS. Nothing except this: Historically, I guess going back to 1932, I believe, by Executive order, all litigation in the constitutional courts have been in the Department of Justice, and this has been somewhat of a hangup; by the time the 1969 Reform Act was passed and the Tax Court became a court, a constitutional court, there was a question then as to whether this question should be raised which, of course, would have been a stumbling block, too.

We consulted with the Attorney General. We took the view that the Chief Counsel's Office has been doing a very good job in that court, and it should not be disturbed.

As you know, any appeal from that court to the other courts, the appellate courts, the Justice Department does handle. Insofar as I am concerned, I see no reason to transfer jurisdiction of those cases from the Chief Counsel's Office to the Department.

Senator MILLER. Well, thank you. There may be some difference of opinion, but I happen to share that opinion.

Now, one thing that has nettled me and nettled a lot of lawyers and accountants in the last year or so has been the national TV advertising and newspaper advertising on tax return preparation. Some of it has been overdone, I think.

The very fact that you have seen on TV an ad that some organization or some individual or some company is preparing tax returns certainly places the lawyers and accountants at a disadvantage.

As you know, the average taxpayer doesn't know too much about the technical and professional requirements for tax return preparation. Have you given any consideration to the possibility of a Treasury Department regulation regarding tax return preparers being prohibited from advertising as tax return preparers, confining them to the same listing as lawyers and accountants, for example?

Mr. WALTERS. Senator Miller, specifically, I have not given any consideration to this type of—

The CHAIRMAN. Why don't those who have questions to ask go vote and come back.

(Short recess.)

Senator BYRD (presiding). The committee will come to order. I recognize the Senator from Iowa.

Mr. WALTERS. Senator Miller, I had stated specifically I had not given any consideration to the regulation such as you mentioned. However, I recognize that this is an area of growing concern and that it needs attention, and I do not know at this time just what the Service has done or is doing, but it is one area we will have to examine.

I think we should all be concerned with the fact that the number of return preparers has increased vastly in the last few years. This no doubt reflects the fact that the tax return form is more complex than we would like. Actually, also, and particularly this committee, we all know it is going to be very difficult, if not impossible, to make a really simplified tax return form under the law as it exists today. Hopefully, down the road somewhere, the Committee on Ways and Means, and the Finance Committee, with the help of the Treasury Department, can find some means of simplifying the law so we can in this way mitigate this problem to some extent; but in the meantime we ought to look at it. How the Revenue Service could regulate, in a meaningful way, the millions of tax return preparers, I don't know at this time, but we ought to look at it.

Senator MILLER. I understand over the years there have been many, many nonlawyers and nonaccountants who have prepared returns, and, frankly, I don't know how we could expect to have the tax returns filed, and confine the preparation to lawyers and accountants. I don't know of anybody who is advocating that. What I am getting at is the advertising on TV and in the newspapers and otherwise, which I don't believe is essential for people to be available to make out tax returns.

I must say I am distressed when I find the Federal Trade Commission is the one agency of the Federal Government that has lowered the boom on what they regard as misrepresentation in advertising by at least one of the large companies involved in tax return preparation, instead of the Internal Revenue Service being the one to lower the boom.

Now, no doubt in order to comply with the FTC the advertising content is going to be trimmed but I am still getting at the advertising per se.

I must say that I am concerned about nonaccountants and nonlawyers being able to advertise at all—that is, in the communications media such as I have referred to. This is subject to abuses. It has already been obviously abused or the FTC wouldn't have brought the charges. It is unfair competition to the real professionals, the lawyers and accountants, and I hope you will put this very high on your agenda as an item to go into; if you think legislation is needed, let us know, but I think fast action is indicated so that we may be able to get something on this done by this fall, in anticipation of the upcoming tax return season.

Mr. WALTERS. Senator Miller, I share your concern, and we will look at it as promptly as we can.

Senator MILLER. That is fine.

Now, as you know, there has been an increasing amount of concern expressed by Congress over the so-called executive privilege, over the so-called secrecy in Government. It has become quite a thing, certainly in the press.

I believe that the Chief Counsel's Office of the Internal Revenue Service still keeps what is known as a library, a veritable library of confidential unpublished rulings. Is that your understanding, too?

Mr. WALTERS. It is my understanding. I have not checked it.

Senator MILLER. I am not suggesting we go back to all of these thousands of confidential unpublished rulings, and publish them, but I would like to think, and I would like to get your view on it, that it might be a healthy thing to do away with confidential unpublished rulings in the future, because I happened to at one time have been in the Chief Counsel's Office, and happened to have known about the existence of such a thing, and happened to have actually made use of it in my research.

I was able to, I think, find out certain information for my clients, if I had to come into Washington on a case which somebody without that knowledge would not have, so I benefited from that knowledge while somebody else's counsel who did not have that knowledge did not benefit from it. That was fine for me personally, but I think as a matter of national policy that confidential unpublished rulings ought to be probably done away with.

I can't see any real benefit to the Federal Government and I think that when a confidential unpublished ruling comes to light, through somebody getting a scoop in the newspapers, that this has a tendency to cause public reaction which is not good for the Internal Revenue Service.

Do you have any comment on that?

Mr. WALTERS. Nothing except to say that I think that all taxpayers, and all taxpayers' representatives should be treated equally and fairly, and that, if it works the way you suggest, I think it raises a serious question, and I would like to look at it.

Senator MILLER. Finally, as a matter of policy, will you agree this is what should be pursued by the Internal Revenue Service: When a taxpayer is behind in his payments, not due to fraud, shouldn't a payment schedule to work out the settlement of his account with the Internal Revenue Service be carried out in such a manner that a business will be able to survive, if it has a reasonable chance of surviving, even though the payment period may be rather long?

Mr. WALTERS. Senator, if the taxpayer involved is cooperative and there is a reasonable chance of survival and payout, I certainly agree. I think that it serves everybody well to permit him to stay in business and to earn more tax money and to pay it out.

However, I have to say that when you have an uncooperative taxpayer, and he is not willing to make the effort that he should make, then I think that we have a different situation.

Senator MILLER. I would agree with that. What I am getting at is I have had cases brought to my attention where some collector out in the field has in effect said to a taxpayer who has been cooperative, doing the best he can—he may have a slack period in his business, but he has been doing the best he can—"We are going to close you down if you don't make this payment" by such and such a

date, and the poor devil just can't make it; he doesn't have any equity to support it, without going out of business, and he can't get the money from the bank or from his friends, so he comes in and says, "Look, if I can, it may take me 18 months to do this, but I will agree to a payment schedule of about, let's say, \$150 or \$200 a month, if you will let me have that time." But then the answer comes back, "That is too long, you have to do it in 6 months or else you are out," and then he is really faced with being out because the business profits simply won't stand that.

It seems to me that the policy just enunciated is being violated and I don't know what the answer to it is, but I think one possibility might be for a policy directive to be issued from your headquarters to the collection divisions around the country saying: "This is our policy: In the case of a taxpayer not involved in fraud, who is cooperative, and whose business has a reasonable chance of survival, if a payment period of a relatively long period can be worked out, and if a payment period of a short duration would really put him out of business, then the policy is to keep that business going."

Mr. WALTERS. My response to that is I certainly concur, and, insofar as we can, under the applicable laws, we ought to do that where this situation prevails.

If I may, I would like at this point to state to the committee something that I have tried to do at the Tax Division in the hope we can do something about it in the Internal Revenue Service.

The Service is much larger and it is going to be more difficult. However, I intend to try, and I hope the committee approves. It is this:

I am completely convinced that we must do everything we properly can to improve and maintain our tax system. We cannot afford to let it falter seriously. If we do, then our entire system of government goes down the drain because this is where we get our bread and butter.

In that respect, I have tried in the Tax Division to do two things. First, to instill in every member of the Division a sense of urgency, and by that I mean treat every case as a case of urgency, try to handle it properly, handle it promptly, get the answer and move them, to avoid any undue periods of languishment on somebody else's desk, and, second, to be alert to problems or have a sense of sensitivity. By that we mean being aware of the kind of thing you mention, Senator Miller.

We should not be unduly harsh when it is unnecessary. We should not pursue cases that are going to make us look ridiculous, even though we may prevail.

I hope that in the Revenue Service we can do that kind of thing and have a sense of urgency and sense of sensitivity, and if we do that, we will do a lot to correct the problem you mentioned.

Senator MILLER. Well, I do not want to be too harsh with respect to a field collector in some small town in a State who has been given his orders and ultimatum from the district office.

I think, however, that a policy coming out from the Department indicating that the policy is to try to let businesses survive that have a reasonable chance of survival should be emphasized, even though payment periods may have to be extended, because, after all, they are paying interest on it anyhow, and to that extent, if they are cooperative

and if they are obviously making every reasonable effort, then that is the policy.

I have an idea you and I feel about the same way on it and I think, if that is so, that some kind of policy directive ought to be issued. I think it can be a good thing.

Mr. WALTERS. We will look into this and attempt to communicate the views, because I think we do share the same view.

Senator MILLER. I have no further questions.

Mr. Chairman, I want to wish Mr. Walters every success.

Mr. WALTERS. Thank you, sir.

Senator ANDERSON. I had a little experience—not a very happy experience—of people asking for special services or special favors with regard to the payment of taxes. We had one case where a man spent his taxes in a poker game in Arizona. I think you ought to be very careful how you handle this.

Mr. WALTERS. We agree with that, Senator Anderson. We can't afford to let anybody not pay taxes when they can afford to, because if we do, then we do an injustice to the other millions of taxpayers. We agree, sir.

Senator MILLER. May I say, too, I agree with my colleague on that. I emphasize "every reasonable effort." I don't think this is a reasonable effort, at all.

Senator BYRD. I have several questions Senator Long would like to have asked, and after that I have several others.

Mr. Walters, do you believe the Internal Revenue Service should firmly enforce its rules of procedure against allowing advertising and soliciting of business by persons enrolled to practice before the IRS?

Mr. WALTERS. Senator Byrd, that goes back, in a way, to the question that Senator Miller touched on earlier. We think that this is an area that presents problems and that we should look into it, and we expect to do so.

Senator BYRD. What is your concept of the responsibility of the Internal Revenue Service with respect to the regulation of businesses which hold themselves out to the public as providing expert assistance in the preparation of filing of income tax returns? I am not speaking of lawyers and certified public accountants.

Mr. WALTERS. Here, too, we think this is a problem. We think in many cases it is misleading and we have to find some way of protecting honest and innocent taxpayers from this kind of malpractice.

Senator BYRD. You have previously been in the Internal Revenue Service and, as a result, you may well be acquainted with the tax scandals in the Internal Revenue Service disclosed by the King and Kean Subcommittee Investigation of the Internal Revenue Service in 1950.

The difficulty was that politics had then worked its way into the administration of our tax laws. Since that time most persons concerned with the Service have felt that the Internal Revenue Service must, at all costs, be kept free of politics. Do you share this view?

Mr. WALTERS. Most definitely, sir. I was in the Revenue Service in the early 1950's and I am quite familiar with what went on at that time. I think since then this Service has been free from political misbehavior, let us say. I think we must keep the Service free from that kind of problem because, as I indicated earlier, our tax system

must be preserved and improved, else we fail totally, and I share that view, without any reservation, sir.

Senator BYRD. I think you are quite right and I think it is vitally important that the Service be kept free of politics.

I believe the Commissioner of Internal Revenue is the only non-civil-service appointment in the Service, with the possible exception of one assistant to the Commissioner.

Is this correct?

Mr. WALTERS. Senator Byrd, the Commissioner is the only non-career employee of the Revenue Service. Even the Deputy is a career man.

Senator BYRD. There has been some discussion of the possibility of creating four positions to serve as direct aides or assistants to the Commissioner of Internal Revenue. These would be apart from the regular line positions, such as the Assistant Commissioner and Deputy Commissioner.

Do you believe that, if four special assistants to the Commissioner are selected, they should be political appointments, or do you believe that they should be selected on a merit basis—either from the Internal Revenue Service or from the civil service of the Government generally?

Even if you were to select four very good men for these positions; if they could be selected politically, isn't there a real danger that subsequent political appointments might undermine the nonpolitical status of the Internal Revenue Service?

Mr. WALTERS. Senator Byrd, I am generally aware of this proposal. My feeling, sir, is that it would be helpful to the Commissioner to have these four people. Maybe not all at once, but as soon as he could use them properly.

I understand the proposal is they would not have line responsibility, they would be more assistants to the Commissioner and would not have direct responsibility over functions in the field and national office. I do not believe they should be political appointees. I think they should be named, if they are named, on a merit basis. I think if they can be named from within the Internal Revenue Service on a merit basis, that that would be entirely satisfactory.

However, I do think, Senator Byrd, that the Commissioner in this kind of personal relationship might be permitted to go outside, if he can find the man that can be of most help to him, but I would say, again, that he should not do it on a political basis.

Senator BYRD. Even if you were to select four very good men for these positions, if they could be selected politically, isn't there a real danger that subsequent political appointments might undermine the nonpolitical status of the Internal Revenue Service?

Mr. WALTERS. There is some danger there, yes, sir. May I just add this point: You know the Commissioner has two special assistants, and they are already on board; so, of the four positions that you mentioned, two are already filled.

Now, I don't mean to indicate that it comes from the proposal that has been made, but Mr. Thrower did have two special assistants, so if I understand the proposal correctly, there would just be two more, and even that there has been no action taken on them at this point.

Senator BYRD. You mentioned the proposal. Whose proposal?

Mr. WALTERS. Well, I understood your question to indicate that it has been proposed, and that is what I am talking about, sir. I know that it has been studied, also.

Senator BYRD. Well, what are your views as to possible structural changes in the organization of the Treasury Department to improve relations of Internal Revenue Service to the Secretary and to the Congress?

Mr. WALTERS. Senator Byrd, I hope I am correct in assuming that this goes to the point that was made in a press release at the time my nomination was announced, indicating that the Treasury was considering some realignment of functions and responsibilities in this respect.

At the time that occurred, I verified that there was no intention at all to downgrade the Internal Revenue Service, that that was only a proposal that was being considered to improve and enhance the team that works in the tax field, insofar as the Treasury Department is concerned, including the Revenue Service—that this would be some realignment which would not affect the role of the Commissioner, that it was to more or less upgrade the positions in the Treasury Department.

I know of no proposal at this time to do anything that would affect the role of the Commissioner in the Revenue Service.

Senator BYRD. Who is your immediate superior?

Mr. WALTERS. My immediate superior is the Under Secretary of the Treasury, and then the Secretary of the Treasury.

Senator BYRD. You report directly to the Under Secretary?

Mr. WALTERS. Yes, sir.

Senator BYRD. To Dr. Walker?

Mr. WALTERS. Yes, sir. I discussed this with both the Secretary and Under Secretary. It was agreed that I would report directly to the Secretary and Under Secretary. We discussed the relationship that has existed between other officials in the Treasury Department and in the Revenue Service, and we agreed with my full concurrence that the Revenue Service should work closely with the Assistant Secretary for Tax Policy and with the Assistant Secretary for Law Enforcement and any others where we may have work in the same area. I think this is proper.

However, it was understood that we do not report to either one of those officials; we report directly to the Under Secretary.

Senator BYRD. Insofar as you know, there is no proposal to change that?

Mr. WALTERS. No, sir.

Senator BYRD. The Director of Internal Revenue now would continue to report directly to the Under Secretary?

Mr. WALTERS. That is correct; and I have had that very clearly understood and I don't think there is any question about that, sir.

Senator BYRD. Now, the Washington Evening Star of June 22, stated in an article that certain reorganization plans were expected to be recommended by the Treasury Department. The article stated that the Treasury was thinking of an additional assistant secretaryship.

One Assistant Secretary for Tax would concentrate on broad policy issues, while the other would concentrate on administrative matters.

(The article referred to follows:)

[From the Washington Evening Star, June 22, 1971]

#### TAX POLICY SHIFT DUE WITH NEW IRS CHIEF

The Treasury plans to reorganize its handling of tax matters when Johnnie M. Walters takes over as Commissioner of Internal Revenue.

President Nixon, as expected, announced yesterday that he will nominate Walters to head the Internal Revenue Service. Walters, a 51-year-old South Carolinian, now is assistant attorney general in charge of the Justice Department's tax division.

Administration sources hinted that the reorganization may involve creation of a new assistant secretaryship in the Treasury, to be filled by John S. Nolan, who now is deputy to Edwin S. Cohen, assistant secretary for tax policy.

#### BROAD POLICY ISSUES

The sources indicated Cohen will concentrate on broad policy issues and innovation in the tax field, while Nolan will handle administrative matters.

Treasury Secretary John B. Connally reportedly had proposed Nolan to be Commissioner of Internal Revenue, but Atty. Gen. John Mitchell had pushed Walters to succeed Randolph Thrower in that job.

The contemplated promotion of Nolan apparently is part of a compromise.

#### CONNALLY'S "CHOICE"

Connally did not specifically deny that he had initially urged Nolan's nomination to head the IRS, but issued a statement saying that "Mr. Walters was my choice . . . and I so informed the President."

A high Treasury official said it was decided weeks ago that the department "couldn't afford to lose" Nolan.

Connally said the Treasury plans "structural changes in the areas of tax policy and administration which will permit Treasury more fully to utilize the talents" of Walters, Cohen and Nolan.

#### LEGISLATION DRAFTED

He said legislation has been drafted to carry out these changes, which "will materially increase the responsibilities of both Mr. Cohen and Mr. Nolan in the development of innovative policies to meet the challenges of the decades ahead."

Connally did not elaborate, but other sources did.

Sen. Strom Thurmond, R-S.C., disclosed recently that Nixon had decided to nominate Walters rather than Nolan to head the IRS, which is in the Treasury's jurisdiction.

Walters, a tax lawyer, previously was on the IRS staff from 1949 to 1953. He later was a tax law specialist for Texaco, Inc., and practiced privately in Greenville, S.C. He is a graduate of Furman University in Greenville, and obtained his law degree from the University of Michigan in 1948.

Thrower submitted his resignation in January, reportedly under White House pressure. He has remained on the job during the search for a successor.

Senator BYRD. This could be interpreted as a new Supercommissioner. What are your thoughts on this subject, and what do you know of these plans?

Mr. WALTERS. My answer to your specific question is, sir: Yes, I think it could be interpreted that way. I raised this question specifically when that press release was issued and Under Secretary Walker assured me there was no intention of that and that is still my understanding.

I do not believe that any definite action has begun to accomplish this but I know that neither the Secretary nor the Under Secretary intend to create a new Supercommissioner.

I would add, sir, had my understanding been different, I probably would not be here this morning.

Senator BYRD. So your feeling is maybe, from the assurances you have had there, if such a position is created, it will not affect your responsibilities or authority as Commissioner of Internal Revenue?

Mr. WALTERS. That is my understanding, sir.

Senator BYRD. Mr. Walters, the Internal Revenue Code, particularly since the Tax Reform Act of 1969, has been described as a very complicated statute. I assume you agree with me on that?

Mr. WALTERS. Most assuredly, sir.

Senator BYRD. The fact of the matter is we made filing tax returns a whole lot easier for 8.7 million taxpayers, yet the complexity of computing tax returns and filing tax returns is the greatest single criticism of our tax system.

The Internal Revenue Service quit using the simple punchcard return a few years ago, and now requires all taxpayers to use the same type of return, whether their tax situation is simple or complicated.

What steps do you think the Internal Revenue should take to make tax returns simple for more people?

Mr. WALTERS. That, Senator Byrd, is a most difficult question. Offhand one would think, if they went back to the simple punchcard you referred to, that would simplify it for most of those people.

However, presumably many of those people no longer have to file returns because of the Tax Reform Act of 1969, because those in the low-income group no longer are expected to file returns, so that might not accomplish what we want.

I know the Revenue Service is already working on means to simplify the form to the extent it can, and the expectation at this time is that some simplification can be worked out on schedule D which will make it much simpler for many taxpayers. However, that might not do the full job. We will continue working on it, Senator Byrd.

Senator BYRD. Well, they would have to file, if they were seeking a refund, of course.

Mr. WALTERS. Yes, sir.

Senator BYRD. Would it be logical, do you think, to have a simple punchcard return for people with low incomes?

Mr. WALTERS. Offhand, I think it would be logical and reasonable, and we will look into it, sir.

Senator BYRD. Speaking of the Tax Reform Act of 1969, there is one provision in there which specifies that a donor of property—for example, stock that has appreciated in value—if a person donates that property to a private foundation you could not get the benefit of the appreciated value, but if you donate it to a public foundation, you could get the benefit of the appreciated value.

Am I correct in that thinking?

Mr. WALTERS. I honestly could not say, sir.

Senator BYRD. What I am getting at is how does the taxpayer know which foundations would qualify for taking the full, appreciated value?

Mr. WALTERS. That might be difficult in many cases. I would assume that a taxpayer making a sizable contribution, though, would verify this, to be sure.

Senator BYRD. How do you verify it?

Mr. WALTERS. I am sure that the Revenue Service would have a list and would provide him the answer upon inquiry, sir.

Senator BYRD. That is what I am getting at. It would seem to me to be logical the man ought to have someplace to go to find out whether or not his gift would qualify.

Mr. WALTERS. We agree.

Senator BYRD. And you feel, if there is not such a list, you will be inclined to try to develop such a list?

Mr. WALTERS. Yes, sir.

Senator BYRD. There has been considerable publicity recently concerning major trade and professional associations holding conventions in Europe and Asia and elsewhere, and then deducting the cost on their tax returns. Some of these probably could be considered more in the nature of a tax-deductible vacation than a business function; not all of them, but some of them. What is your attitude regarding the tax deduction for these foreign vacations?

Mr. WALTERS. I have grave reservation as to whether reputable American concerns should be doing this because, whether or not the members who participate abuse the tax deduction treatment, it certainly presents a possibility and the temptation.

I know that many are being held. We are all aware that the American Bar Association recently met in London, and I would like to say that, with the Secretary's approval and permission, I went to London to make a speech. I did so because of the particular circumstances in which the Service and Secretary were at the moment.

I do have some serious reservation as to whether it should be permitted, Senator. I do not know the full answer. I know many people on the other side of the question say we can meet in the Virgin Islands, or elsewhere, cheaper than we can meet in New York City, and this is probably true.

But taxpayers generally probably misread this and look upon it as a tax dodge with a nice sunny vacation included.

Senator ANDERSON. What are you going to do about the American Bar Association? Everybody knows what happened. They went on a junket. They weren't studying in London or Paris, and they got all kinds of deductions for themselves and their families.

Mr. WALTERS. Well, Senator Anderson, insofar as the families are concerned, there should be no deduction allowed for the families' travel.

Insofar as the lawyers are concerned, who were participating in the meetings or attending the meetings as lawyers, assuming that they have proper records and can justify the allocation that they make in their financial records, then presumably under the rules as they apply today, they will be permitted to deduct that portion.

But it is a difficult task for the Service to determine this.

Senator ANDERSON. I say, if you want to go and have the American Bar Association meeting, you probably should meet on the North American Continent.

There were people here in town yesterday on their way from that convention to another convention. I don't quite understand how you deduct this.

Mr. WALTERS. I might add this, Senator Byrd and Senator Anderson, in thinking about this problem: I have thought, and I am sure you can get good advice from the staff, maybe one possible solution to it is for the Congress to enact a provision that would say—to give these organizations time to make plans, some of them have planned these conventions years in advance—that 5 years from today this kind of deduction will not be allowed, or something of this nature.

It would probably work a grave injustice to these organizations if all of a sudden, without proper notice, this kind of privilege were denied them.

Senator BYRD. Let me read into the record, if I may, section 274(c) of the Internal Revenue Code, labeled "Certain Foreign Travel":

(1) In general, in the case of an individual who travels outside of the United States, away from home, in pursuit of a trade or business, or in pursuit of an activity described in section 212, no deduction shall be allowed under section 162 or section 212 for that portion of the expense of such travel, otherwise allowed under such section, which under regulations prescribed by the Secretary or his delegate is not allocable to such trade or business or to such activity.

**Exception.**

(2) Paragraph (1) shall not apply to the expenses of any travel outside of the United States, away from home, if (a) such travel does not exceed 1 week or the portion of the time of travel outside the United States, away from home, which is not attributable to the pursuit of the taxpayer's trade or business or an activity described in section 212 is less than 25 percent of the total time on such travel.

This is the provision that apparently justifies what they are doing. I realize that you have a complex problem that you need to give consideration to.

Mr. WALTERS. Yes, sir.

Senator BYRD. Mr. Walters, I want to congratulate you on your assignment. I think the Government is fortunate to have your experience and have a man of your ability and integrity in this important position.

Thank you, Mr. Chairman.

Mr. WALTERS. Thank you, Senator Byrd.

Senator ANDERSON. Would you tell us something more about this bar association? A man and his wife were here yesterday afternoon—in other words, do we write letters saying we have made these deductions?

Mr. WALTERS. I think this, insofar as the Revenue Service is concerned, Mr. Chairman, that it will come up in an audit of the returns of the various lawyers.

We, I am sure, will not audit all of the returns of all of these people, so I don't know how you would get at it on a total basis. It is a very difficult problem.

Senator ANDERSON. You can ask 10 lawyers: "Did you go, and if so, who paid your expenses, or did you deduct?"

Mr. WALTERS. Yes, sir. Well, I am sure we would find, Mr. Chairman, that all of the lawyers who went are going to be deducting at least a portion of their expenses. I hope they allocate and deduct only the proper amount. If they did not and we pick it up in the Revenue Service, in auditing returns, the deductions will be disallowed.

Senator ANDERSON. You know what happens, there is no doubt about it.

Mr. WALTERS. Let me say I think many of the lawyers who went—and I don't know, I think some 6,000 went—honestly went over in connection with their practice of law. Many of them no doubt did know—used it as a means of vacation in Europe, and they are the ones we have to worry about.

Senator ANDERSON. Do you know if the American Bar Association asked to be approved in advance?

Mr. WALTERS. I doubt it, sir. Of course, I am sure they planned this convention several years ago.

Senator ANDERSON. Senator Hansen.

Senator HANSEN. Thank you, Mr. Chairman.

Mr. Walters, despite my having said earlier that I have no questions, since I do have an opportunity I would like to ask you a few.

First of all, does the Internal Revenue Service have personnel to provide assistance for all taxpayers who request it?

Mr. WALTERS. I would say no, sir.

Senator HANSEN. Recently a great deal of publicity developed over the many instances of tax returns being improperly prepared by persons and firms holding themselves out as qualified tax return preparers. In other instances, tax return preparers have sold information collected from tax returns they had prepared.

This breach of confidentiality and the apparently high incidence of improperly prepared tax returns has raised the question as to whether the Internal Revenue Service should police private preparers of tax returns and fix qualifications for their employees.

I have heard that the Internal Revenue Service takes the position that it does not want to police these private preparers, apparently preferring to let little taxpayers act at their peril in seeking assistance from these private preparers.<sup>1</sup>

What is your attitude about this matter of policing preparers of tax returns?

Mr. WALTERS. First, Senator Hansen, I think that we do need some policing in this area. However, quite honestly, I do not know at this time how the Revenue Service would be able to handle this problem adequately.

Certainly, if we were to undertake it, it seems to me it would mean a great deal of people involved, and additional money and, as you know, at this time we hardly have enough to do the job we are supposed to do already. I think if we were to get into this area it would be necessary to come back to Congress and get approval and money.

Senator HANSEN. From time to time the Reader's Digest publishes articles about the Internal Revenue Service's harassment of taxpayers.

Just recently the magazine Medical Economics<sup>2</sup> published an article about the Internal Revenue Service's harassment of doctors. The front cover shows a raid and seizure of books by IRS agents. Without question, the Internal Revenue Service has broad powers of collection and investigation which it must use sparingly.

Do you have any comments on this subject?

Mr. WALTERS. Sir, I feel very strongly that the Revenue Service should conduct itself in a high professional manner in every instance. I might say that a doctor friend of mine who was in Europe on some mission sent me this article and a blistering letter, and not only that, there is a supplement which he has now sent me, so I am fully aware of this article. I think it is despicable when the Revenue Service misbehaves. Unfortunately, with as many people as the Service has, which is now some 66,000, I understand, now and then we are bound to get somebody who misbehaves.

My personal view will be, when we find that person, with all proper consideration and safety provided for that person, that we should do something about it to remove him from the Service or to assure everyone it will not recur.

<sup>1</sup> See p. 25.

<sup>2</sup> See p. 31.

Senator HANSEN. In your position in the Justice Department, you concentrated on litigation. In the Treasury Department and in the Internal Revenue Service, the intent of Congress plays an important part in directing how gaps in a statute should be filled.

What would be your attitude if you were confronted with a situation where there was a dispute in the Service as to whether Congress has expressed a clear intent in an area where the Justice Department may have won an obscure case somewhere?

Mr. WALTERS. My attitude, sir, is that, as we indicated earlier this morning, where we have an ambiguity or dispute we ought to communicate with people who know what may have been intended.

Certainly your staff members, who participate in the drafting and the executive sessions, should be consulted. It would be my intention to do that.

I know Tom Vail, I have known Larry Woodworth for many years, and I have already indicated to both that I would hope that we would have an opportunity at any time to consult and discuss these matters informally and without any great redtape. In that way, hopefully, we can resolve some of them. No doubt there are going to be some instances when it will be necessary for us to litigate.

Now, in those instances there will be an attempt to clarify it for all parties concerned, but I hope we can keep this kind of difficult problem to a minimum.

Senator HANSEN. From time to time material relating to what appears to be specific tax cases has appeared in the press in a manner which makes it appear that the material may have been "leaked" by either Justice Department personnel or Internal Revenue Service personnel. It seems to me that the confidentiality of the return information is a serious thing in a system such as ours involving voluntary assessments on the part of the taxpayers.

Do you believe that it is important to guard against these leaks to the press of confidential return information? Is your view the same with respect to the proposals received by the two agencies with respect to proposals for changes in rulings or regulations?

Mr. WALTERS. That is a double question.

In answer to the first question, Senator, I think it is not only important, it is absolutely critical that we guard this confidential information.

I might say that it is most distressing, speaking now from experience in the Department of Justice, it is more than distressing when information is leaked.

We are convinced that it has been leaked and is still being leaked. We have made efforts to try to determine who is leaking it, because our feeling has been, and when I say "our feeling" I mean as Assistant Attorney General of the Tax Division and the Attorney General, that if ever we could determine the person who is leaking and we could prove it beyond any reasonable doubt, we would have no hesitation in terminating the service of that person, because in our opinion it is intolerable.

Walking across the street is not going to change my view on that, sir. The problem is very difficult, and I might add at this point, if I may, just yesterday there was a leak in Chicago that is most distressing, concerning a high Federal judge. I won't say any more except that it is appalling. We are going to make attempts to see what can be found

out about it because it is obvious somebody has leaked information that should not have been leaked.

You can imagine the distress when it involves someone of that status.

Now, the second question is: Is your view the same with respect to proposals received by the two agencies with respect to proposals for changes in rules or regulations?

Senator, I am not sure I understand exactly what that means. Does anyone know precisely?

Senator HANSEN. It may be somewhat ambiguous. It is with respect to the confidentiality of proposals with respect to those that have been made to them coming probably from someone on the Hill.

Mr. WALTERS. My conviction is that leaking any information that is of a confidential nature is intolerable, and that we should have no leaks of information that is not, you might say, published and available publicly. I think it is particularly bad, the kind of instance that is indicated here, where you have proposals that should be considered and worked out, and then after the decision is made properly, whatever is decided, published in the appropriate form.

I think it is wrong to leak it to the media in an effort to influence improperly decisions that have not yet been made.

Senator HANSEN. Thank you very much, Mr. Walters.

And I would like to say, Mr. Chairman, that I am greatly encouraged by the responses Mr. Walters has given to the questions asked of him this morning and I want to wish him the very best as he undertakes this very important assignment.

Mr. WALTERS. Thank you, sir.

Senator ANDERSON. I have been trying to say, generally speaking, all these things work out all right, but sometimes you can't work them out at all.

Senator Milliken, who was one of the real brains in the U.S. Senate, and one of the finest men I ever knew, made the comment that he would deduct every time he left Washington \$20 a day as long as he was away from Washington. I don't know how he did it, but he did, and nobody quarreled with him.

Mr. WALTERS. Let me say that I do not know exactly in the specific case the details or any more about it but my feeling is that a businessman—and in that broad category I would include Members of Congress because their business is being here and looking after the affairs of their constituents—businessmen should be permitted all proper deductions for expenses they incur in carrying on their businesses. They should not be allowed any more than that, because, if you allow them more than that, then you are really allowing them an undue deduction, which means the taxes of other taxpayers are increased.

Therefore, we do not think any improper deduction should be allowed a businessman or lawyer or doctor or anyone else, but he should be permitted all proper deductions.

Now, in determining in every specific case what is proper and what is improper, we get into, as you know, at times, great difficulty and dispute, and at times it is necessary to ask the court to referee these fights, but I would hope that the Revenue Service would be reasonable

and fair, not only fair to the particular taxpayer, but fair to all taxpayers in trying to administer this properly.

Senator ANDERSON. I am not trying to say anything was wrong, but I just wondered if it was a theory that most of us overlook.

Mr. WALTERS. No, sir; I would say not, and I think you are most gracious in indicating that you think that the Service should treat all taxpayers alike, and our feeling has been, in the Department of Justice, and will be in the Service, and I think it properly has been, that we should not give anyone an unfair advantage and, as you know, during the past few months we have indicted a former Member of Congress for not filing his tax return.

So I think this is an indication that we are really trying to treat all taxpayers alike, without regard to their status in life.

Senator ANDERSON. That is pretty hard to do sometimes.

Mr. WALTERS. It is difficult. I might add it is most difficult.

Senator ANDERSON. I appreciate your comments and, as Senator Hansen has said, we are pleased with your appointment and we hope you do a good job, and we will help you when we can. I think it is a dangerous thing when we say this man can deduct this and the other man can't.

Mr. WALTERS. That is right. We agree with you and we appreciate the graciousness of the committee, sir, and we hope that we can come back and visit with you when we have problems on which we need help. And I am sure we will have some.

Thank you, sir.

Senator ANDERSON. Thank you very much.

The CHAIRMAN. Any further questions, gentlemen?

If it is all the same, in view of the time situation, why don't we vote on this nominee?

All in favor say "Aye".

(Chorus of "Aye".)

The CHAIRMAN. Opposed, "No."

(No response.)

(Thereupon, at 12:10 p.m. the hearing adjourned, subject to call of the Chair.)

[From the Wall Street Journal, Apr. 7, 1971]

## TAX TOTALERS—DOES AN ATLANTA MAN OWE UNCLE SAM \$141?—OR DOES HE GET REFUND?

PROFESSIONAL SERVICES, USING IDENTICAL SETS OF FIGURES REACH DIFFERENT ANSWERS—"MONEY BACK FOR EVERYBODY"

(By Tom Herman)

ATLANTA.—John Sherman, his wife and two small children live in a comfortable \$30,000 home in a suburb of this Southern city. Last year, John (not his real name) earned \$13,962.69, including \$3,643.89 paid him by his employer, a large publisher, as reimbursement for moving expenses incurred during his transfer here last summer.

John is a fairly typical American taxpayer. He has the usual income tax deductions, including medical expenses, interest, state and local taxes and charities. He also has the typical taxpayer's sense of foreboding as the April 15 deadline for filing returns rapidly approaches.

John usually computes his own income taxes. Once, however, he used a professional tax-preparation service. And this year, because of such complexities as the separate form used for itemizing moving expenses, John, like several million other U.S. taxpayers, decided once again to seek professional tax advice.

Once his decision was made, John encountered a common problem: Which service should he use? This year's Atlanta Yellow Pages list 90 tax-preparation firms, up from 82 in last year's edition. John, like other taxpayers throughout the country, was at a loss as to which office would be the best choice. Or did it make any difference?

### A \$793 DIFFERENCE

It did indeed: At the suggestion of a reporter from this newspaper, John agreed to submit his figures to five different services. At one extreme he was told by a tax office he was entitled to a refund of \$852.04 from the federal government; at the other extreme, another service figured he owed the government \$141. The difference between these two figures was a hefty \$793.04—despite the fact that John had given all the so-called experts the same set of figures.

The services also varied in other areas. On John's Georgia income tax return, the five offices all came up with different refunds, ranging from \$55 to \$181.04—a difference of \$126.04. And, perhaps coincidentally, the expert who promised John the biggest refund also charged him the biggest fee (\$31), while the office that told him he owed the government money charged him the lowest fee (\$15).

Such variances between the professional services may surprise the average taxpayer, who often seems to assume that tax computation is an exact science. But federal tax officials say the differences aren't surprising at all, since there are absolutely no rules or regulations to govern who can set himself up in business as a tax expert.

It's been suggested that all would-be tax experts be required to pass a standardized test. But an Internal Revenue Service spokesman in Atlanta says the IRS "would be reluctant to jump into the game of judging which people are qualified to figure out other people's income taxes."

### "MECHANIC ON DUTY"

For this reason, at least for the foreseeable future, taxpayers seeking help from professional services should be prepared to face the fact that no one expert has the last word on all tax matters. A close look at John's experiences with the experts helps to illustrate this point. (In his rounds, John was accompanied by this reporter, who claimed he was along "for moral support.")

The first discovery made by the comparison shopper is that tax services can be found in varied locales, ranging from downtown office buildings where clients are seen by appointment only to gasoline stations where the sign outside advertises: "Cigarettes 35 cents. Guaranteed Income Tax Returns, 20 Years Exp. \$5 & Up. Mechanic On Duty."

The differences don't stop at the door, as John quickly found out. The five offices he visited were operated by C&M Tax Service; H&R Block (John used two branches—one in Atlanta and one in Decatur); Sears, Roebuck & Co. and Mr. Tax of America. Their computations and fees were as follows:

	Refund or (amount owed)		Fee
	Federal	State	
C&M.....	\$652.04	\$181.04	\$31.00
Block-Atlanta.....	487.00	167.00	25.00
Block-Decatur.....	542.00	55.00	22.50
Sears.....	(141.00)	111.00	15.00
Mr. Tax.....	483.00	82.00	26.00

Each tax service insisted its work was checked several times by highly qualified personnel. Each also assured John that it was positive its work was 100% correct and that it would gladly pay any penalty or interest caused by any error. (Each office also said, however, that it wouldn't pay any extra taxes, should they later be deemed due by the IRS.)

#### THE ULTIMATE EXPERT

John was perplexed. Should he put his trust in C&M Tax Service and claim a \$652.04 refund? Or should he follow Sears, Roebuck's computations and pay \$141 to the IRS? He finally decided to take his problem to the ultimate expert: the Internal Revenue Service itself.

Under most circumstances, the IRS won't figure out a taxpayer's return unless the individual is blind or disabled. It will, however, answer specific questions from any taxpayer and it will compute the tax of an individual using the standard deduction whose adjusted gross income is \$20,000 or less and consists solely of wages or salaries and tips, dividends, interest, pensions and annuities. Although John's case didn't conform to all these requirements, the IRS agreed to compute his taxes since he was working with a reporter on a story.

But even the IRS wasn't infallible. After examining John's figures in detail, the government agency said he was entitled to a refund of \$466.10. Later, however, when John questioned this figure, an agent said he had erred in the computation of moving expenses.

The correct refund, the IRS said, was \$400.94. This figure, presumably the last word, was \$251.10 less than the refund stipulated by C&M. It was also \$541.94 better than the figure advised by Sears.

To solve the confusion on the state income tax, John took his form to the Georgia Revenue Department, which will fill out without charge the state form of any Georgia resident. The department informed John that he was entitled to a refund of \$117.80. The figure was \$63.34 less than that given John by C&M, but it was far better than those computed by three of the other offices.

A study of the forms prepared by the five commercial services shows that the biggest and costliest differences were connected with moving expenses and itemized deductions:

#### ITEMIZED DEDUCTIONS

	Federal	State
C&M.....	\$3,724.16	\$3,510.56
Block-Atlanta.....	2,835.00	1,710.00
Block-Decatur.....	3,034.00	1,902.00
Sears.....	3,103.00	1,957.00
Mr. Tax.....	2,937.00	2,579.00

#### MOVING EXPENSES

	Federal	State
C&M.....	\$3,643.89	\$0
Block-Atlanta.....	3,682.00	3,585.00
Block-Decatur.....	3,772.00	0
Sears.....	204.00	204.00
Mr. Tax.....	3,561.00	0

#### A NUMBER OF ERRORS

Certainly, the treatment of moving expenses for tax purposes has recently become more complex. Federal tax changes in 1969 increased the number of deductible moving expenses, including a number of "indirect" items associated with moving. Former laws, for example, didn't allow currently legitimate deductions, such as expenses connected with house-hunting and other related costs not directly involved in the move.

But the services also had a large number of errors:

—An employe at H&R Block's Decatur office filled in \$3,054 in itemized deductions on one tax form but later put \$3,034 on another form, costing John \$20 in deductions.

—Several of the services failed to deduct \$214 in state taxes withheld by Georgia during the year, even though the figure was prominently displayed on John's W-2 forms.

—Several offices failed to include as income \$8.53 in interest earned by John even though he gave each office a set of figures including that item.

—H&R Block's Atlanta office didn't include a \$138 deduction for medicine and drugs.

—One office wrongly listed his home address, and another listed his first name as his surname.

—Two offices gave him deductions he didn't claim and to which he clearly wasn't entitled. C&M, for example, allowed him \$25 for "tax preparation" by a professional last year, although John said he had prepared his own taxes. And Sears allowed him \$30 for miscellaneous deductions, although John said he had no idea what this amount should be.

#### SOME WERE ALERT

On the other side of the coin, some of the service's employees seemed to be especially alert. For example, Mrs. Mildred Dorton of Mr. Tax of America discovered several legitimate deductions that went unnoticed by everyone else, and she cited specific tax court rulings to substantiate her claims. (Mrs. Dorton apparently made one error, however, when she informed John he couldn't deduct any of his moving expenses on his state forms. The Georgia Revenue Department later said he could deduct \$1,555.89 of these expenses.)

Despite the faults of tax services, growing numbers of taxpayers are turning to them for professional help. Statistics aren't available for the total number of offices throughout the U.S., but their growth is reflected plainly in the performance of some of the industry leaders.

H&R Block, number one in size, has 5,267 offices this year, up from 4,349 in 1970. Sears, Roebuck has tax services this year in more than 600 stores, up from 109 last year. Montgomery Ward & Co., another giant retailer, currently has tax services in 250 retail stores, up from 135 last year.

S. Bonsal White Jr., a partner at Alex Brown & Sons, a Baltimore brokerage firm, says a major reason for the industry's growth is the growing complexity of tax laws and tax decisions. "Every time Congress or a state legislature passes a tax reform bill, and every time a tax court hands down a major decision, you can be sure that more people will flock to tax-return companies," Mr. White says.

#### MORE COMPLICATED TAXES

Observers say another reason for the industry's growth is the rise in individual incomes, leading to increasing diversification of investments and more complicated tax returns. Also, more cities and localities are requiring income taxes, meaning that more forms must be filed.

Tax services operate their offices in a variety of ways, including franchises. H&R Block owns outright most of its locations in major cities and operates these offices with its own personnel. Block also has a few franchised locations; and in smaller cities and towns, the service sets up so-called satellite offices.

Under the satellite method, H&R Block selects and trains a local individual, who is allowed to set up shop under the H&R Block emblem. The individual furnishes his own office, but Block does his advertising and provides him with some of his office supplies.

Tax services, of course, operate their offices on a seasonal basis—usually from early January through mid-April. During the remainder of the year, the larger offices run training sessions for the upcoming season's employes.

Richard Bloch, chairman of H&R Block, says about "75% or more" of each season's employes return to the service the following year. "Personnel is no longer a problem," he says. "It was at first when we were getting started, but not any longer."

#### "A PEOPLE BUSINESS"

Some services disagree. "Getting qualified personnel is by far our biggest worry," says R. L. Swan Sr., an official at Mr. Tax of America. "You see, this is a people business, and getting good people is the whole ball game."

Despite personnel problems, the industry sees more growth in the future. The IRS estimates that slightly more than half of the 77 million individual returns filed last year were prepared by "third parties," including professionals, semi-professionals, friends and relatives. This means that about 50% of the taxpayers

will prepare their own returns—about 40 million potential customers. Furthermore, analysts predict population growth will lead to a steady growth of new, young customers.

The industry also undoubtedly prospers from the fear and mistrust with which many taxpayers regard the government in general, and the IRS in particular. "Do you think the average taxpayer will actually ask the IRS to figure out the best angle for him?" asks one Atlanta tax practitioner. "Don't be silly. He believes the government's people are out to squeeze every penny they can from the public, and so he'll come to private firms."

Firms specialising in tax returns aren't the only beneficiaries. Banks and loan companies, for example, have found that tax-return services draw new customers. "When you have a man's tax return in front of you, you're in a great position to know what he can afford and can't afford to do with his money," says one tax-service man.

#### OCCASIONAL FRAUD

Federal and state tax officials report that fraud is sometimes evident in the work of tax-return services. "There's this one outfit here in Atlanta that promises every client a refund, and you should see some of his work," says an agent at the Georgia Revenue Department. "We've never been able to get him in court because nobody will testify against him."

Earlier this year, however, the federal government managed to prosecute a case involving fraud by a tax professional. A federal district court in Jackson, Tenn., convicted Mrs. Fannie Mae Case Robertson, a tax practitioner, on 12 counts of fraud and sentenced her to a year in prison and a \$600 fine. Mrs. Robertson is appealing the decision.

But the five firms visited by John were guilty of errors rather than fraud. "That was purely a mistake on my part," the Sears man later said concerning his moving-expenses computation. And Richard Bloch said, "I've got to place the blame squarely on the tax return service."

"It astounds me," Mr. Bloch said. "We do nine million returns, so we're bound to make some mistakes, but there's no excuse for getting the spread you got. I can't understand it. We have a minimum of two people checking every return done by our preparer."

At C&M, tax-preparer Thomas Perry conceded he forgot to include several items on John's forms, including \$13 in dividends and interest on his state return. Mr. Perry stood by the deduction he gave John for tax-preparation services, claiming it was for his own work this year. (Mr. Perry noted, however, that the \$25 he allowed John for tax preparation should have been \$31—the fee charged by C&M.) According to the IRS, however, such deductions may be made only for tax-preparation fees paid during the year for which the return is being submitted.

Mr. Tax of America's Mrs. Dorton also stood by her ruling that John wasn't entitled to moving-expense deductions on his state forms. She said the matter of such deductions was "a very gray area," adding that her reasoning was based on prior experience. But the Georgia Revenue Service, which presumably has the last word, maintained John was indeed entitled to the deductions.

Beyond the problems of error or fraud, there lurks another worry: Some tax return firms may be selling information gleaned from supposedly confidential returns to outside concerns, such as department stores, credit bureaus and direct-mail companies. The Federal Trade Commission is now investigating this possibility, as well as possibly misleading advertising by some tax firms that promise big refunds to prospective clients.

Congress has also entered the picture. Sen. Charles Mathias (R., Md.) last month introduced a bill that would require the consent of a taxpayer before a tax-return preparer could use information from his client for any purpose other than figuring the return. "Many income tax preparation firms and services are beginning to move into other fields, such as the selling of mutual funds, insurance and other financial services, and are using for these marketing purposes the detailed knowledge of their customers gleaned in the course of preparing income-tax returns," Sen. Mathias says.

[From the Congressional Record, May 3, 1971]

DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Washington, D.C., March 8, 1971.

HON. RICHARD T. HANNA,  
House of Representatives,  
Washington, D.C.

DEAR MR. HANNA: Commissioner Thrower has asked me to reply to your letter dated February 18, 1971.

The Internal Revenue Service launched an inquiry into commercial tax return preparation services a little over a year ago to define the scope of our authority and to consider what actions we might properly take for dealing with abuses by tax return preparers.

The recent proliferation of commercial preparers of returns is essentially a manifestation of American enterprise looking for new markets. More and more businessmen are looking at the millions of individual taxpayers as potential clientele. This in itself is not of concern to the Internal Revenue Service because these firms can provide a service for the taxpaying public.

Our main problem is that of misleading and deceptive advertising arising from the activities of a relatively few commercial preparers. Our interest here is to be alert to the occasional excesses of this minority which, if unchecked, might result in problems both for taxpayers and tax administration. The FTC is currently cooperating with us in a survey of advertising tactics of returns preparation firms.

The rules of conduct for practice before the IRS, as set forth in Treasury Department Circular No. 230 (copies enclosed)\* generally apply only to attorneys, certified public accountants, and others enrolled to practice. Since commercial preparers of returns advertise, they are not eligible to represent taxpayers before the IRS and, therefore, do not come within the purview of the Circular. So, absent a clearly fraudulent act such as inducing a taxpayer to file a false return or document, the Service is without authority to police this area.

Interestingly, H.R. 9922 was introduced in 1954 to authorize the Secretary of the Treasury to issue regulations relating to qualifications of persons who assist taxpayers in the preparation of tax returns. The Service opposed this legislation on the grounds that if a high standard of technical competence would be required, the number of persons who could qualify would not be sufficient to meet the demands of the taxpayers. If the system, otherwise, did not contemplate high technical competence, the evils inherent in the present system would not be greatly abated. To our knowledge, no similar legislation has been introduced since 1954.

Frankly, while we are concerned about the increases in the number of incompetent preparers, we are still of the view that the Service should not attempt to control these firms or individuals. We do not have sufficient manpower to test and police the thousands of persons engaged in this business. Furthermore, we are still concerned that controls would cause fewer people to engage in this business, thereby depriving taxpayers of needed assistance. Also, I doubt whether we in the Service could ever staff up or devote sufficient manpower to take care of the needs of taxpayers who do not feel competent to prepare their own return.

At this time we do not feel that we can draw any final conclusions or make legislative or administrative recommendations. I appreciate the opportunity to clarify this matter for you. If I can be of any further service please let me know.

Sincerely yours,

S. B. WOLFE,  
*Director, Audit Division.*

JUNE 16, 1971.

HON. RICHARD T. HANNA,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. HANNA: This is a follow-up to my March 4 letter in response to your inquiry concerning commercial tax return preparers in order to inform you of later developments.

Events during the recent filing period have convinced us that serious consideration needs to be given to the problem of commercial tax return preparers. We have undertaken a study to determine how we might deal with the situation. Our study will consider licensing return preparers; conducting IRS sponsored training courses for return preparers; prescribing a code of conduct, with sanctions for malfeasance, and publicity programs to guide taxpayers in the choice of preparers.

One of the key issues in our study will be the regulation of advertising of tax return preparers other than attorneys, CPA's, and enrolled agents. Also, we will be consulting with the tax committee of the American Bar Association, the American Institute of Certified Public Accountants, and the National Society of Public Accountants.

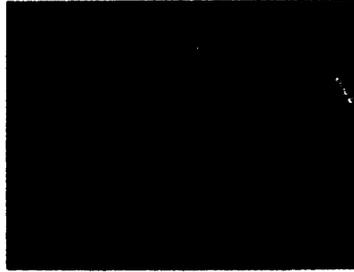
Sincerely yours,

S. B. WOLFE,  
*Director, Audit Division.*

\* Not printed at this point.



# Will the I.R.S. use these strong-arm tactics on you?



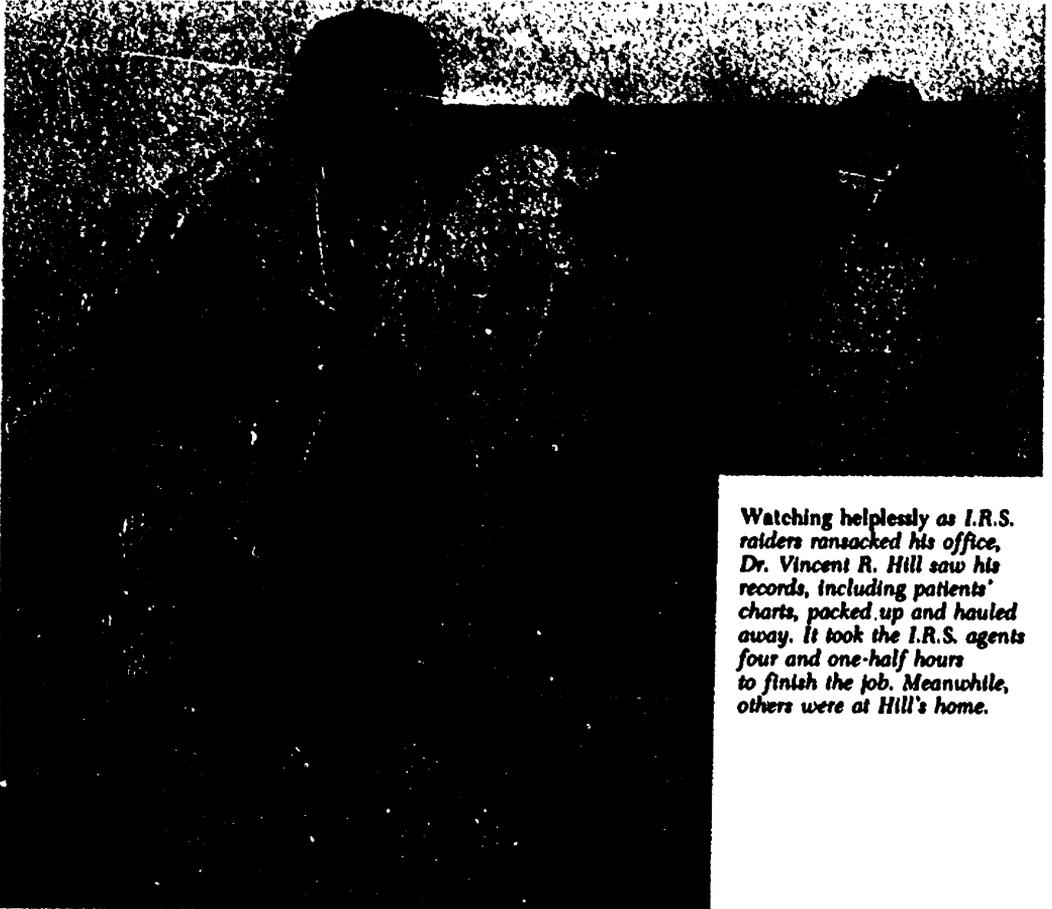
The Internal Revenue Service recently seized one doctor's records, including his patients' medical histories, on suspicion of tax evasion. It threatened to padlock the office of another unless he paid up overdue taxes on the spot. These frightening new turns of the enforcers' screw are detailed in two case histories that follow.

A legal storm is breaking over cases like these. The precedents are as old as the U.S. Constitution and as new as the Safe Streets Act of 1968. Ironically, that act is being interpreted in a way that could open your medical office to Federal intruders in the 1970s. For unless the I.R.S. is leashed by the courts, you or any other doctor could be the victim of strong-arm tactics if informers should claim you're a tax evader or if you simply take too long a time to pay back taxes that you acknowledge owing.

That's what happened to the two physicians whose respective stories appear on the following pages.

## **"Move aside, we're going to**

**Acting on tips from former employes of this Illinois M.D., the I.R.S. raided his home and office and seized his records. If upheld by the courts, such tactics could become widespread.**



**Watching helplessly as I.R.S. raiders ransacked his office, Dr. Vincent R. Hill saw his records, including patients' charts, packed up and hauled away. It took the I.R.S. agents four and one-half hours to finish the job. Meanwhile, others were at Hill's home.**

# break the door down!"

By Sheldon H. Gorlick, J.D.

Senior editor, MEDICAL ECONOMICS

Up to the day when 13 Internal Revenue Service special agents raided his office and home, Dr. Vincent R. Hill had practiced quietly as a G.P. for 22 years in Springfield, Ill. His contacts with the I.R.S. had been minimal. Except for paying his tax bill, which had ranged from \$8,000 to \$10,000 in recent years, Dr. Hill had been audited only once. That examination was over in two hours and resulted in an additional tax bill of just \$100.

The raids changed everything for Vincent Hill and his wife, June. The immediate effect was to catapult them into local notoriety through television and newspaper coverage of the raids. The long-term effects could leave every doctor vulnerable to similar surprise raids. The tangle of constitutional issues raised by the raids has already reached the Court of Appeals, and knowledgeable attorneys believe that it will wind up in the Supreme Court. So far, the case has cost Hill over \$15,000 in legal fees and the income he has lost because the agents seized Hill's records, including his patient histories.

Although more than a year has gone by since the raid, the I.R.S. still has the originals of Hill's records. Before getting copies,

Hill was allowed to consult the records, but only at I.R.S. headquarters. And when he finally did get the copies, many of them were illegible.

The raiders were looking for evidence of criminal tax evasion. A former employe had gone to the I.R.S. and had sworn in an affidavit that Hill had segregated records of some patients in special accounts. The I.R.S. then questioned three other former employes who also told of segregated accounts. While none of the informants claimed to know how much income Hill had reported, all of them either said or implied that he wasn't reporting all of it. One stated: "I do not recall that I ever made any inquiries to Doctor or Mrs. Hill with regard to the two systems of fee processing."

The story they told the I.R.S. was of a special "red letter" system used to flag the segregated accounts. One employe said: "Patients whose files were to be categorized as red letter cases were sometimes drawn from noninsurance cases, patients who appeared infrequently, parties who paid at the time of visits, and patients who appeared for refills of prescriptions."

Another aide's statement went as follows: "I recall an occasion

when Doctor Hill suggested that the 'red letter' file of medical folders be removed from the office and transferred to the trunk of my automobile, which was available in the medical office parking lot during office hours. The use of folders from this file continued uninhibited. My automobile was used as a temporary repository for the file of 'red letter' folders until Dr. Hill suggested their return to the drug room. To the best of my recollection this use of my car to hold the 'red letter' file was about a 30 day period shortly after the dismissal of another aide."

Hill characterizes all statements made by his former aides as the "accusations of disgruntled employes."

Some five weeks after the I.R.S. began its investigation, Judge Omer Pooos of the U.S. District Court in Springfield granted applications for warrants to search Hill's home and office. The warrants were granted and issued on Feb. 19, 1970. At 3 o'clock that same afternoon, Hill suddenly found himself confronted by a raiding force of seven I.R.S. agents. Here's how he recalled it recently:

"I was sitting at the reception desk talking to one of my aides. Three patients were waiting for

**"Move aside, we're going to break the door down!"**

me. Suddenly seven men stood in front of me. The leader, who I later learned was T. Ralph Ranaletta, told me they were special agents of the I.R.S. and declared, "We want to look this place over."

At that point, an argument apparently broke out. One version of what happened is that Hill jumped to his feet and moved toward the room where his records were stored. Another is that the agents tried to get into the records room and found the door locked. In any event, Hill remembers Ranaletta warning:

"Move aside, we're going to break the door down!"

Without having to break the door, the agents gained entry to the records room. "While they searched, I was ordered to remain in the office," Hill recalls. "Later, I went to the bathroom and one of the agents pounded on the door and shouted, 'What are you doing in there?'"

"I asked if I could call my attorney, but they refused. Later they called him, and I asked him to come over. All the while, the agents were looking at all the records and desks, and examining every bit of paper they came across. They began packing up the papers in cartons they brought along. At 4:30, my attorney, William Fuiten, came to the office, but they refused at first to let him in. Then I was allowed to go home to my wife, but

my nurse and secretary had to remain. The agents stayed there until 7:30."

The raid on the Hills' home had also started at 3 p.m. Five men and a woman came to the house and rang the bell. "I asked who they were and what they wanted," Mrs. Hill recalls. "They told me they were special agents of the I.R.S., and they pulled out a search warrant. I was told I could not leave the house. I could make a call or answer the telephone. I insisted on calling Mr. Fuiten, and when he came to the house they let me out to talk to him.

"They searched everywhere and in every drawer. We had moved into the house six months before, and some of our personal cards and letters were still in packing boxes. They even leafed through my Bible. My husband came home just before the agents left the house at 5 p.m."

By the time the agents left Hill's office and house, they had packed 35 cartons of records going back to 1963. They hauled them away in a truck.

The next day, Fuiten and his partner, Robert G. Heckenkamp, petitioned the District Court for the return of the records and to suppress any evidence obtained through their seizure. The grounds for the petition were that the raids had violated the Fourth Amendment to the Constitution, which prohib-

its unreasonable searches and seizures, and the Fifth Amendment, granting the privilege against self-incrimination. Those amendments, as part of the Bill of Rights, are fundamental bulwarks against the arbitrary intrusion by the Government on an individual.

Thirty-nine days after the raids, Judge Poos ruled that the I.R.S. could examine the contents of the records without violating Hill's constitutional privileges. Though the judge did order the I.R.S. to provide Hill with copies of the records within 20 days, no deadline was set for the return of the records themselves, and no limitation was put on their use as evidence in future proceedings. The case is now on appeal to the United States Court of Appeals for the Seventh Circuit. From the day of the raids until he got the copies, Dr. Hill had to go to the I.R.S. headquarters to see his patients' histories. In some cases, he says, he was unable to give shots because he was afraid of allergic reactions. Processing of insurance claims came to an abrupt halt.

Since then, the I.R.S. has been sifting through the records in an attempt to build a case of tax evasion against Hill. Following up the leads, the I.R.S. is contacting some of his patients. When asked for canceled checks and receipts for payment to Hill, some of his patients think *they're*

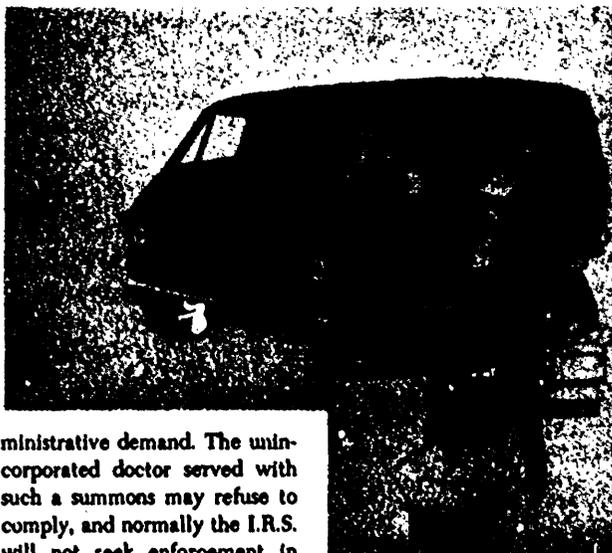
the ones being investigated. "It's confusing to them," says Mrs. Hill, "and embarrassing to us."

The procedure in the investigation of Dr. Hill is an abrupt departure from a long-standing I.R.S. policy. Normally, the I.R.S. evaluates accusations by informants, and a revenue agent audits the taxpayer's records without telling him of the accusation. If the revenue agent uncovers indications of fraud, he calls in a special agent whose job is to uncover criminal tax evasion. This is a drastic procedure. But having special agents simply take away the records is almost unprecedented.

When asked why Dr. Hill had been treated that way, a spokesman for the Department of Justice explained that the Government had felt there was danger that he would destroy his records if given a chance. One of the employees swore that she had been instructed to burn the records if I.R.S. agents ever came to the office.

What's the implication of the Government's use of such tough new procedures? Listen to the opinion of Paul P. Lipton, Milwaukee attorney and authority on procedure in tax fraud cases.<sup>\*</sup> Lipton says:

"I.R.S. agents do have authority to issue a summons for records, but this is merely a written ad-



Seized records, packed in 35 cartons, were hauled away in a truck. Since then, Dr. Hill has been working from copies.

ministrative demand. The unincorporated doctor served with such a summons may refuse to comply, and normally the I.R.S. will not seek enforcement in court against a taxpayer who asserts his privilege against self-incrimination. However, the taxpayer is powerless to prevent execution of a search warrant."

Lipton adds that a special agent beginning an investigation must tell the taxpayer that he can't be compelled to answer questions or to provide incriminating information; the agent must also advise the taxpayer of his right to counsel. By relying on his constitutional protection against self-incrimination, the taxpayer may simply refuse to make his records available to the I.R.S. agent, Lipton emphasizes. But if armed with a court-issued search warrant, the agent can seize records, and the taxpayer has no right to refuse.

In the Hill case, the I.R.S. was flexing new muscles it had obtained through recent changes in the law. Lipton explains: "Until recently, it was firmly established that a search warrant

could be used only to seize the instrumentalities and fruits of crime and articles of contraband. In 1967, however, the Supreme Court held that the Fourth Amendment did not preclude the seizure of 'mere evidence.' Following that decision, the Omnibus Crime Control and Safe Streets Act of 1968 authorized the issuance of warrants to seize any property that constitutes 'evidence of a criminal offense in violation of the laws of the United States.'"

Actually, Dr. Hill is not the only taxpayer to feel the lash of the new law. In at least two other recent cases, professional men have been confronted with I.R.S. raiders who came to seize their records. One case involved a

<sup>\*</sup>See "Your Next Tax Audit: Could You Be Accused of Fraud?" *MEDICAL ECONOMICS*, Aug. 18, 1968.

California dentist. A U.S. District Court recently upheld that search and seizure. In another, the office of a Miami otolaryngologist was searched, and virtually all his medical records and financial records were seized.

In the Miami case, the search warrant was issued on the affidavit of a special agent who obtained his information from only two employees. If the I.R.S. can obtain a search warrant on the basis of two statements, what's to prevent it from obtaining a warrant on the basis of only one statement? It might even be possible to obtain the warrant without any statement at all.

If the use of search warrants in tax cases continues to gain court approval and becomes more widespread, it's entirely possible that you could find yourself confronted with a raiding party. In that case, is there anything you could do to prevent your records from being carted away? The answer I get from constitutional specialists is an unequivocal No. A search warrant has the same effect as an arrest warrant. If you prevented the agents from carrying out the search, they could break down your door. If you called the local police, they would be powerless to stop the Federal agents. If you persisted in obstructing them, you could find yourself seized along with your records, and you'd wind up in jail. □

## "Pay up right now or

**If you fall behind in your income tax payments, can the I.R.S. actually padlock your office until you raise the cash to pay off your arrears? Here's what one doctor learned.**

**By John Carlova**

Senior editor, MEDICAL ECONOMICS

**Y**ou walk into your office and three I.R.S. men are waiting for you. They're polite but to the point. "You're behind in your income tax payments," one tells you. "Pay up right now or we'll padlock your office and seize your accounts receivable."

Could that really happen to you? Yes, under certain circumstances. It happened not long ago to a G.P. we'll call Dr. Joseph Norrin, and it may indicate a new trend in tough tactics by the I.R.S. To help other doctors avoid the painful squeeze in which Norrin suddenly found himself, MEDICAL ECONOMICS assigned me to investigate his case in depth.

To start, I traveled to the pleasant, fast-growing city where Norrin practices. The doctor turned out to be a tall, slender, somewhat diffident man

in his middle years. He received me in his office, a spacious, nicely furnished suite in a professional building.

Understandably, Norrin was hesitant about having his run-in with the I.R.S. publicized. How, he wanted to know, had MEDICAL ECONOMICS learned of it? I explained that another doctor in the area, who had heard of the padlock incident, had written to the magazine about it. The purpose of an article, I emphasized, would be to alert all physicians to the problem. When I added that Norrin's real name and place of practice would not be revealed, he agreed to cooperate. Here's the story he told.

Norrin had settled in this particular city 12 years previously. After a modest start, his practice grew to the point where he was seeing more patients than the av-

**we'll padlock your office!"**



*A surprise visit by I.R.S. men caught this unwary doctor in a painful squeeze. He'd been going on the assumption that Uncle Sam is willing to wait for overdue income tax payments. He found out quite abruptly how very wrong he was.*

## "Pay up right now or we'll padlock your office!"

erage G.P.—and making more money. With the help of an adviser at a local bank, he invested most of his excess income in stocks. As the bull market of the 1960s soared, this turned out to be a highly profitable move—on paper, at least.

Meanwhile, Norrin's practice expanded to the point where he needed three full-time aides and a part-time bookkeeper. He also employed the services of a management consultant-accountant.

By 1968, Norrin was netting around \$34,000 before taxes. In addition, he had a portfolio of stocks worth about \$100,000, plus \$6,000 in a savings account. He and his wife and two of their five children lived in a \$60,000 home on which he was paying off a \$35,000 mortgage. He was also paying life insurance premiums of over \$1,500 a year. For a man who'd just turned 45, Norrin seemed to be pretty well set.

However, three of his children were now in college, and in his early financial planning he'd failed to make sufficient provision for this. In addition, Norrin's 64-year-old widowed mother, whom he'd been helping to support, suffered an intestinal ailment that hospitalized her for two months. After that she had to go into a nursing home. Her private insurance wasn't nearly enough to cover all of her health-care bills, and the burden of paying them fell on Norrin.

By the end of 1968, the G.P.'s savings account was just about cleaned out, and he was borrowing on his life insurance policies. It seemed better to raise cash that way than to touch his stocks, which had been doing so well. Even when the bear market began toppling prices right and left, he was unwilling to sell off any of his portfolio, which was designed for long-term growth.

Meanwhile, the cash bind in which Norrin found himself was aggravated by the fact that he'd fallen into the bad habit of letting his quarterly income tax payments slide. His best course, he figured, was to pay the Government 6 per cent simple interest on the unpaid amount.\* A bank loan would cost much more. But in April of 1969, when Norrin sat down with his accountant to work on his income tax return, the G.P. was surprised to learn that his tax arrears had piled up to nearly \$7,000.

Again, Norrin didn't take out a bank loan to catch up. Accompanied by his accountant, he went down to the local I.R.S. office and reached an agreement to pay off the arrears in installments over the coming year. However, in doing this, Norrin fell behind on his current income tax payments. When April 15, 1970, rolled around, he owed the I.R.S. about \$10,000. Once more

\*A penalty of one-half of 1 per cent a month, up to a maximum of 25 per cent, has since been added to the yearly 6 per cent interest.

an agreement was reached to make good the debt in installments, although this time the I.R.S. showed some reluctance to go along.

By now the rampaging bear market was knocking the props out from under stock prices. Norrin still wasn't worried. In fact, he not only held onto the stocks he had; he even picked up more at what he figured to be bargain prices. Along with his heavy personal expenses, this left the G.P. strapped for cash, as usual. He couldn't even meet an installment payment of \$2,000 that fell due on his overdue tax in the last quarter of 1970.

After getting a notice, Norrin called up his accountant and asked for advice.

"How much cash do you have?" the accountant asked.

"About \$900 in my checking account, but I need that for current expenses."

"When will you have enough to pay off the \$2,000 you owe for income tax?"

"I could pay off half in a couple of weeks, then the other half in another couple of weeks."

"All right," the accountant suggested, "supposing I go over to the I.R.S. office and see if they're agreeable to a month's extension?"

"Fine," said Norrin. "Let me know how you make out."

The accountant later called back and reported: "The reve-

nue officer who's assigned to your case wasn't in the office. But I spoke to the chief of the collections division, and he seemed willing to go along with your offer. He said he'd recommend to the revenue officer that you be allowed to pay \$1,000 in two weeks and the remaining \$1,000 in another two weeks."

"Great," said Norrin, relieved that the problem had been solved so quickly. "Thank you a lot."

He hung up, figuring he was still ahead of Uncle Sam in their financial checker game. Three days later, however, just as the G.P. had finished seeing the last of his morning patients, he received a telephone call from the cashier of his bank.

"Doctor," the cashier said excitedly, "there's an I.R.S. man here with a levy against your accounts."

"There must be some mistake!" Norrin blurted.

"Apparently not. The levy's in order." The cashier hung up.

Norrin immediately reached for his hat and hurried over to the bank, which was only a block away. The cashier took him aside and said, "You're too late. The I.R.S. man just left."

"What about my accounts?"

"You can't touch them. The I.R.S. has taken them over."

Norrin didn't care about the savings account—it had only \$5 in it to keep it open. His check-

ing account, however, had \$828.

Bewildered, not certain what to do, the G.P. went back to his office. There he was surprised to find three I.R.S. men waiting for him. The leader, a rangy man with a shock of unruly red hair, flashed his credentials and announced he was the revenue officer in charge of Norrin's case. He suggested that he and the doctor go into the consulting room for privacy.



*Racing the clock, the physician hurried to the bank in an effort to scrape together quick cash for his overdue tax payments.*

There, the red-haired I.R.S. man explained: "Doctor, my colleagues and I have spent all morning checking into your financial resources. I have just frozen your bank accounts for a total of \$831. You still owe a balance of \$1,189. I must have full payment right now."

Norrin was flabbergasted. "But I've made an arrangement to pay off the balance."

"Do you have anything in writing to that effect?"

"No, but—"

"The point is," the I.R.S. man cut in firmly, "I'm in charge of this case, and it's dragged on beyond reason. I want the full payment *right now*."

"That's impossible," Norrin protested. "You know I don't have that much in cash."

"You have stocks. Sell some."

"That would take days."

"All right," the I.R.S. man said briskly, "I'd hoped to avoid this, Doctor, but you leave me no alternative. I have orders here to padlock your office and seize your accounts receivable."

Norrin had been standing. Now his legs felt wobbly and he sank into the chair at his desk. "Surely you're joking," he said.

The I.R.S. man held up a metal box that Norrin hadn't noticed before. It looked like a big, old-fashioned lunch box. "I've got the padlocks right here," the I.R.S. man said.

**"Pay up right now or we'll padlock your office!"**

In desperation, the G.P. reached for the phone to call his accountant. Out to lunch.

As Norrin hung up, he heard the heavy rattle of metal. The I.R.S. man was shaking something in the box.

"This is incredible," the doctor said. "If you lock up my office, you'll disrupt my practice. What will my patients think if they see a padlock on the door?"

"That's your worry, not mine," the I.R.S. man replied. "Seems to me, Doctor, that a man in your position would have friends he could borrow \$1,100 from."

Norrin shook his head. "It

would be too embarrassing."

"What about a bank loan?"

"That would take a day or so to arrange—maybe longer."

"All right," the I.R.S. man concluded, "then sell your car."

"But I need my car."

"You have another at home."

"That's for my wife's use."

The I.R.S. man glanced impatiently at his wristwatch. "Doctor, we're wasting time here. It's now 12:15. I know you have patients due in at 1:30. If I don't receive \$1,100 from you by then, there'll be a padlock on your office door."

With no other way out apart, Norrin then agreed to sell his car—the three-year-old Buick

## "Pay up right now or we'll padlock your office!"

Electra on which the G.P. had shortly before finished payments. Fortunately, the title was in the car. Norrin drove it to a used-car lot, and after some bargaining, accepted a check for \$1,600 for the Buick, which was retailing for up to \$2,400 at that time.

The I.R.S. officer, who had followed along in his own car, then drove Norrin to his bank. The check for \$1,600 was signed over to the I.R.S., the levy was lifted on Norrin's accounts, and he was able to purchase a cashier's check for the balance of \$400 that he owed on his income tax. He was back in his office just before the first of his afternoon patients arrived.

Somehow the G.P. got through the rest of the day. At first he felt dazed, still not quite able to believe the incredible thing that had happened to him. By the time he got home, though, he felt just plain worn out.

When he told his wife what had happened, she was outraged. "That's storm-trooper stuff!" she exploded. "Get your accountant over here. Let's find out what we can do about this."

Norrin wasn't inclined to do anything. He'd had one taste of Federal might, and he didn't want any more. At the insistence of his wife, however, he called the accountant. He, too, was astonished at what had happened, but like Norrin, he figured that if

the G.P. protested too vigorously, a hornets' nest might be stirred up at the I.R.S. Consequently, the only thing the accountant did was to call the chief of the collections division at the local I.R.S. office the next day. Why, the chief was asked, had the arrangement made on behalf of Norrin not been honored?

"First of all," the I.R.S. official pointed out, "no arrangement was made. You made a *proposal* for the doctor and I said I'd *recommend* that it be accepted. The revenue officer in charge of the case decided not to accept the recommendation. He felt he could collect the payment in full. Sure looks like he was right, doesn't it?"

The management consultant didn't argue the point, and neither did Norrin. As he told me in concluding his story, "I'd still like to know if those I.R.S. men really could have padlocked my office, but, frankly, I'm afraid to find out. I don't want any more trouble."

Although I had no reason to disbelieve Norrin's account of what had happened, I double-checked it with his wife, banker, and accountant. All corroborated the G.P.'s story on every point with which they were familiar. From other doctors and from local medical society officials, I learned that Norrin was highly regarded in the community.

I then made some discreet in-

quiries at the local I.R.S. office. A new director had instilled a get-tough attitude into revenue officers. As a result, a number of small businesses had been padlocked because of income tax delinquencies. I didn't try to question the red-haired I.R.S. man who'd dealt with Norrin for fear of putting further heat on the doctor, but I did ask another local I.R.S. agent, "Would you consider a doctor's office just another place of business—that is, a place that could be padlocked?"

"Why not?" was the answer.

I shifted my inquiries to the I.R.S. headquarters in Washington and to knowledgeable attorneys. The big question, of course: Does a revenue officer have a legal right to padlock a doctor's office and seize his accounts receivable if the physician is delinquent in his income tax payments? The answer appears to be Yes. The pertinent law here is the Internal Revenue Code of 1954, which provides in Section 6331 (a):

*"Authority of Secretary or Delegate—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property . . . belonging to such person . . ."*

## "Pay up right now!"

Obviously this statute takes in a lot of territory. But was the red-haired I.R.S. revenue officer within his rights in demanding immediate full payment from Norrin? Yes, because the installment-payment form the doctor had signed contains the following clause:

"I understand and agree that if I fail to meet any of the conditions of this agreement, permission to make installment payments may be withdrawn and the entire amount of my tax liability may be collected by levy on income or salary, or by seizure of my property without FURTHER NOTIFICATION TO ME."

To enforce the law, the I.R.S. has more than 6,000 revenue officers scattered across the country. These officers should not be confused with revenue agents, who make routine investigations, or special agents, who make criminal investigations, or tax technicians, who examine returns and spot errors. The principal task of the revenue officer is to collect money from people who've failed to pay taxes assessed against them.

That can be a tough job—but revenue officers have the legal muscle to get tough. "These men have more power than any other Government agents in the U.S., including the F.B.I.," says Leonard Bailin, a former I.R.S. man who's now a New York lawyer specializing in tax matters. As an

example of that power, an I.R.S. revenue officer can conceivably fill out a form authorizing a seizure, sign it himself, and then execute it.

Some I.R.S. agents have gone to extremes in strong-arming suspected income tax offenders. The chairman of a Senate subcommittee that conducted an investigation a few years ago concluded: "The I.R.S. has become morally corrupted by the enormous power with which we in Congress have unwisely entrusted it. Too often, it acts like a Gestapo preying upon defenseless citizens."

One report tells of a revenue officer who complained: "The I.R.S. doesn't look on people as human beings anymore; they're just numbers, statistics." The officer then cited a local I.R.S. order that warned: "We will be watching very closely the revenue officer who doesn't average at least one levy per week and one seizure per month. . . . Get the dollar."

A similar local directive, issued in 1967, states: "Levy at once on known sources of income, i.e., wages, bank accounts, etc. Seize assets of taxpayer, car, home, business, etc. Make this your first action. Get taxpayer's attention." The order adds that "efficient work" will earn "promotions and awards," while "inefficient work will be severely dealt with by demotions and

**"Pay up right now or we'll padlock your office!"**

separation from the service."

It's possible, therefore, that the I.R.S. men who walked into Norrin's office were intent on racking up more points for their records. Would they really have padlocked the office? That's hard to say. All the I.R.S. officials with whom I spoke denied any knowledge of a doctor's office actually being padlocked. From other sources, however, I found that the *threat* to padlock a doctor's office and seize his accounts receivable has been used in a number of instances during the past couple of years—and used effectively; all paid up.

Could it happen to you? Not if you keep in mind these five lessons that Dr. Norrin learned:

(1) When his installment payment of \$2,000 fell due, he didn't bother to go to the local I.R.S. office and explain that he was short of cash. Instead, the I.R.S. had to send him a notice, thus deepening the shadow of unreliability that was already on the doctor as a taxpayer.

(2) It was a mistake for Norrin to assume from his accountant's discussion with the chief of the collections division that an agreement had been reached. To be effective, such an agreement

must be in writing. There are forms to be filled out, dated, stamped, and signed by both the doctor and the I.R.S. official involved in the case.

(3) When the red-haired I.R.S. officer told Norrin that he had orders to padlock the office and seize the accounts receivable, the doctor should have asked to see them. A seizure order must be in writing. It's a standard, printed form, signed either by the I.R.S. district director or someone delegated by him—who, as mentioned earlier, can be the revenue officer himself.

(4) When Norrin realized the predicament he was in, the person he should have tried to contact was his attorney, rather than his accountant. Income tax officials are more inclined to listen to lawyers than laymen.

(5) Finally, of course, Norrin should never have slipped into the sloppy habit of putting off his income tax payments. "If he had money to buy stocks, he should have had money to pay his tax," observes Jack E. Horsley, a Midwest attorney. "Hardship, rather than convenience, should be the only reason for entering into a deferred or installment payment plan with the I.R.S. And once such an agreement is reached, the taxpayer would be wise to live up to it. Uncle Sam may wear a funny hat, but he's nobody to play games with. You just can't win." □