S. HRG. 101-987

IRS IMPLEMENTATION OF THE TAXPAYERS' BILL OF RIGHTS

HEARING

BEFORE THE

SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

APRIL 6, 1990

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IRS IMPLEMENTATION OF THE TAXPAYERS' BILL OF RIGHTS

FRIDAY, APRIL 6, 1990

U.S. SENATE,
SUBCOMMITTEE ON PRIVATE RETIREMENT PLANS AND
OVERSIGHT OF THE INTERNAL REVENUE SERVICE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:42 a.m., in room SD-215, Dirksen Senate Office Building, Hon. David Pryor (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

[Press Release No. H-22, Mar. 14, 1990]

FINANCE SUBCOMMITTEE TO HOLD HEARING ON TAXPAYER RIGHTS; IMPLEMENTATION OF TAXPAYERS' BILL OF RIGHTS TO BE REVIEWED, PRYOR SAYS

WASHINGTON, DC—Senator David Pryor (D., Arkansas), Chairman of the Senate Finance Subcommittee on Private Retirement Plans and Oversight of the Internal Revenue Service, announced Wednesday that the Subcommittee will hold a hearing to review the Internal Revenue Service's (IRS) implementation of the Taxpayers' Bill of Rights.

The hearing is scheduled for *Friday, April 6, 1990 at 9:30 a.m.* in Room SD-215 of the Dirksen Senate Office Building.

"The IRS has had well over a year to implement the Taxpayers' Bill of Rights. Everything should be up and running by now, and the Subcommittee needs to take a careful look to see if the IRS is administering the law properly. Additionally, this is a good time to assess how well the legislation is protecting the rights of American taxpayers, and to determine whether any follow-up legislation is necessary," Pryor said.

The Omnibus Taxpayer Bill of Rights, subtitle J of Public Law 100-647, was enacted in November 1988 to provide greater protection for taxpayers in disputes with the IRS. In general, the legislation modified IRS audit procedures, codified many taxpayer rights, provided new protections for the taxpayer during the levy and collection process and established new procedures and institutions to oversee the protection of these rights.

OPENING STATEMENT OF HON. DAVID PRYOR, A U.S. SENATOR FROM ARKANSAS, CHAIRMAN OF THE SUBCOMMITTEE

Senator PRYOR. Good morning, ladies and gentlemen. First, I would like to remind our audience today and all of those participating within the hearing room that this committee today, as always in the past, will strictly adhere to the rules, not only of the U.S. Senate, but more specifically we will adhere to the rules of the Senate Finance Committee.

I will read Rule 14 of the Finance Committee rules that relates to audiences. "Persons admitted into the audience for open hearings of the committee shall conduct themselves with dignity, deco-

rum, courtesy and propriety traditionally observed by the Senate. Demonstrations of approval or disapproval, or any statement or act by any members or witness are not allowed. Persons creating confusion or distractions or otherwise disrupting the orderly proceeding of the hearing shall be expelled from the hearing."

That rule today is going to be strictly enforced. It is not in any way an attempt to repress the free expression of any individual. That is not what our country is about. But we have called the witnesses carefully this morning. We will not have them interrupted, nor will we have the orderly process of this committee interrupted this morning or any other day.

Today we are requesting the Internal Revenue Service to appear for an audit. I hope the Commissioner has his records in order, that the standard imposed on taxpayers—crossing every "T" and dotting every "I"—is being met by the IRS. At today's hearing we will review whether the IRS is complying with the law.

In November of 1988 the President of the United States signed the Taxpayers' Bill of Rights into law. It became the law of the land. It was the first comprehensive attempt by Congress to strengthen the rights of our citizens in their dealings with the tax man. The Act provides a basic safety net for taxpayers when the bureaucratic machine goes awry. The safety net will work only if the IRS decides that taxpayers' rights are a high priority.

Today we question whether the Internal Revenue Service considers the individual rights of the American taxpayer a high priority. The public will not be protected by merely codifying a list of safeguards and having the IRS issuing regulations. What the public needs is a change in the attitude of the Internal Revenue Service.

The hearing this morning will test the IRS's commitment to implementing the spirit, as well as the letter of the new law, known as the Taxpayers' Bill of Rights.

I am going to be the very first this morning to admit that the Taxpayers' Bill of Rights is far from perfect. Nothing this fine institution ever does is perfect. After 2 years of hearings and debate and three complete rewrites, the majority of the House and Senate finally agreed to its passage. In order to bring about this passage, we had to make some compromises. We had to make last minute changes to the bill as we do in most legislation.

This brings me to the second subject of today's hearing, a look at the legislation itself to see if it is providing the necessary protection for the taxpayers. I hope that the witnesses today, including the IRS, will make suggestions to this committee on how to improve the Taxpayers' Bill of Rights and how to protect the rights of the American taxpayer.

Our witnesses come from all over the country this morning. They represent many different interests. In addition to the Commissioner, Mr. Goldberg, testifying today, we have Mrs. Kay Council, an aggrieved taxpayer, to discuss her very sad story. We will hear from Mr. John Connor, a very brave and courageous revenue officer from Philadelphia, to discuss his job, his role as a collection agent of the Internal Revenue Service. We have a number of small business representatives and practitioners to discuss how the Act has affected their members.

Finally, there is no denying that the Internal Revenue Service has a tough job. Thousands of dedicated employees try to carry out the IRS's mission to collect the proper amount of taxes owed under the law. But by the very nature of the IRS's mission, it will always place, to some degree, the American taxpayer in jeopardy. So Congress must provide, and always place as a high priority, the basic rights of the individual citizen. And Congress needs to be constantly vigilant in its oversight. We must remind the IRS that they are dealing with real people with real problems.

I would like to close by relating something I heard a young businessman say recently to me in a town meeting in Arkansas. I believe it summarizes what many taxpayers feel today about their relationship with the tax collector.

He said, and I quote, "It is not that I have a problem with paying the IRS every shiny nickel I owe the Government, and it is not that I begrudge them having to get tough every now and then if I do not pay; what I do resent is when they bury me in computer letters, do not acknowledge my explanations, and grab my bank account, ruin my credit and only then decide they were wrong after all."

I look forward this morning to hearing these witnesses. We appreciate their attendance. We will impose a 5-minute rule on each witness. We will impose a 3-minute limitation on the answers posed by members of the committee.

One of the great Senators who has been involved in shaping the Taxpayers' Bill of Rights, and protecting the American taxpayer, is Senator Harry Reid from the State of Nevada. Senator Reid and I, I think, became the first two co-sponsors of the Taxpayers' Bill of Rights. In fact, 2 years ago, I might remind Senator Reid and the audience, that in his maiden speech on the floor of the Senate, I happened to be the presiding officer at that moment, Senator Reid talked about some of the abuses of the Internal Revenue Service and the need for a Taxpayers' Bill of Rights.

I sent him a note and I said, "Senator Reid, I want to join you in this effort." We are glad that Senator Reid is continuing his vigilance. We appreciate him coming this morning.

Senator Reid, we look forward to hearing your statement.

STATEMENT OF HON. HARRY REID, A U.S. SENATOR FROM NEVADA

Senator REID. Senator Pryor, thank you, very much.

There is a famous poem written by T.S. Elliott called "The Wasteland." And the first line of the poem says that "April is the cruelest month." I have for the committee's benefit, have a poem written with T.S. Elliott's speech in mind. It is based on T.S. Elliott's "The Wasteland."

April is the cruelest month, sending 1040's across the land, mixing duty and despair, stirring taxes, a Spring pain. Reading lips kept us warm, expecting no new taxes, forgetting Internal Revenue has no humor. W-2 surprises coming after the holidays, with the power of law the tax man stopped us and said he had the right to lien upon our labor. And sounding awful talked about his power, in this world nothing is certain but death and taxes. And as the IRS

was churlish, crafting new abuses, Congress, it passed a Bill of Rights. The Agency's leash was tightened. They had to say, taxpayers you have rights. The IRS must follow rules. In the meantime, all citizens are free to inquire about their rights and keep their legal wage.

Mr. Chairman, this poem is, of course, in jest, but I think it sets for this hearing, as you have in your opening statement, the fact that April is a very difficult month for many, many people in this country. Your leadership on the Taxpayers' Bill of Rights is something that I will always remember and the American taxpayer should remember.

As the annual tax filing date approaches it is important that Congress learn the progress made so far in implementing this important act to see if any changes are warranted. And, Mr. Chairman, although I am concerned with reports I have heard about IRS reluctance to enforce some of the provisions of the Taxpayers' Bill of Rights, I am elated that this hearing is being held at all.

As you indicated, a little over 3 years ago—in fact, it was on January 14, 1987—I rose to deliver my maiden speech. The topic, as you have indicated, was the Taxpayers' Bill of Rights legislation. At that time I had little idea of the personalities and events that would turn my dream of enactment of a Taxpayers' Bill of Rights into reality; legislation I had started working on when I served in the House.

For example, Mr. Chairman, as you also indicated, it was fortuitous that you, the Chairman of the IRS Oversight Committee, was the presiding officer that day when I delivered my maiden speech. Because without your active support, guidance, leadership and most of all your tenacity, the Taxpayers' Bill of Rights would have languished in the hopper forever.

This hearing, therefore, is a tangible reminder of the tremendous victory of millions of American taxpayers who are now protected by our legislation. The Taxpayers' Bill of Rights has largely been a success. Publication 1, informing taxpayers of their rights is a very good document. It sets forth in plain and simple English, as we want it, and some useful diagrams, the rights and obligations of taxpayers and IRS.

Taxpayer assistance orders have been extremely helpful as well. The Ombudsman has been very responsive to Form 911. I know my State offices rely on it quite regularly. By last August the Ombudsman had handled over 9,000 cases and took action on 6,700, or almost 75 percent, of all the requests.

This hearing is also a reminder, if any is needed, of how carefully Congress must scrutinize this powerful, powerful Agency that plays such an active role in the lives of every American. I have heard that some provisions of the Taxpayers' Bill of Rights have been ignored. A year and a half after its enactment some provisions still lack regulations. The longest period allowed for issuing regulations under the enabling legislation was 1 year, or on November 10, 1989.

It is hardly nit-picking to demand regulations on time. The IRS is not at all accommodating a taxpayer is 17 months late in paying their taxes. Unless we in Congress monitor this acrana, our constituents will find their rights really unprotected.

Mr. Chairman, I urge you and this committee to carefully and vigorously question Commissioner Goldberg today on the progress the IRS has made in fully implementing the Taxpayers' Bill of Rights. By holding this hearing and keeping the pressure on, the IRS will take both the spirit and the letter of the Taxpayers' Bill of Rights seriously and incorporate the philosophy into all its activities.

Cooperating with Congress as it investigates, for example, Project Layoff, something that took place in Nevada, is just one example of how this philosophy could stand to spread throughout the Agency.

The previous Commissioner, Lawrence Gibbs, was the first Commissioner to understand that the "S" in IRS stood for Service and stands for Service. Commissioner Goldberg also seems to understand this definition, hopefully even better. However, as was discovered in the hearings we held in the Taxpayers' Bill of Rights, the permanent IRS bureaucracy—everyone but the Commissioner—has a mind of its own. They circled the wagons when it looked like the Taxpayers' Bill of Rights was to become law. They did not like it then and they probably do not like it much now.

Only through the efforts of Congress can Service become a priority of not only the Commissioner, but the entire IRS.

Chairman Pryor, again, I thank you for holding this hearing. I appreciate this opportunity to testify and will answer any questions that you may have.

[The prepared statement of Senator Reid appears in the appendix.]

Senator PRYOR. Senator Reid, I only have one question and I am alluding to your comment in your statement that the IRS should take both the spirit and the letter of the Taxpayers' Bill of Rights seriously and to incorporate that spirit and letter in its philosophy and all of its activities.

Why do you believe this is so important?

Senator REID. Mr. Chairman, the IRS is never going to win any popularity contests. But I think we would have a much more productive IRS, a much more productive citizenry if people paid their taxes out of respect for the law rather than fear. I think we deal too much with fear and we should not. The IRS is an Agency of the Federal Government and it is an Agency that collects the money that runs this Government. It is something that the American taxpayer should come to understand and pay their taxes out of respect, not out of fear.

Senator PRYOR. Senator Reid, thank you. We thank you for your testimony this morning and your continuing commitment. Your full statement will be placed in the record. This will apply to all witnesses.

Senator REID. Even the poem?

Senator PRYOR. Even the poem. Especially the poem, Senator Reid. Thank you very much for joining us this morning.

We have a new Commissioner of the Internal Revenue Service, Mr. Fred Goldberg. We look forward to Commissioner Goldberg this morning. Mr. Goldberg, good morning; and you may take the witness chair. Please be assured that you are invited to bring any and all aides to your side.

Mr. Commissioner, I know you have a large staff. I think you brought everyone of them this morning. [Laughter.]

We appreciate you being here, Mr. Goldberg.

STATEMENT OF HON. FRED T. GOLDBERG, JR., COMMISSIONER, INTERNAL REVENUE SERVICE, ACCOMPANIED BY MIKE MURPHY, SENIOR DEPUTY COMMISSIONER; CHARLY BRENNAN, DEPUTY COMMISSIONER, OPERATIONS; HAP SHASHY, CHIEF COUNSEL; AND DAMON HOLMES, TAXPAYER OMBUDSMAN

Commissioner GOLDBERG. Thank you, Mr. Chairman. It is a pleasure to be here. I would like to echo Senator Reid's comments that the importance of continuing oversight is critical to the health of the tax system and I want to thank you. It is a very important subject. It is a pleasure to talk about what we have done today in implementing the Taxpayers' Bill of Rights.

With me are Mike Murphy, Senior Deputy Commissioner; Charly Brennan, Deputy Commissioner, Operations; Hap Shashy, my evil twin and the Chief Counsel; and Damon Holmes, the Taxpayer Ombudsman. I would also like to introduce Bob LeBaube, who also is here. As you know, the Taxpayers' Bill of Rights created the new position of Assistant Commissioner (Taxpayer Services) and Bob is the first person to fill that job.

Senator PRYOR. Thank you. We are proud that all of you are here this morning.

Commissioner GOLDBERG. Mr. Chairman, we have put together a pretty lengthy statement that details our actions on the Bill of Rights to date. It also covers a number of related topics, notably budget issues, systems modernization efforts and concerns over simplification. I would like to submit this statement for the record and limit my comments to a number of general observations.

Senator PRYOR. Your full statement will be placed in the record, Mr. Commissioner.

[The prepared statement of Commissioner Goldberg appears in the appendix.]

Commissioner GOLDBERG. Thank you.

I have also brought with me—you know we love paperwork, Mr. Chairman—over there is a stack of materials. It is a partial compilation of the training manuals we have put together, and the information pamphlets we have put together, and the educational video tapes we have put together, showing different ways we have tried to come to terms with this bill. We are happy to make that material and other material available to the committee staff for review as appropriate.

Senator PRYOR. Mr. Commissioner, I appreciate that. Let the record note that that stack is about, I would say, at least a foot and a half tall. Our deficit today is large enough that we do not have to add to it by putting all of that in the record, but our committee would love to have this and look into it.

Commissioner GOLDBERG. I agree with you, Mr. Chairman.

I have said on a number of occasions and I feel so strongly that the greatest challenge facing our tax system during the 1990's is to make the system more workable for the American public. The American public does not mind paying taxes. It may not be fun,

but they do not mind it. What the American public resents is complexity, uncertainty, repeated law changes, and hassles with the Internal Revenue Service that take month after month to resolve. And the biggest challenge we face during the 1990's is to make it easier on the citizens.

I think that the Taxpayers' Bill of Rights has played a major role in this regard. I think that the specific provisions of the Taxpayers' Bill of Rights do indeed afford our citizens greater rights in dealing with the Internal Revenue Service. I think as a result of the bill we are better informing taxpayers of their rights and their responsibilities. We have strengthened our Problem Resolutions Program and our Taxpayer Ombudsman Program. The bill is helping to ensure fair and impartial enforcement activity. The bill provides taxpayers with greater recourse against the Internal Revenue Service when we stray too far.

Citizens of this country today have more rights in proceeding against the Internal Revenue Service than they do against any other agency of the Federal Government or any governmental instrumentality in this country and I think that is good.

The law is also important because of the spirit behind it. I think the Bill of Rights stands for the proposition that the most important thing we can do in tax administration is make it easier on the American public.

In terms of the status of our implementation efforts, my testimony goes through in detail what we have done to date, laying out the provisions in the bill and the actions that we have taken and are taking to implement its provisions. By and large, I am proud of what we have accomplished. I think when you compare what the law requires with the steps we have taken and the steps we are taking, I believe you conclude—I have concluded—we are indeed making a great deal of progress.

I would like to single out the Taxpayer Ombudsman Program. I think it is working extremely well. I think creation of the Assistant Commissioner—Taxpayer Services—was long overdue and I think that that program is working well. We are making improvements. We have invested a considerable amount of time and effort in training our work force, in working with outside groups, outside constituencies in developing publications and informing the public of their rights. I think the policy statement on the use of statistics is a very positive step. I am pleased with the instances where we have gone beyond the letter of the law in our efforts to advise taxpayers of their rights, expanding the scope of Taxpayer Assistance Orders, expanding the scope of the penalty waiver provisions.

I am proud of the fact that the Taxpayers' Bill of Rights, by name, is incorporated in our strategic business planning process. Our strategic business plan, laying out where this agency will be going over the next decade, specifically talks of the need to protect and guard taxpayers' rights.

Where do we go from here? I think as a first step we need to continue to focus on our procedures and the implementation of the requirements of the law as written.

May I continue for——

Senator PRYOR. Take another few minutes, Mr. Commissioner.

Commissioner GOLDBERG. Thank you, Mr. Chairman.

I think notable examples where we need to continue to work at implementing the statute relate to certain of our collection procedures and to regulations projects that were alluded to by Senator Reid. I think perhaps most notably, we need to work harder and work better at improving our correspondence programs. I think we have made progress in these areas. It is clear we need to make more progress in the months and years ahead.

But beyond the letter of the law, I think we need to always be attentive to attitudes. It is taxpayer contacts where it really matters. Time and again you go out to the field as Commissioner and you see employees out there doing their best to help taxpayers. You talk to employees throughout this country who really do care, who really do want to make it better. But it is not perfect. We need to do everything we can to assure all 120,000 of us are courteous and respectful whenever we're dealing with taxpayers, whether the taxpayer is right or wrong.

I think that there are examples and illustrations that we are making progress. The American Institute of Certified Public Accountants has written a letter in response to our inquiry as to how they thought we were doing, and they have concluded that "While we still hear of individual agents who violate statutory intent, the situation is far better than it was 3 years ago. We commend the Service for dealing with a very sensitive issue in a way that recognizes taxpayer rights."

The indication was that the attitude of our employees, in terms of wanting to help, trying to help, has improved significantly. But we can go further.

It is also quite possible that there is need for administrative and legislative changes in this area. A systematic part of our implementation efforts is to look for these kinds of needs. The statute has not been on the books that long. We are early in the process. But examples may include the fact that if we have collected money that is owing we cannot refund those monies, even if the taxpayer could otherwise demonstrate hardship. The question of administrative appeals and seizures needs to be looked at.

We have asked our Internal Audit function, which concluded at the time that we were doing a good job at initial implementation, to take another look at our efforts. How are we doing 18 months down the road? We need to watch it everyday.

But I think as we go forward, it is critical to put this issue in a broader context: what is the tax system doing to the American public? I think that we must use our efforts to simplify the law. If the law is too hard to understand, if it is too complex, it is going to lead to mistakes; and mistakes lead to hassles, whether it is our mistakes or the taxpayers' mistakes. Areas such as head of household and the payroll tax deposit rules for small businesses, simply cry out for simplification.

The timing of tax legislation is also critical. Last-minute enactment of tax laws with current year effective dates also necessarily causes mistakes; and mistakes cause problems for taxpayers.

The IRS budget is incredibly important. We can talk about machines all we want, but it is the people who make the difference. We need to spend the money to train our employees, to provide our employees with the tools to do the job properly.

Finally, we simply have no choice but to modernize our systems. When your systems require taxpayers to deal with their government by writing letters back and forth there are going to be mistakes. Letters are going to cross in the mail and that is going to cause problems. I think that the most critical steps we need to take, as we go down the road, are to stop the mistakes from happening in the first place.

Mr. Chairman, I believe that we are making progress. I think the Taxpayers' Bill of Rights for the law it provides and for the spirit it sets is right on the mark. I congratulate you and your colleagues and I look forward to working with you in the years ahead.

Thank you, Mr. Chairman.

Senator PRYOR. Thank you, Mr. Commissioner.

Mr. Commissioner, I am going to place into the hearing record an Exhibit. This is a—it looks like about a 20 or so page document that are given to the collection officers out in the field. I imagine in the Service, being a collection officer is one of the tougher jobs.

Commissioner GOLDBERG. Yes, sir.

Senator PRYOR. I assume it is very tough.

[The exhibit appears in the appendix.]

Senator PRYOR. Now you talked about modernizing equipment system. You talk about the spirit of the Taxpayers' Bill of Rights, the attitude that needs to prevail, the training that is necessary. However, in this particular exhibit of all of these instructions given to each of the collection officers in the field, all of the items that they are needed to check off and comply with, item number 13A, the last page, the last item, last priority, let me read it: "Observe taxpayers' rights."

What sort of a priority is that if it is the last item mentioned, the last instruction to that collection agent? Why is the taxpayer rights at the bottom of the list?

I am reading actually from this document, Mr. Commissioner. There is a smaller one-page sheet that I understand addresses the same issue in other words, but it is still at the bottom of the list. Why is this?

Mr. BRENNAN. What you are referring to is our collection quality management system check sheet.

Senator PRYOR. Called a CQMS, I believe.

Mr. BRENNAN. Right. It shows critical success elements. Obviously, I would have liked to have it up higher, but I would submit to you that these are all important items. The reflection of what is number 1 and what is number 13 is certainly not meant to be in priority order. It is our quality check sheet that we use to check all the quality items, and we feel they are all important.

Having said that, I would also point out that we are revising the critical elements for both our Revenue officers and our Revenue agents. One of the critical elements that we are focusing on to deal with taxpayers' rights and the Bill of Rights even more is a customer relations section. We will be glad to furnish a draft.

Senator PRYOR. Mr. Brennan, the next time—and some of you have been before this committee on several occasions. The next time we ask you or request your appearance, I am going to look again at that instruction sheet. I am going to see what priority and where that is on that sheet. Because I think if I were a collection

officer and were going through all these pages of documents and checklists and finally I come to the very last one—"Observe taxpayers rights."—that says something. And it is a strong statement.

Mr. BRENNAN. I appreciate and understand your guidance.

[The following information was subsequently received for the record:]

RESEQUENCING OF CQMS CHECKSHEET

Collection is in the process of developing an automated review system to replace the current CQMS system, which is manual. The new system, which is expected to be available for use in FY 1991, will include specific Taxpayer Bill of Rights related material.

Senator PRYOR. Now if this—I think in this whole area of CQMS we know that in the past, and one thing that the Taxpayers' Bill of Rights addressed specifically, was the so-called "quota system," wherein a collection officer's future, his demotion or promotion, turned on a sort of a bounty hunters system.

Now I am wondering if this new CQMS system, because of all the statistics generated, are you not basically attempting to go another route to create the old quota system.

Now are we generating statistics for that purpose? We are going to have a collection agent testify in a moment. I think that is going to be the bottom line of his testimony, that this is just another system to evaluate the agent.

Do you have comments?

Commissioner GOLDBERG. Mr. Chairman, I have personally reviewed our policy statement on the use of statistics. I have to tell you that you cannot run this agency—you cannot run any business in this country—if you do not keep track of some kind of numbers, like the trillion dollars we collected or the $130 billion deficit.

I believe that the Taxpayers' Bill of Rights provision requiring certification by each District Director—and we have expanded that requirement, as you know, to cover Service Centers as well, which was not in the statute—has made major, major improvement in getting away from any appearance of a quota system. But I think the bill is absolutely right on the mark. We cannot do it; we should not do it; we are not going to do it. I think that we need to review our evaluation procedures.

I read those certifications when they come in, and I believe we are holding our managers accountable. If they are circumventing that standard through other means, we are going to put a stop to it. But I do not think you can walk away from numbers to manage a business.

Senator PRYOR. Are you telling the committee that there is no production or quota system being used today by the Internal Revenue Service?

Mr. BRENNAN. Yes, sir. We have a managing statistics desk guide. If I could just quote a couple things from it? "Our primary objective is to operate in an environment where quality customer service comes first. If we are to install the highest degree of public confidence in administering our tax laws all taxpayers must be treated with fairness, consistency and courtesy. Actions taken by the Service cannot be motivated by production goals or quotas."

It goes on in another section. "Statistics related to program objectives and priorities have not been, nor should they be, maintained at an individual employee level or used for the purpose of evaluation and performance. Our employees must be evaluated on their individual case work and on such criteria as the critical job elements and standards."

Senator PRYOR. Thank you, Mr. Brennan.

Mr. MURPHY. Mr. Chairman?

Senator PRYOR. Yes, Mr. Murphy.

Mr. MURPHY. On your specific question, the answer to your question is: There is no quota system in the Internal Revenue Service, period.

Senator PRYOR. All right. Then my question to Mr. Murphy or to any of the gentlemen here: Does quality equate to production in this area? When we talked about quality today are we substituting a new system of quality that actually amounts to production?

Commissioner GOLDBERG. Mr. Chairman, quality equates to doing it right, properly, fairly, the first time. If we do things properly, fairly and right the first time, if we do it that way, I guarantee you our production will increase dramatically.

Senator PRYOR. Thank you, Mr. Commissioner.

Now, I want to go off in another area here. I have had it brought to my attention we will have a witness coming forward in a few moments to talk about a—let me say—I do not want to call it a program, but something is going on out there in the Service that is very disturbing to me. For the lack of better terminology, I would call it the "snitch program." Do we have a snitch program going on out there today in the Internal Revenue Service?

Mr. BRENNAN. No, sir.

Senator PRYOR. What is happening? I think you know what I am talking about.

Mr. BRENNAN. I believe, sir, you are referring to the employment tax examination program that we have.

Senator PRYOR. Well I am going to submit for the record, Mr. Brennan, a document prepared by the Internal Revenue Service titled "Referral to Employment Tax Examination Program." Then I would like for you to explain to the subcommittee what you know about this particular program.

[The document follows:]

ATTACHMENT A.—"SNITCH SHEET"

REFERRAL TO EMPLOYMENT TAX EXAMINATION PROGRAM
PLEASE COMPLETE THE FOLLOWING ITEMS (IF KNOWN)
NAME OF FIRM:.....
FIRM'S ADDRESS:.....
TELEPHONE:.....
TAXPAYER FEDERAL
INDENTIFICATION NUMBER:.....
ISSUES INVOLVED: (CIRCLE ONE)
A. NO REPORTING OF WAGES.
B. UNDERREPORTING ON EMPLOYMENT TAX RETURNS (FORM 940, 941).
C. EMPLOYEES PAID AS INDEPENDENT CONTRACTOR.
D. OTHER:
JOB DESCRIPTION(S) OF WORKER(S):.....
NUMBER OF WORKERS INVOLVED:.....

PLEASE SEND THIS FORM TO:
INTERNAL REVENUE SERVICE
EMPLOYMENT TAX EXAMINATION GROUP 56
3660 WILSHIRE BLVD. SUITE 400
LOS ANGELES, CA 90010

ATTN: LEAD COORDINATOR

PLEASE INCLUDE ALL PERTINENT DOCUMENTATION, W2'S, 1099'S, 941'S, NAMES OF WORKERS WITH ADDITIONAL INFORMATION.

Senator PRYOR. Have you seen this document, by the way?

Mr. BRENNAN. Yes, sir. I believe I saw it a few minutes ago.

The employment tax audit program started about 3 or 4 years ago. We made a study of certain occupations around the country and found that there was then a trend, and a growing trend, in our views, of employees being characterized as independent contractors. The difference is, if you are an employee, as I think most of us know, you have taxes withheld from your wages, you are covered by Social Security and have other kinds of benefits, and, of course, that is paid over to the government. If you are an independent contractor, then you are not subject to withholding tax, Social Security and the other things.

So after looking into this area and finding that they were moving in that direction, we did start, I believe it was about 3 or 4 years ago, an employment tax audit program where we do go out to businesses where we have leads. Some do come from the public. Some come from our own employees. Some come from other government agencies. And we do an examination of that company to determine whether the individuals working there are truly independent contractors or are employees.

Senator PRYOR. I want to talk specifically now about this form and more specifically about the program. My question is this: Is the IRS today going out to businesses, especially small businesses, and telling them that if they will snitch on competitors not complying with the law that (1) they will have a reduction of their own liability or (2) if they turn in enough businesses not in compliance, that they might have penalties waived. Is this happening?

Mr. BRENNAN. There is no national procedure.

Senator PRYOR. I am not talking about a national procedure. I am talking about any Regional Office, any agent of the Internal Revenue Service.

Commissioner GOLDBERG. Mr. Chairman, I am learning in this job that one never says never. But I will tell you it should not be happening, and if it is happening we would sure like to know about it because we will put a stop to it today.

Senator PRYOR. Let me read you some notes that an individual gave to us who had met with the Internal Revenue Service in California in 1989—this was not back in 1930, this was 1989, last year—the written notes I have actually had typed up in order so I could read them better.

Here is what happened: This gentleman stated that he met with a group of small business people in California. An IRS agent was present at the meeting. He requested that they become "snitches," and in his exact words, turn in their competitors. He provided us with a form—this is the form that I have submitted for the record

that we have been discussing—he also established the contact with a lead coordinator for "snitch leads."

He stated that every new lead would be contacted. The IRS agent—I am still reading from the notes taken at the meeting—the IRS agent mentioned if your lead is placed in a company envelope the company reporting would in all likelihood also be audited. I am inferring from this statement by the agent to these small business people that any contact should be made, therefore, in a blank or an unmarked envelope.

Note: This meeting took place to discuss IRS enforcement of Section 530 of the 1978 Revenue Act and Section 1706 of the 1986 Tax Reform Act.

Any comments, Mr. Commissioner?

Commissioner GOLDBERG. Mr. Chairman, I look forward to looking into this matter. But I will tell you that one of the most difficult problems we have as the tax administrator is the payroll tax area. And it is not only the IRS that has the problem. I spend a lot of time talking with my colleagues from the States—the State of Arkansas, the State of California, a lot of States—who have the same problem.

There is a third group that we talked to as well. They are businesses that come to the Internal Revenue Service and say, we are treating our folks as employees because they are employees. Our competitors are not. And that is giving our competitors an unfair economic advantage.

And then there is a fourth group, Senator, and that fourth group is the individuals who should be treated as employees, but are not treated as employees. As a result, these lower income individuals are losing health benefits that they are entitled to, and as a practical matter may be losing Social Security benefits that they are entitled to as well.

So I feel absolutely the Internal Revenue Service should not be run on some kind of "snitch program." I think that is reprehensible. But at the same time, I think that the need to enforce these laws to protect the rights of low-income individuals, to protect the rights of small businesses that are playing by the rules, is an important balancing factor to keep in mind.

Senator PRYOR. Mr. Commissioner, I am very aware of the problems with the payroll notice. I understand that it is basically a trust fund that the employer keeps for the employee and must turn in. I know that the penalties are severe and they should be.

We are not saying "don't collect revenues." We are saying, that there should not be a snitch program. If we are in fact using the tax collection system to turn people against people, and business against business, and offering a quid pro quo, if this in fact occurs; then we have created a monster.

Commissioner GOLDBERG. You are right, and we will put an end to it.

Senator PRYOR. A bureaucratic Frankenstein. They are tearing down walls in Eastern Europe. They are doing something with the KGB. They are doing something with Secret Police. I do not want to see us creating an underworld of IRS agents in this country, who could use their leverage to turn people against.

I was in China some years ago, and on every floor of the hotel there was someone posted to monitor the comings and goings of everyone there. To find something on someone and to turn them in. We are not going to create that system here, Mr. Commissioner.

Commissioner GOLDBERG. You are correct, Mr. Chairman. As I said, I used the word reprehensible. You said it is a monster and I agree with you. We are not going to let it happen.

Senator PRYOR. You and I received a letter from Senator John Kerry of Massachusetts, dated March 19. He talked about the areas of New England, Massachusetts, and New Hampshire, in connection with tax audits of small businesses. I am going to place Senator Kerry's letter in the record. I think it has brought forth several areas that give me great concern about the targeting of small business owners. This worries me.

I wonder if you responded to Senator Kerry's letter and if so, what your response was?

Commissioner GOLDBERG. A draft response has been prepared and is being sent forward to me for my review, Mr. Chairman. But I will tell you what I think my response is going to be. First, we appreciate his calling this matter to our attention. In reviewing the area it is clear that there were certain discrepancies in some of our procedures and we have taken steps and have remedied those discrepancies.

[The letter appears in the appendix.]

Charly, I don't know if you have anything to add on that?

Mr. BRENNAN. No, that is basically the thrust of our reply, sir.

Commissioner GOLDBERG. We need to watch this everyday, and I think we owe Senator Kerry a thanks for calling it to our attention.

Senator PRYOR. Yes. I agree. He sent me a copy of the letter that he sent to you, Mr. Commissioner. As you know, when you have 120,000 people out there, you have to have people from all walks of life to tell you of the abuses going on and we appreciate those people.

One of the main concerns I have in this letter and I am quoting from page 2 of Senator Kerry's letter to you, Mr. Commissioner, is where he says, "Taxpayers have reported unannounced, unscheduled visits by IRS personnel to taxpayers' officers in the middle of a very busy business day for the purpose of conducting initial interviews."

I know that this is a hard job. But to come unannounced to a business, perhaps when the person is in the process of dealing with customers or perhaps the customers see one or two or three IRS agents walk in and show their badge, this is intimidation, Mr. Commissioner. It should not occur.

This brings out other points in the letter, like how small businesses in the New England area are being targeted. I would like, if I might ask, that your response to Senator Kerry might also be shared with this committee.

Commissioner GOLDBERG. We will provide you with the same information. And again, I appreciate his efforts, your efforts and the other folks who are going to testify today, their efforts to call these matters to our attention. We need, as an agency, walk in the other guy's shoes.

Senator PRYOR. Mr. Commissioner, I have here a course book to be used in training. This is the "Problem Resolution Program Form 911 Application for Taxpayer Assistant Order to Relieve Hardship."

On page 10 of your instructions to the agents, you have used two examples of a case scenario of what the agent might do or not do in a given situation. Let me quote from the middle of one of these examples. "He, the taxpayer, learned that the IRS considered him to be a tax protestor because of his past actions. Because of this, they will not honor his request for reconsideration of the examination." I could go further. I will not.

In this example, is this not some form of an insinuation that if you are labeled as a tax protestor it will somehow damage your rights as a taxpayer? How do you decide who is a tax protestor?

Mr. HOLMES. Senator, if I could try to answer that? It does suggest that. Part of the training is that—when we set out these examples—we do not have hard and fast rules of who gets help. We tried to have a series of situations to see how people would judge them. It is a fact that people use stereotypes like that and make judgments.

My own view, and what we try to teach our people who are receiving these applications, is that we do not look at labels. We look at what the situation is, what the facts are. In the application process, though it is not apparent from this, before anything is done with a case we ask the problem resolution officer to decide first, without looking at any facts at all having to do with the tax or its consequences, whether or not there appears to be a hardship in the taxpayer's case, regardless of what is causing it—whether we are causing it, the taxpayer or whatever.

Senator PRYOR. Well, Mr. Holmes—Pardon me.

Mr. HOLMES. I was going to say that for 70 percent of the people, while we denied them the hardship application, we still helped them. And in this particular case, I would hope that most of our people would ignore the fact that that label "protestor" is there and look at the taxpayer's situation, to see if they need help or straighten it out. What happened yesterday, even if the person had been a protestor in the past, should not affect what happens today.

If somebody comes in and wants to comply and try to deal fairly with the system, we should treat them that way.

Senator PRYOR. Under the recently enacted Taxpayers' Bill of Rights a taxpayer has the right to record the conversation with the IRS official. Would that place him in the category of being a tax protestor?

Mr. HOLMES. It would not in my book.

Commissioner GOLDBERG. Absolutely not.

Mr. BRENNAN. No, sir.

Senator PRYOR. What if that taxpayer decided—once again pursuant to the Taxpayers' Bill of Rights, that he could by power of attorney send his attorney or qualified agent to represent him during a certain proceeding?

Mr. HOLMES. No, sir.

Senator PRYOR. I have several other questions in that area that I may submit in writing.

[The questions appear in the appendix.]

Senator PRYOR. As of March 16, the Internal Revenue Service has a backlog of orders for taxpayer assistance. I wonder if this is correct. Is there a big backlog out there of people trying to get some taxpayer assistance and how can people obtain a taxpayer assistance order if there are no forms? I understand that you have run out of forms.

Mr. HOLMES. If your question is to the availability of the blank forms that a person might use, I am not aware of a national problem. There has been a substantial reordering. But, Senator, no one needs that form to get the assistance. They can come in with a letter or they can just pick up the phone and call in and describe the situation and they will get exactly the same thing. Our people will write down the facts. They will get a decision within 24 hours.

Senator PRYOR. Okay. Mr. Holmes, how is that taxpayer advised of that opportunity?

Mr. HOLMES. Well, there are a number of ways. We have publications such as Pub. 1, "Your Rights as a Taxpayer." But if he has a problem of any kind and calls one of our offices and talks to taxpayer service, they are trained on this and should be aware that he is entitled to it.

Senator PRYOR. What about the recent statistics demonstrating that 30 or 40 percent of all calls get a busy signal. What does the poor taxpayer do then?

Mr. HOLMES. I cannot say anything positive about how we are going to help him if he cannot get through. That would be a problem if he does not get through.

Senator PRYOR. What would you suggest that the taxpayer to do?

Mr. HOLMES. Well actually——

Commissioner GOLDBERG. I might suggest they write their Congressman and Senator and support the administration's 1991 budget proposal. [Laughter.]

And I think I had better duck out of the room.

No, Mr. Chairman, that is a very frustrating problem. If taxpayers cannot get through, it is not doing any good, and I agree with you.

Senator PRYOR. Let me wear the hat of a Congressman or a Senator for a moment. When we hear from a taxpayer from our States or our Districts, we have great reluctance to get involved. We are afraid to intercede on behalf of that taxpayer because we think that it will place a red flag on that taxpayer's file. We think this would jeopardize rather than assist that taxpayer.

Commissioner GOLDBERG. Mr. Chairman, I think—and it has been my experience since I have been Commissioner of Internal Revenue—that when the Congress calls to our attention specific cases involving taxpayer problems, that does nothing but help us and help the system, because that is how we find out where we are making mistakes. And as you said, we are big and we make mistakes. We have to find a window on the world that shows us where there are problems.

So it's helpful to us when one of the members up here calls and says, "You have a problem out here," or a member says, "we do not want to interfere on the merits, we want you to do what is right." I applaud you and your colleagues for calling this stuff to our attention. And we find——

Senator PRYOR. Well we are hesitant.

Commissioner GOLDBERG. Senator Kerry's letter pointed out mistakes and we are going to fix them.

Senator PRYOR. Yes.

Mr. MURPHY. Mr. Chairman?

Senator PRYOR. Yes, Mr. Murphy.

Mr. MURPHY. The contacts with the congressional offices are such an important part of our administration that just to have you or any of your colleagues feel that they could cause an additional problem for the taxpayers just makes it all the more difficult for us. We look forward to the day that somebody would write to you and then as a result of your inquiry we get it resolved. On a future one the taxpayer writes to you and says, "I did not even have to come back to you, Senator Pryor. I was able to get this resolved myself with the Internal Revenue Service."

So we see it as a positive, not a negative at all.

Senator PRYOR. That is illuminating. Thank you.

If that is true, then it is truly a change in attitude and I appreciate it. And I know all members of the House and Senate do as well.

Mr. Goldberg, I am going to ask the General Accounting Office—by the way, this is for your benefit and my benefit—our benefit. I am going to ask the General Accounting Office to review the implementation of the Taxpayers' Bill of Rights. In doing so what I think I am attempting to find out—and once again I hope that you will benefit, because if your people down the line are saying we are doing this and that, and this is good, and this is better, and whatever, that is fine. I think the General Accounting Office would give both of us an unbiased view of how the Taxpayers' Bill of Rights is being implemented.

And knowing you personally, as I do, I know that you want that law implemented. I know that you want the spirit of that law carried out. I think one of your problems, as Commissioner Gibbs has, is trying to have your attitude transferred to all 120,000 employees of the Internal Revenue Service.

We appreciate very much your coming. Do you have further comments or any rebuttals? Have I been unfair with you?

Commissioner GOLDBERG. Mr. Chairman, I just want to say I think we are making progress, and I think for a large portion of that progress we ought to give you and your colleagues a lot of thanks. I want to tell you thanks. Thank you so very much.

Senator PRYOR. Thank you very much. I thank all of you this morning.

Ladies and gentlemen, our next witness is Mrs. Kay Council. I have read her statement. I think that her statement stands on its own. I may ask a couple of questions later, if I may. I would like now for you to give your statement, Ms. Council. Thank you for coming this morning. I know this is not easy for you. The committee will always be in your debt for telling your story.

Thank you for coming and you may proceed.

Excuse me, I think if we could get Mrs. Council a glass of water.

You may proceed, Mrs. Council.

STATEMENT OF KAY M. COUNCIL, TAXPAYER, HIGH POINT, NC

Mrs. COUNCIL. Mr. Chairman, my name is Kay Council and I have lost my voice today of all days. I live in High Point, NC. I am 48 years old and because of the IRS I am a widow.

I came home in June 1988 and found the lights on, the house empty, and a note from my husband that said he had committed suicide. His note is reproduced in my testimony.

I don't remember many details from the rest of that night, but I will never get over what I had lost that night—what the IRS did to us, what the IRS drove my husband to do. He was 49 years old.

Four months later, finally able to pay our attorneys up to date with the money from Alex's life insurance, I went to court and beat the IRS. The court entered a judgment barring the IRS from collecting $300,000 in tax, penalties and interest it claimed that we owed. The court agreed that we owed nothing. The court ordered the IRS to cancel the tax lien that it had placed on our property, an illegal lien that had ruined our business. Our income barely covered our living expenses.

The IRS was wrong from the day they sent us the first notice. We were innocent from day one and the court decisions and court orders say that. But look what was done to my life. People sit back and say, well, this is a terrible story, but it is surely an exception to the rule and this sort of thing can never happen to me. They are very wrong. This could happen to anyone.

We just got caught up in the middle of a big IRS screw up and we could not get out of it. After an audit of our 1979 tax return we never received an audit report, a 30-day letter, a 90-day letter or any notice of assessment. Then from nowhere the IRS sent us a bill for $183,000 and demanded that we pay. This was in September 1983, 4 months after the statute of limitations had run out. We were dumbstruck.

In an affidavit filed in Federal court in November of 1987 my husband described his attempts to find out what had happened. He said, "We attempted to determine why we had never received these documents or any other notice which foreclosed any administrative or tax court review of the proposed deficiency. These efforts were wholly unsuccessful until very recently. The only communication I had received from the IRS since 1983 indicated receipt of my letters requesting the above information, bills threatening collection procedures and notices of intent to levy on my assets."

The IRS said that it had sent us a certified letter containing the required notice of deficiency 3 weeks before the statute of limitations ran out. We never received such notice and our accountant never received such notice, and we tried repeatedly to get the IRS to show us a copy of the notice and prove that it was mailed. It would not. We tried to get the IRS to give us the number of the certified letter so that we could go to the postal records ourselves and try to trace it. The IRS did not respond.

We tried again and again to get the IRS to check into it and resolve it. We had been doing that from the day we first received the tax bill. Their attitude was simply to ignore us.

If they had gone to the postal records to find out what had happened to the certified letter the whole thing could have been avoid-

ed and my husband would be alive. But they would not. Alex is dead because of the IRS's arrogance and incompetence.

After 2 years we finally received a copy of the notice of deficiency in 1985. In 1987, after a 4-year wait, the IRS sent us a copy of its only proof of mailing—a certified mail list showing that the notice was mailed at a post office in San Francisco on April 15, 1983. But the IRS's mail list had our address wrong. That explained to us why we never received the notice. The IRS had sent it to the wrong address.

We argued in court that the IRS could have found out what happened to the notice by going to the post office and looking at its certified mail records. It did not do this, despite our repeated queries starting in October of 1983. By the time the IRS bothered to check the post office had destroyed the records.

The IRS argued that we should have known that an assessment was likely and that we should have notified them. This is absurd, and the Judge agreed, saying the law does not place upon plaintiffs the burden of hounding the IRS for delivery of a possible notice of deficiency.

Some of my friends and relatives think that I should be happy that I have accomplished what Alex wanted me to accomplish—I beat the IRS. They ask, "Why don't you go on with your life and be a happy woman?" It is not that simple. Right now I'm fighting for my financial life. My legal fees were close to $70,000, and I still owe my attorneys about $14,000 plus interest even though the court ordered in August of 1989 the IRS to pay $27,900. The IRS dropped the appeal of this order in December, and the check finally came a few days ago.

What if Alex and I had not had the money to hire attorneys to begin with? If you are poor, what do you do? There is something wrong when the IRS can accuse you of something and assume you are guilty and destroy your life. Aren't you supposed to be innocent until proven guilty?

The damage to my credit continues even though the court made the IRS remove the lien. The illegal tax lien is still on my credit report. I thought that since the IRS put these tax liens on my credit report, when the lien was released, they would have it removed. It does not work that way. It is my responsibility. The credit bureau said that there is no way I can get the lien off of my credit report, that it stays there for 7 years. All I can do is attach a statement to the report trying to explain what happened. So I am still feeling the effects of the IRS's action against us, even though I beat the IRS in court.

The IRS should not be in the position to say to the taxpayer you are guilty of this and the taxpayer should not be put in the position of spending every dime that they have to prove that they are innocent. Look what I have been through to prove my innocence. You talk about winning battles; look at the battles I have won. But I lost the war because my husband is dead.

I should feel some satisfaction that I beat the IRS, that I got a $27,900 check to pay a portion of my attorney fees. I do not feel good about any of it. I feel very cheated.

I feel cheated of my rights as a citizen. I feel cheated of growing old with the man I love. I lost my best friend. I now have to start a

new life and a new career at the age where I should be able to enjoy my children and my grandchildren.

I worked for 20 years as a professional, but I have not been in the job market since 1982. Our children have no father, only the emotional devastation left in their life to try and deal with. Our grandchildren have no "Pop." That is the name they used for the grandfather that they loved dearly. Our granddaughter thinks that her pop got sick and died. How do you explain the IRS and suicide to a 5-year-old? It seems to me that somebody has to be held accountable for this destruction to me and to my family.

Yet, I am told I cannot sue the IRS for damages, economical or personal. How do you put a price tag on a life? I cannot sue them for the illegal tax lien they put on us. I had no rights. The IRS has them all.

People ask me why I do this, because it devastates me every time I go through this. All I can say is I thought that beating the IRS would give some meaning to Alex's death, but it hasn't.

Senator PRYOR. Mr. Keating, I wonder if it might be appropriate for you to complete Mrs. Council's statement if she would like you to do this. Would you like to do this?

Mr. KEATING. She has one more sentence and I think she would like to finish it. Thank you.

Mrs. COUNCIL. There has to be something done to control the IRS, to keep it from destroying people's lives. And I really believe that if enough little people like me keep coming forward, then there are going to have to be some changes made.

Thank you.

Senator PRYOR. Mrs. Council, we appreciate your courage.

Is the tax lien still on your credit report?

Mrs. COUNCIL. It shows on my credit report. It shows released. But it will be on my credit report for 7 years and there is no way to have it removed. So every time I have to go through something that involves credit I have to explain to people. Automatically, if someone sees that you have a $300,000 tax lien against you by the IRS, they are immediately suspicious of you, regardless of the circumstances.

Senator PRYOR. This lien was placed on your account and your assets with no notice by the Internal Revenue Service; is this correct?

Mrs. COUNCIL. They passed——

Mr. KEATING. As I understanding it, Mr. Chairman—Kay can correct me if I am wrong—there were notices over many years. The problem is that the Councils responded to these notices repeatedly and never got any action out of the Agency. So the Councils gave the IRS more than enough notice that there was a mistake here, but the Agency never took the steps necessary to correct the mistakes.

Senator PRYOR. Mrs. Council, in your heart, do you think that the statute of limitations had run against you and your husband; and do you think that someone at the IRS intentionally issued these liens against you knowing full well that the statute had run?

Mrs. COUNCIL. I think the IRS knew from the very beginning that they were wrong. Why did they go for 4 years and basically ignore our repeated attempts to get this thing resolved? Why didn't

they come in and take the assets that we had? Why did they do nothing for 4 years?

Senator PRYOR. You were ultimately, by the Federal courts, exonerated; is this correct?

Mrs. COUNCIL. Yes, that is correct.

Senator PRYOR. How much money did it take you to clear your name, financially?

Mrs. COUNCIL. About $70,000 from the day my husband died. Prior to that there were other expenses.

Senator PRYOR. I see. Mrs. Council, we thank you. I may have one or two more.

[The prepared statement of Mrs. Council appears in the appendix.]

Senator PRYOR. Mr. David Keating, who is with the National Taxpayers Union, has been a long-time supporter of the Taxpayers' Bill of Rights concept. Mr. Keating, we would enjoy hearing your statement at this time.

STATEMENT OF DAVID L. KEATING, EXECUTIVE VICE PRESIDENT, NATIONAL TAXPAYERS UNION, WASHINGTON, DC

Mr. KEATING. Mr. Chairman, thank you for the invitation to appear today before your Subcommittee. I would like to briefly read from a letter that Alex Council sent to his legislators in the Congress almost 2 years ago to the day. He sent a copy of it——

Senator PRYOR. And Mr. Council is the——

Mr. KEATING. Kay's husband and he was an NTU member. He wrote to his representative, Stephen Neal, at the time, and his two Senators saying he strongly supported the Ombudsman Taxpayers' Bill of Rights. He said, "This bill certainly needs to be passed into law. We are the individuals who have given the IRS this power. Yet, their actions are at many times unbelievably horrible. Taxpayers deserve the protections offered in this legislation." He briefly recounted his case to his legislators and closed his letter saying, "Please give your first attention to helping pass the Taxpayers' Bill of Rights."

Senator PRYOR. How long after that letter was written did he take his life?

Mr. KEATING. Two months.

Senator PRYOR. Thank you.

Mr. KEATING. Senator Pryor, you and the Members of the Finance Committee and other Members of the Congress that worked for the Taxpayers' Bill of Rights should be proud of what you have done. It is the first time Congress has ever provided a substantial expansion of rights for taxpayers. It was long overdue and much needed.

The Commissioner this morning claimed—and I think falsely—that taxpayers have more rights in dealing with the IRS than any other Agency. What he did not say is that the IRS has more powers than any other Agency of any Government in the United States. We need to make sure those powers are exercised with the greatest of care.

Now although the Taxpayers' Bill of Rights does offer some very important new protections for taxpayers, the job is far from com-

plete. In fact, I have serious doubts that had it been in effect in 1980 that it would have prevented this tragedy. If it had been in effect, I think Kay would have had a very small chance of successfully suing the IRS for damages.

Senator Pryor, your original bill would have allowed taxpayers to sue for damages if any employee of the Internal Revenue Service carelessly, recklessly, or intentionally disregarded any provision of the tax law. As the bill progressed through the Congress the word "carelessly" was dropped. Was the IRS treatment of the Council family careless and negligent? Absolutely. Was it reckless or intentional? We do not know. It is a very difficult standard of proof to meet in a courtroom.

During the 1980's Congress has passed many new penalties on taxpayers and tax preparers for not getting the job done right. Yet incredibly Congress still does not require the IRS to exercise reasonable caution in using its vast array of enforcement powers.

Now as Kay Council's case showed, taxpayers can suffer enormous financial damages even when they win. Kay was fortunate to receive an award for attorneys fees for her case. The law that was changed in the last 10 years allowed her to do that. But the fee award does not come close to paying her total costs. She still owes tens of thousands of dollars.

Does Congress want to say to future Kay Council's that they'll have to pay through the nose for the legal help to fight a careless, incompetent or abusive IRS? I hope not.

To protect taxpayers from enormous financial losses when they are innocent, we strongly urge that the outdated $75 an hour cap for attorneys fees be raised or eliminated. I do not know where you can hire a competent tax counsel in the United States for $75 an hour. You can barely get a good tax preparer for that charge. The court would still be limited by only being allowed to award reasonable fees.

There are three laws on the books—the Federal Tort Claims Act, the Anti-Injunction Act, and the Declaratory Relief Act—that almost completely keep taxpayers out of the courts to enforce their rights.

Senator Pryor, the National Taxpayers Union calls these three laws the Berlin Wall against taxpayers' rights. Your bill helped open some narrow passages through that wall. Mr. Chairman, I think it is time we took that wall down. Allowing such limited lawsuits would make the IRS more accountable and make the Agency more likely to operate in a lawful fashion. It will help preserve fair treatment of innocent taxpayers.

Mr. Chairman, the job of protecting the taxpayers' rights will never end. That is why we are so grateful to you for holding these hearings today and for asking the GAO to review the implementation of the Taxpayers' Bill of Rights. There has been much progress made in the last 3 years and you deserve a great share—indeed, the lion's share—of the credit. But we still need more legal protections for taxpayers. Continuing aggressive oversight by your Subcommittee and the other committees in the Congress is absolutely essential to ensure that the IRS properly implements the law.

You have made a great start, Mr. Chairman; and I urge you to continue this important work.

Senator PRYOR. Mr. Keating, I want to thank you; and I want to also thank you for your compliment. However, as long as there is one Alex and Kay Council case and miscarriage of justice in this country, none of us are doing our job.

Let me also state, and I wish that the Commissioner had been present when I finally had this confirmed, that this particular witness, Kay Council, was very courageous and brave to come forward. She was intimidated by the Internal Revenue Service when they learned that she might appear at this particular hearing. The IRS called Mrs. Council directly by phone asking her to sign a waiver. The waiver actually amounts to the Service taking all of her tax forms in the past 15 years to allow anyone to go over them.

The second form of intimidation to Mrs. Council occurred yesterday. An IRS agent or someone who is employed by the Internal Revenue Service called two networks, or when asked about the Council matter, said, "Well, you know, Mrs. Council and Mr. Council had other tax matters." If that is the case, they have broken the law. They have broken the law of confidentiality and furthermore, they have discredited the Internal Revenue Service's relationship with an individual taxpayer. Finally, under the Rules of Evidence, had there been any other areas of tax problems in the past, not only were they irrelevant to this particular case, they were immaterial to this particular case; and I consider this to be a gross violation of confidentiality breaking and I will do some further checking on this.

This is contemptible behavior on the part of the Internal Revenue Service and we will not permit it.

Mrs. Council, Mr. Keating, I want to thank the both of you. If either of you have any summation or rebuttal or further statements we would hear from you now.

Mr. KEATING. Mr. Chairman, I think what you just said about the IRS is enlightening and very disappointing. I heard the same stories. A network did call me to tell me the same story. And I think it is disgusting. It is illegal and it has no relevance to this case at all. I think the IRS, not the Commissioner, but somebody in the Agency somehow thinks this is good public relations. Well they are wrong.

Good public relations would be for the Commissioner to issue an apology to Kay Council, an apology to her family, and all other taxpayers who have been wronged by the IRS. I hope an apology will be forthcoming someday.

Thank you.

Senator PRYOR. Mr. Keating, thank you.

Thank you very much, Mrs. Council.

Mrs. COUNCIL. Thank you.

Senator PRYOR. Mr. John F. Connor, Revenue Officer from Philadelphia, PA. Mr. Connor, we welcome you this morning; and I want you to know how courageous I think you are to come here today. I know that none of your superiors in Philadelphia or anywhere else encouraged you. In fact, I imagine it would be reverse encouragement when they held that you might want to talk about the collection process and some of the things that are going on.

It is very difficult for us to get before this committee present employees—agents or officers—of the Internal Revenue Service to tell

us what it is really like. For that we salute you and we look forward to your statement this morning.

STATEMENT OF JOHN F. CONNOR, REVENUE OFFICER GS-1169-12, PHILADELPHIA DISTRICT OFFICE, INTERNAL REVENUE SERVICE, PHILADELPHIA, PA

Mr. CONNOR. Thank you, Senator. My name is John F. Connor. I am a Grade 12 Revenue Officer in the Philadelphia District. I am currently assigned to Group 11 in the District Office at 600 Arch Street in Philadelphia.

I come before you today out of concern for what has become an intolerable state of affairs in the Collection Division in the Philadelphia District. I am convinced that the critical elements which the IRS now uses to measure the performance of revenue officers are actually being used to the ultimate harm of both the IRS collection personnel and the American public.

The requirements imposed by the critical elements are impossible to meet. It is a 58 point checklist in outline form and many of the headings merely refer to Sections of the Internal Revenue Manual. The IRS Quality Collection Measurement System (CQMS) applies the critical elements with draconian rigor when reviewing cases.

That means, for example, that a revenue officer can collect full payment. But if he neglects to document in his case file that he actually asked for the full payment, CQMS will make a negative finding. Initially, this whole process of CQMS and their findings may mean no merit pay increase for management and ultimately it can mean the employee is fired.

The volume and complexity of the critical elements results in what I have nicknamed the "bull's eye effect." Since the elements are virtually impossible to meet, the employee is continually at risk, vulnerable to adverse findings in a work performance review, thus there is a huge bull's eye placed on his or her back. In turn, there is pressure to put that bull's eye on the taxpayer's back.

CQMS uses these critical elements to generate statistics which measure the performance within the District. These same statistics form the basis of the IRS's merit pay system. In this way, the bull's eye effect originates at the highest level of management where it can be freely used as desired throughout the chain of command until everyone within the collection network lives and works at risk.

With the critical elements, the collection mission is radically skewed towards meeting a set of performance standards. The business of fairness, integrity, public confidence and collecting the proper tax becomes a function of a system of measurement when rightly it should be the other way around.

There is no more drastic example of the deleterious effects of this inversion than when collection personnel actually meet with the public. Given the rigor with which the CQMS applies the critical elements to collection personnel, those personnel can hardly escape bringing that same rigor to their encounters with the taxpayers. CQMS checklists are routinely put in all tax cases to guarantee total compliance by IRS personnel with the standards. And you

must remember, Senator, someone's merit pay hangs in the balance.

This strict application of the critical elements as the only warranted means of solving the delinquency in the field is the cu degra in a method of administrating the tax law that inevitably reduces itself to locating the bull's eye. What used to be an obsession of production within the IRS has been replaced with an obsession with the measurement of that production. The result is supposed to be quality. But as you can see, that is not the case. Mission has yielded to method and tax administration has yielded to a continuous scrambling for self-preservation; and the American people are the losers.

In the book of Matthew there is a story about a spirit who has been exorcised and has nowhere to go and wanders looking for a home. He returns to the man whom he originally possessed and finds the man clean and in order. The spirit then gets seven other spirits more evil than he and repossesses the man. The scripture concluded, "The last state of that man becomes worse than the first."

To a great degree, I think that is what has happened with the IRS. In its attempt to cleanse itself with an emphasis on quality, they are reverting to an emphasis upon statistical measurements and production that is worse than ever before.

Thank you for giving me the opportunity to appear before you today.

Senator PRYOR. Thank you, sir, Mr. Connor. We appreciate your attending this hearing today.

What has all of this new system done to the employee morale?

Mr. CONNOR. It has devastated the morale, sir. It has devastated the morale because of a confluence of different elements. Number one, these criteria are impossible to meet. I point out Part D——

Number one, before I even begin with what the actual criteria are, there are eight critical elements here—and I emphasize the word "critical." And there are enough points under these elements that we can say there are 58 critical aspects. Our entire job, sir, is measured by critical aspects. Everything we do is critical.

And I ask anyone in this room, what job can be—what job—we are not air traffic controllers. You know, we do not have airplanes flying around that we have to direct. What job could everything be critical? Everything. And I noticed the gentleman who sat to the left of the Commissioner—I do not know what his name was—but he talked about the revision of the performance standards. And I will get back to your question, sir, but this—he—there was a little cue word he threw out there that maybe you had missed. But he used the word "critical" again. And I guarantee you, sir, when those new performance standards come out, everyone of them is going to be critical. There is no room to breathe.

The Frankenstein—this is a Frankenstein. When the new one comes you may see the bulging electrodes removed and you may see the scars on the face covered up, but I guarantee you, sir, if you look, it is going to be the same Frankenstein.

Senator PRYOR. Is this another quota system?

Mr. CONNOR. It is exactly that, only it does not—before we began this, the quality system, collection groups actually operated on a

numerical formula. For every four staff hours spent on direct time, it was called—it was the delinquency where the taxpayer owes money or where there was an unfiled return. That is called direct time, both those cases. For every four staff hours, which they could measure from your daily, because every day we turn in a report itemizing how much time we spend and where we spend it. Every four staff hours, sir, had to produce one closed unit.

They had a numerical formula—2.5. At the group meetings we are always told you are either in or out of formula. We are below the rates; we are below the norms; we have to get up; get the closings; get the closings; get the closings.

Senator PRYOR. Now when you say a closing, what does that mean?

Mr. CONNOR. Well, let's take for instance a man is delinquent for four quarters in his payroll taxes—the first, second, third and fourth of, say, 1989—if I were to close the first quarter, say, collect full payment on the first quarter, that would be a closing. If I closed out an investigation that required me to secure returns—it may be ten returns—that is a closing. So it was actually a closing of a specific delinquent unit. The case file may still be open because there may be other delinquent units within the case file.

But we do not do that anymore. All the kings horses and all the kings men did a great job putting a lot of Humpty Dumptys together; and that is what we were measured on. But somewhere along the line someone say, you know, these Humpty Dumptys, lots of them are getting put together but you're not putting them together too good. So now the buzz word is quality. But all the kings horses and all the kings men are still measured on how the quality is.

Fifty-eight aspects to measure quality. You can't measure quality like this. Quality in a sense is an art form. It is anything well done. It is very close to art. You cannot jam quality or jam a system that tries to measure it, and especially a system that gives no leadway—none, no leadway. You collect full pay—I forget the document—you can an "N"—no, you did not meet the critical point.

So we are now trying to do quality work, but what does that mean. It means conformance with 58 points. No one looks at the end result. Did you collect the tax? Who cares? Did you drive the guy into bankruptcy? It doesn't really matter. But did you do everything here so that someone 400 miles away can look at your case file and sit down and take this sheet and go boom, boom, boom, boom, boom, boom, boom—80 percent.

And he also said, sir, that—he made a very nuance statement, the gentleman sitting to the left of the Commissioner. He said statistics are not maintained at individual level. That is true in one sense. CQMS does not—their statistics that they send back to the groups do not say, John Connor has a 75 percent error rate in the element of document. But it does say that Group 11 does. The statistics are maintained to the group level. That is what CQMS is all about.

The other reason that—and this gets back to your original question, where it really impacts on the individual revenue officer, because you see there is a double system of measurement that goes along simultaneously. The CQMS is continuously going on. Every

time cases are closed or pulled, some cases are pulled and sent to CQMS and they generate these statistics.

Along with that, revenue officers are reviewed quarterly by their group manager. You are told, bring in these cases—boom, boom, boom, boom, boom. You take them in. The group manager gets out the same list CQMS uses and he is required to take the same interpretation that CQMS does. He says if it is not there, you did not do it. But I collected—look I collected that period. But you didn't document you asked for the money. Boom, negative finding.

All this boils down to, if you miss two points under anyone aspect and then miss two more points out of 58 points out of another aspect, in other words, you miss four points out of 58, the Internal Revenue Service has the power to begin an action against the employee that may result in his dismissal. It is called a "counseling memo." The next is a 60-day letter in which you get an opportunity to change your act around and that changing the act around hinges on did you do all this.

Senator PRYOR. Not whether you——

Mr. CONNOR. So you want—that is right.

Senator PRYOR. Not whether you collected the sum owed to the Government? That was immaterial, right?

Mr. CONNOR. That is right. And you are being judged many times by managers who have a tenth of the field experience that you do.

You wonder why the morale is bad. Look at Part D, critical element, Protection of Government's Interest; 7. Enforcement Procedures Used Appropriately; Lien Refile Determined. I want to draw attention to two words. One, appropriate. Lien Refile Determination, When Appropriate; Levy Action Taken, When Appropriate.

And there is also a metronome. I forgot to bring that little element in. If you have ever seen anybody try to learn to play the piano, the metronome, the little hand comes out and, tick, tick, keeps the time. Time frames are built into all this, sir. That if you do not do it within a certain amount of time, even if you do it later on, boom, you missed. Bump. Negative finding.

Senator PRYOR. Let me ask you one final question. We have another panel that is waiting. Your testimony has been fascinating. You heard Mrs. Council a few moments ago. I think you were in the hearing room. Is that correct?

Mr. CONNOR. Uh-huh.

Senator PRYOR. What happened in that case?

Mr. CONNOR. I wasn't very sure of the particulars. Did the field personnel come out?

Senator PRYOR. Pardon?

Mr. CONNOR. Did the field personnel actually get involved? I couldn't really hear all the particulars, sir. I am not familiar with the particulars.

Senator PRYOR. All right. I will withdraw that then.

Let me ask this: If those liens were placed against her property and her assets, was this basically someone within the Service that felt the pressure to do this from above?

Mr. CONNOR. Well not necessarily. The determination——

Senator PRYOR. I am talking about illegal liens and many without notice and without hearings.

Mr. CONNOR. I cannot really say that that is why they did it. It could have been done out of ignorance. But I know that you have to check the computer. And if there is a coding in there—504—that means, at least according to the system, the fourth notice was sent out. And that is what is required by the Taxpayers' Bill of Rights before liens are filed.

So systematically, I could go in—in other words, I say, do I have a right to file a lien on this case. I go in the computer, I punch in, I pull up the delinquent period. I go to the last page of the print and I see 504 and the date. I count 30 days and technically I am allowed to file a lien. But there could be a systemic—they may have never gotten that notice. I mean, it went out according to the system and by law then we are allowed to proceed then and file the lien.

Senator PRYOR. They went for a period of years trying to get the IRS to produce that notice or some copy or facsimile or some proof that they had actually sent the notice. It is my understanding that after about a 2 or 3 year wait, that when the proof of the notice was given to the Councils and the actual address on the notice was in fact a wrong address.

Mr. CONNOR. Well, that is right. There could have——

Senator PRYOR. We won't go into that. Let me just say this, I want to thank you. I heard a story——

Mr. CONNOR. Could I just say a few words, just to sum up real quickly?

Senator PRYOR. Yes.

Mr. CONNOR. Rules, regulations, statutory requirements, that is all fine. When the tapping, the general rapping at the door comes and it is the IRS collection agent, there is a great opportunity, sir, to equalize any discrepancy. The interaction of the regulatory, statutory with the human. We get right into their lives. We sit in their living rooms. We sit at their kitchen tables. We do all that. There is a great chance, a great opportunity for justice to occur. It is never going to occur if field personnel are required to operate under this.

You are asking the pianist to play a piece by Beethoven in a straight jacket. It cannot be done. This has to be dismantled completely.

Senator PRYOR. You are saying, I think, I do not want to speak for you, that there has got to be a human element that the collection agent has to be given sufficient——

Mr. CONNOR. Latitude.

Senator PRYOR [continuing]. Latitude or options in dealing with that person when you are in their living room or kitchen in trying to work out their taxes.

Mr. CONNOR. If you hire Grade 12 revenue officers, somewhere along the line you will have to have confidence that they know what they are doing. You will have to give them the chance to do that. You cannot regulate their existence and their lives by this lunacy.

Senator PRYOR. I want to thank you. I heard a story about you this morning, Mr. Connor. I hope it is all right if I repeat it in public. I hear that we have something in common—that you have three sons. Evidently, mine are a lot older than yours. But I heard

that your sons, when told you were coming to testify about your work and maybe even about the system, were afraid that you were going to go to jail. Is that correct?

Mr. CONNOR. Yes, they expressed that concern, sir.

Senator PRYOR. Well I must say——

Mr. CONNOR. I had to reassure them daddy will be home Friday night. At least I hope I will.

Senator PRYOR. I also want to say that my three sons, since I have been involved in the investigation of IRS, feel that I also am going to wind up in jail. So we do have that in common.

Mr. Connor, we owe you a debt of gratitude. Thank you very much.

Mr. CONNOR. Thank you very much.

Senator PRYOR. We salute you for coming.

[The prepared statement of Mr. Connor appears in the appendix.]

Senator PRYOR. I am going to call our final panel. This is a very fine panel. Mr. Harvey Shulman, general counsel, National Association of Computer Consultant Businesses; Mr. David Burton, manager of Tax Policy Center, U.S. Chamber of Commerce; Mr. John Motley, III, the vice president of Federal Government relations, NFIB, that is the National Federation of Independent Business; and Mr. Gerald Portner, partner, Peat Marwick & Mitchel in Washington, DC.

All of you gentlemen, or most of you, I should say, have testified before this committee before. And I might say for the record that all of you have been very, very help and instrumental in helping us in the past 2 or 3 years to shape the Taxpayers' Bill of Rights. This hearing today is a hearing to see how we are coming on that implementation. We look forward to your statements. We will attempt to have a 5 minute limit on each opening statement and then we will have some questions.

Let's see, I will call then at this time on Mr. Shulman first. Mr. Shulman, we welcome you to our committee this morning.

STATEMENT OF HARVEY J. SHULMAN, GENERAL COUNSEL, NATIONAL ASSOCIATION OF COMPUTER CONSULTANT BUSINESSES, WASHINGTON, DC

Mr. SHULMAN. Thank you, Senator. I am accompanied in the audience by Mr. Bjorn Nordemo from Massachusetts, the President of our Association.

Senator PRYOR. Thank you, sir.

Mr. SHULMAN. Unfortunately, for too many firms, particularly in our business—the technical services business—the Taxpayers' Bill of Rights has really become a Taxpayers' Bill of Wrongs. I listened to the Commissioner this morning and I honestly believe that his attitude is the attitude that you intended the legislation to create throughout the Service. But his explanations, unfortunately, are not the reality of what is happening out there.

Senator Kerry's letter brought to your attention instances of violations in Massachusetts and New Hampshire. I can sit here today and tell you that it is also happening in Maryland, in California, in Minnesota, in Missouri; and not just once, and not just twice, but dozens of times. I have personally, personally, heard an IRS

agent—who happened to be on a speaker phone—meeting with one of my clients. The agent came in off the street to a small business—no appointment, no letter—showed an I.D. to a receptionist and terrified the person, basically. Asked to see the President of the company and did not give anyone present Publication No. 1.

The taxpayer—and I am listening to all of this—the taxpayer asked, "Don't I have any rights?" The IRS said, "Well, no. This is only a compliance check in the employment tax area. This is not an audit; it is a compliance check." "Well aren't there any procedures? Or don't I need to be given anything?" "No, we're just doing a compliance check here." The agent immediately on the spot wanted to see 1099's and W-2s going back 3 years—right then and there.

When the taxpayer said, "Well I would like a written request for the documents. We will fully cooperate, but we would like a written request," the agent took out the badge and said, "This is all I need to request the documents. If you would like to write it down what I want so you have a list of them, you can do that. But I do not need a letter."

When the taxpayer told the IRS official that some of the documents 2 and 3 years old were off the site, the agent said, "Well, isn't there anything here that I can see right now?" When told no, and asked to come back later after making an appointment and sending a letter, the IRS employee said that she would report to her supervisor that the taxpayer acted suspiciously because he refused the oral request to produce the documents right then and there.

Well, Senator, that is one story I have heard from our members over and over and over again throughout this country. I ask you, when you look at the Taxpayers' Bill of Rights—and listening to Mrs. Council's story—to think why that law is so critically important to small businesses in particular. First, it is because your customers and employees and contractors do not want to do business with you if they think you may be in any trouble with the IRS.

Second, because the 20 question common law employment test is so vague and difficult and unpredictable—as the IRS itself has conceded over and over again—once the IRS officers get into an audit they really do not know what to do. So the procedural preliminaries, the Taxpayers' Bill of Rights, almost seem irrelevant.

And third, the amount of back tax liabilities for small businesses is a death knell to small business. It puts you out of business, particularly in our industry. And that makes it all the more important that a Taxpayers' Bill of Rights be implemented strictly.

Now in my written testimony I have referred to what are the IRS failings: (1) Failure to deliver Publication 1; (2) Unreasonable delivery. They give it to you after they are sitting there and talking with you; and when the interview is over, then you find out you had the right to tape record the interview and to talk to your accountant or your lawyer and have that person present; (3) The unreasonable time and place. You have referred to that; (4) The coercive conduct during the interview. This whole notion of leads—"I am here not to do an audit, but to follow up a tip. I have a compliance tip."

Senator PRYOR. Now are you talking about the snitch program?

Mr. SHULMAN. The snitch program, Senator, is the tip of the iceberg. That snitch sheet, what it really shows, what it really shows is the IRS at its worst in terms of doing a number of awful things. They will come in off the street without a snitch sheet and try to get you to turn in competitors or try to turn in other companies who you think may be violating the law based on speculation and rumor and innuendo: "You happen to use an independent contractor, you must be a law violator."

The agent will remind you during these interviews—and this is not once, this is many times—it is your burden as a taxpayer to prove that you are right. It is not the IRS's burden to prove that you owe the taxes. It is your burden to prove that the IRS statement that you owe the taxes is wrong.

There is one case, Senator, a small business in our Association, they have spent 1,600 hours complying with requests for IRS information and the audit isn't even halfway over.

My time is up. I wish I could tell you more because I think, as my testimony sets forth, you may have cleaned up part of the IRS and we appreciate what you have done, but there is a long way to go.

Senator PRYOR. The full body of your statement is going to be placed in the record, Mr. Shulman. I will have a couple of questions for the entirety of the panel in a few moments. We really appreciate your contribution.

[The prepared statement of Mr. Shulman appears in the appendix.]

Senator PRYOR. I will call on Mr. David Burton at this time from the U.S. Chamber of Commerce. Welcome.

STATEMENT OF DAVID R. BURTON, MANAGER, TAX POLICY CENTER, UNITED STATES CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. BURTON. Thank you, Mr. Chairman. My name is David Burton. I am manager of the Tax Policy Center for the U.S. Chamber of Commerce. We appreciate this opportunity to present the Chamber's views on the impact that the Ombudsman Taxpayers' Bill of Rights is having on the U.S.'s tax administration system and on ways to improve the sometimes troubled relationship between the IRS and the American taxpayer.

The Taxpayers' Bill of Rights was landmark legislation. It was the first legislation that strengthened the fundamental due process rights accorded to the American taxpayer. The American taxpayer is deeply in your debt, Mr. Chairman, for your tireless work to overcome a combination of indifference and hostility. Your efforts ultimately resulted in the Taxpayers' Bill of Rights becoming law, by its inclusion in the Technical Corrections Act of 1988.

Untold numbers of taxpayers have been helped by the legislation, but complaints about inequities in the system are still common; and the system remains highly burdensome to taxpayers.

In this statement I will provide the Chambers analysis of the impact of the Taxpayers' Bill of Rights and some thoughts about how the tax administration system could be improved. We still get plenty of phone calls complaining about compliance burdens, com-

plexity, and substantive tax provisions. But telephone calls from Chamber small business members facing immediate and unwarranted levy have declined—declined substantially. And we attribute that to the Taxpayers' Bill of Rights.

First, the IRS management has been forced to confront and correct some of the more egregious abuses in the system as a result of more aggressive congressional oversight. Second, the legislation prohibits the use of quota systems for levies. And third, and we think most important, the problem resolution office has been substantially strengthened.

According to the Office of Ombudsman, in calendar year 1989 15,445 applications for a taxpayer assistance order were filed. Of those, the office determined that 6,680 did not involve a significant hardship, but that 8,765 did. Of the 6,600 that were not hardship cases, the office says they helped 71 percent anyway. Of the remaining 8,700, 67 percent or about 5,870 were helped.

The interesting thing, though, is that only nine taxpayer assistance orders were actually issued. And we are not quite sure whether that is because the collection officers, when faced with the problem resolution officer that has newfound authority and the ability to stop in appropriate collection, just comply with the problem resolution officer's wishes or if it is because the PROs are being insufficiently aggressive representing taxpayers' problems.

The IRS is often attacked for its low audit rate. Recently it fell below 1 percent. But we think these statistics are really pretty far from the truth. In fact, the real statistical story is about the IRS computer-generated notices and the agency Service Center program. Through Service Center correspondence in 1988 18 million returns were corrected. That comes to about 17 percent. We think that a 17-percent correction and audit rate through the correspondence from the Service Center is really quite high.

Moreover, there was over $6 billion in penalties assessed by the IRS. On the other hand, 45 percent of that amount was abated. Of the IRS computerized notices that were sent out, somewhere between 9.1 percent and 45 percent, depending on whose numbers you believe, were in error. We believe that those kind of error rates are unacceptable.

Moreover, the simple fact that a penalty was paid does not mean that the IRS was right. A recent Money magazine gallop poll showed that 59 percent of taxpayers would not fight an incorrect penalty if it was under $50 and 77 percent would not fight it if it were under $100.

There are a lot of ways that we can improve the law. I will run through it quickly. The situation that Mr. Shulman discussed with respect to independent contractors is a major problem. It is a problem for small businesses throughout the country, including tens of thousands, perhaps hundreds of thousands of businesses. The problem there is that it is not simple to craft a solution to it. But the Chamber has established a group to try to work through such a solution and hope to have a recommendation to you soon.

The IRS computer system dates from the 1960's. At this point it is absolutely impossible for an IRS agent to bring up a taxpayer's file and figure out what their problem is in a way that almost any

private business can do. There is a radical need to improve their computer capability.

David Burnham in his book raises a number of issues about how Section 6103 might be impeding the ability of the Congress and the press to sufficiently oversee the IRS.

There is a very serious problem with the payroll tax deposit system and we would like to work with you, Senator, and your staff, to craft a simplification proposal on that front and we think we have done something that might work out.

One other area that you recently held hearings on and, to which we attach a great importance, is simplifying the pension system. The pension system is to the point now where almost no one truly understands it and small businesses simply cannot begin to comply with it. There is a radical need for simplification there.

Thank you very much.

Senator PRYOR. Thank you very much, Mr. Burton. We will put the full text of your statement in the record. We appreciate your being here and also your suggestions as to where we go from here.

[The prepared statement of Mr. Burton appears in the appendix.]

Senator PRYOR. Mr. John Motley of NFIB. John, thank you for coming.

STATEMENT OF JOHN J. MOTLEY, III, VICE PRESIDENT, FEDERAL GOVERNMENTAL RELATIONS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, DC

Mr. MOTLEY. Thank you, Senator. Thank you for inviting us on behalf of NFIB's more than 560,000 members across the country. We certainly appreciate the opportunity to comment on the Taxpayers' Bill of Rights.

First of all, though, I think that we need to thank you for all of the effort that you have put in over the years on this particular problem, the attention that you have called to it, and the role that you played in getting the original Taxpayers' Bill of Rights enacted into law. We would also like to thank you for the role that you are playing in the reauthorization of OIRA and solving the paperwork problems faced by small business owners across the country.

There have been several positive results, from our standpoint, from the enactment of the Taxpayers' Bill of Rights in 1988. The first is that when used promptly the summary of rights statement that the IRS has to pass out seems to reduce the tension between agents and small business taxpayers and gets them off on the right foot. We think that is a very positive thing.

Second, a small business owner's standpoint probably the most important thing, is their ability to use a representative in dealing with the IRS—their CPA or their tax attorney or someone else.

Unfortunately, the legislation enacted in 1988 has not solved all of the problems. And the largest problem that is remaining out there, I think we can sum it up in one word, as you have heard from the other witnesses, and that appears to be attitude—the attitude of the IRS and the attitude of IRS personnel.

I think an NFIB member from Florida who is also a CPA has stated it best from our standpoint, and I would quote, "The spirit of

the Taxpayers' Bill of Rights has not trickled down to those who have daily contact with the taxpayers."

In addition to the attitude problems that I have mentioned, we have uncovered other problems in canvassing some of NFIB members who have had recent contact with the IRS. I would like to just mention four of them. One, IRS still appears to view small business owners as tax evaders or criminals and treat them as if they are guilty until proven innocent. That attitude has not changed.

Number two, even though small business owners tend to feel that using representatives is terribly important, they tell us rather consistently that IRS discourages them from having a representative present, and indeed indicates that their audit might go with more difficulty if someone else is present during the process.

Third, the ability of taxpayers to use installment plans to pay overdue taxes and penalties is not being used in a way that would make the system work much better. Requiring sudden payment of taxes is very difficult from a small business standpoint and I think not allowing more flexibility is something that the IRS is missing out on. Because the object here is not to burden taxpayers but to collect those past taxes.

And last, levies which are still used much too frequently from our standpoint to collect taxes, and not used with a great deal of forethought or consideration for the taxpayer.

NFIB believes that overall much of the friction that still exists between small business taxpayers and the IRS is a result of the still present confusion that is out there resulting from the complexity of the tax laws. Here I would simply reiterate two areas that have been mentioned by both witnesses before. One area of great complexity is the payroll deposit rules and the other is the rules for determining who independent contractors are.

Something is wrong with a system when one out of three employers are penalized each year for missing payroll tax deposits; 3,545,000 penalties were issued in 1988 and there are only 5 million employers in the country, which means we are having several employers which have repeat penalties. Most disturbing is the fact that half of the dollars fined these people are abated.

We believe that the system can be greatly simplified and we would like to work with you and the committee to find a way to do that.

In addition, the area of independent contractors is rapidly approaching, from our standpoint, the area of payroll tax deposits as being the number one complaint area for small business owners. It is very difficult for small business owners to focus on the 20 common law rules that are used by IRS. These rules are treated and interpreted differently across the country from region to region. We believe that this is also an excellent target for future simplification.

Thank you very much, Senator.

Senator PRYOR. Mr. Motley, we want to thank you for being here and especially for the information that you have gleaned from your membership out across the country. Those four areas that you brought to the committee this morning, that is fascinating to me; and I thank you. We are going to have a series of questions in a moment.

[The prepared statement of Mr. Motley appears in the appendix.]

Senator PRYOR. We will call on our final witness. We have reserved him to last because he has been able now to absorb all that he has heard in the last 2 hours. There is no man in this country that I admire and respect more than Mr. Gerald Portney. And I can tell you, without reservation, that during the drafting of the Taxpayers' Bill of Rights and the compromises and the whole process there is no one that I turned to more than our next witness. We are glad he is here today and he is committed to a fair tax system.

Mr. Gerald Portney, thank you for being with us.

STATEMENT OF GERALD G. PORTNEY, PARTNER, KPMG PEAT MARWICK, WASHINGTON, DC

Mr. PORTNEY. Thank you very much, Mr. Chairman, for those comments and the opportunity to be here. But more importantly, as a citizen I join the others in commending you wholeheartedly for your enormous contributions to the benefits of citizens every place.

Senator PRYOR. Thank you, sir.

Mr. PORTNEY. The notion of taxpayer rights not only not alien to the mission of the Service, but I think if people would pause to look at both, I think they will see that it is entirely consistent with the mission of the Service, which is to collect the proper amount of revenue which is due and owing to the U.S. Treasury, to treat people with fairness, respect and so forth.

And I think there is indeed a community of interest between the administration of the tax system from the Government side and the taxpayers and that community of interest is not sufficiently defined and understood by both. So from that standpoint, I think that that is something that ought to be undertaken as a worthwhile effort.

Now while the Service is statutorily prevented from unauthorized disclosure of taxpayer information, it is not prevented from turning on the light in terms of what it does, why it does it and how it does it. And it is certainly not precluded from being more aggressive in its outreach at the local level, in talking more about taxpayer rights and what the IRS is doing to protect those rights before citizen groups, civic groups, and business groups. And I might suggest, Mr. Chairman, another focus for that kind of an effort is our students, before they become full-fledged taxpayers.

The town meetings which the Service has engaged in and the surveys of customers, and taxpayers, are certainly laudable steps in that direction. I think Commissioner Goldberg's urging of the extension of the Commissioner's Advisory Group concept to be implemented in the local levels around the country is another important step. But I think much, much more needs to be done.

I am deeply troubled by the continuing characterization of the IRS as the nation's largest law enforcement agency. I think it is a truly unfortunately characterization. And while the Internal Revenue Service is probably not at fault for having created that label, it frankly is not doing as much as it ought to shed that label. I think that we need to find a way, and I think that the Service very much needs to find a way, to be able to recast that characterization as

the agency of Government which is principally responsible for administering the tax system.

The Service continues, unfortunately, to think and speak in ways that are not helpful in this regard. For example, they continue to make comparisons between enforcement versus service, and implying that they are mutually exclusive and perhaps somewhat contradictory. Generally, in response to the issue of whether or not the Service is doing a good job, I think that I would agree with others to the effect that really final substantive judgments as to how they are doing are somewhat premature. There is little, if any, data available to measure changes in the way IRS business is done.

I think the exception is probably the problem resolution program under the taxpayer ombudsman. With the exception of a few locations in the country, the system works well and I think the Service has actually taken a more flexible approach in administering the taxpayer ombudsman taxpayer assistance order area than the statute actually requires.

I think in retrospect the statutory requirement that for a taxpayer assistance order there be significant hardship was a truly unfortunate one. It suggests, and is consistent with other parts of our Tax Code, that as American taxpayers we are entitled to due hardship. I think that that is an unfortunate approach to treating citizens in this country. We should not be entitled to due hardship, and only seek relief when the hardship becomes undue.

I think that at least from my standpoint there is still lacking a true complaint system. You have to still meet certain criteria to access the system. I will rush through the rest, but I do want to make a point.

Senator PRYOR. Certainly. Go for it, Mr. Portney.

Mr. PORTNEY. I just wanted to focus, as a last point, on a regulation that was issued early this week. Not just because of what the regulation says and how it says it, but because in the early stages of very important legislation of which the Bill of Rights certainly was and is, it can be a preview of coming attractions. And this is the regulation dealing with time and place of interview.

I think I just have several quick points I would like to make. The first is that in the preliminary part of the summary, it states, and I quote, "It is the goal of these regulations to balance the convenience of the taxpayer with the requirements of sound and effective tax administration." And I would respectfully suggest that maybe the convenience of the taxpayer and sound and effective tax administration are not necessarily contradictory, at least in many, many cases.

In the explanation of provisions, it suggests that special accommodations or any accommodations will not be made with regard to seasonal problems. And I think what they are really talking about here are conducting audits during the tax filing period when tax preparers and taxpayers are meeting their responsibilities.

Mr. Chairman, it seems to me that the obligation to file tax returns and to file them by April 15 is an obligation that was placed by the U.S. Government. I think that obligation should be respected in terms of the Service's attitude. The fact that they have suggested that they will attempt to minimize adverse affects simply suggests that that is about what they are willing to do. Now maybe

they mean something else, but they did not say it—again, the dichotomy between the orderly administration of the tax system on the one hand and the burdens of tax preparers on the other hand.

There are two areas that I just want to close with where I would suggest that not only is the spirit of the law not being met, but I suggest there may be a basis for saying that even the letter may not be. In connection with those taxpayers whose place of business is so small or virtually nonexistent that it would disrupt or even close the business because of an examination, the Service has taken this position: One, the taxpayer must make a written request not to have it done there. I can accept the importance of a written request.

It then goes on to say that they will verify the truth of that. And it seems to me that they could have said it another way; i.e., where appropriate. But it sounds to me like what the message is, taxpayers, we do not trust you folks. And what we are going to do is after you write us and tell us the situation, we are going to go back out and check that. I think that that is extremely unfortunate.

It also seems to me this effects directly the very smallest kind of business people. They have been told that, as a group, they will examined at an IRS office, not at their representative's office, not at their home, not at some other convenient location.

I think the other two points, very quickly, are, when it comes to transferring a case to where it would be more convenient, the Service says arbitrarily that there have to be 13 months left on the statute or else it will require an extension.

And finally, in what I think is an unfortunate and gratuitous further requirement they have imposed, they are saying that they will not transfer a case to another District if that other District's resources are inadequate. And, Mr. Chairman, I do not have the foggiest idea who is going to make that judgment, how a taxpayer is going to find a way to challenge that with anyone else up the line.

I think that in closing I would like to say that even after the realistic budgets become a way of life, hopefully; even after systems modernization comes into being; that perhaps the most important task of all that faces us as citizens is going to remain—that is the fundamental need to restructure the relationship between the tax collector and the taxpayer.

I thank you again, sir, for this opportunity.

[The prepared statement of Mr. Portney appears in the appendix.]

Senator PRYOR. Mr. Portney, I know all of our witnesses this morning know that you speak with authority because you are a former high ranking official with the Internal Revenue Service. You give us a perspective from that side, in addition to you being so strong for the protection of the rights of the taxpayer. I want to thank you for coming as well as all of our witnesses.

We are going to have to close down in 5 or 6 minutes. Let me ask this final question or two, if I might.

What are the—I can ask this probably to Mr. Motley and then we can go forward. What aspects of tax compliance are the number one problem for small business today? What is the number one in complying with the Tax Code?

Mr. MOTLEY. Well I think there is no doubt that it is the deposit rules for payroll tax deposits. The figures I cited before, we only have 5 million nonagricultural employers in the United States and there are over 3.5 million penalties issued in a given year. You are talking about, you know, people who are repeating time and time again. I have to think that the reason for that is that the way the rules are written are very unrealistic and they need to be simplified.

Senator PRYOR. Any other further comments on that? Mr. Burton, you represent business.

Mr. BURTON. I would agree with that. The payroll tax deposit system needs radical simplification and would say that the complexity of the pension system and the independent contractor rules are a close second and third.

Senator PRYOR. All right.

Mr. Portney, I am wondering if you would like to venture into the area of talking about the penalty reforms that we passed last year. Is that going to make any difference? I never did feel that those reforms in the area of penalties went far enough. What are your feelings about that?

Mr. PORTNEY. I think, Mr. Chairman, that it was a giant step forward. In all fairness, Congress helped create the problem. The Service went ahead and added to the problem. Congress has turned around—and I think that again special recognition should be extended to you, Mr. Chairman, for having created a private sector task force that was widely representative of all groups and that came up with many suggestions for reform.

I think the final product was greatly enhanced by your task force and also by the process which was followed by the Oversight Subcommittee in the House, which also conducted an open process, Mr. Chairman. They called it roundtables. You had a task force. You were both doing the absolute right thing by getting the ideas, the problems, the solutions, et cetera, before the rules were actually changed. And I think that process was superb.

The Penalty Reform Bill, like the Taxpayers' Bill of Rights, is not absolutely perfect, but if it were it would have to go in the Guiness Book of Records.

Senator PRYOR. Thank you very much.

Mr. Shulman, do you have any final comments? I am in a situation where I have to catch an airplane in the next few minutes. I am headed to Little Rock. Anybody want to go to Little Rock this afternoon.

Mr. SHULMAN. Senator, just in closing, I echo the other comments. I think you are going to see—and I hope to God it does not get to the point of tragedy—you are going to see more people like Mrs. Council here in a few years with these employment tax audits: the burden of proof, the way the Service is pushing that against businesses, and the independent contractor issue. Please do not be fooled, Senator. The notion that the IRS is collecting taxes that otherwise are not being paid is not the case.

In our industry, in the computer industry, they are collecting taxes from companies who they reclassify as employers. They are collecting employment taxes from these firms where the taxes in 95 percent of the cases have already been paid by the independent

contractors. So there is a problem until you clear up the burden of proof; and the definition of who is an independent contractor; and finally give people peace of ~~mind that~~ an investigation or audit is closed—because when these IRS employees walk out the door, you do not know whether they are going to come back and knock on your door in 6 months and tell you the investigation is continuing, which has happened in many of our cases, or you do not know whether the matter has ended.

Senator PRYOR. Mr. Shulman, thank you.

We want to thank all of our witnesses this morning—this panel and all of the previous witnesses. This has been very educational for me and hopefully constructive in the sense that we will know where to proceed from here.

Thank you very much.

The meeting is adjourned.

[Whereupon, the hearing was adjourned at 11:55 a.m.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED

PREPARED STATEMENT OF DAVID R. BURTON

I am David R. Burton, Manager of the Tax Policy Center for the U.S. Chamber of Commerce. We appreciate this opportunity to present the Chamber's view on the impact that the Omnibus Taxpayer Bill of Rights is having on the U.S.'s tax administration system and on ways to improve the sometimes troubled relationship between the Internal Revenue Service (IRS) and the American taxpayer.

The Taxpayer Bill of Rights was landmark legislation It was the first legislation that strengthened the fundamental due process rights accorded to the American taxpayer. The American taxpayer is deeply in your debt, Mr. Chairman, for your tireless work to overcome a combination of indifference and hostility. Your efforts ultimately resulted in the Omnibus Taxpayer Bill of Rights Act becoming law by its inclusion in the Technical and Miscellaneous Revenue Act of 1988.

Untold numbers of taxpayers have been helped by the legislation. But complaints about inequities in the system are still common and the system remains highly burdensome to taxpayers. In this statement, I will provide the Chamber's analysis of the impact of the Taxpayer Bill of Rights and some thoughts about how the tax administration system could be improved.

THE IMPACT OF THE TAXPAYER BILL OF RIGHTS

Although it is still too early to reach a definitive conclusion, the Taxpayer Bill of Rights appears to have had a major positive impact on the relationship between taxpayers and the IRS.

While we still get plenty of telephone calls complaining about compliance burdens, complexity and substantive tax provisions, telephone calls from Chamber small business members facing immediate and unwarranted levy on their house or business or similar serious problems have declined noticeably. While it is impossible to be certain that the Taxpayer Bill of Rights is the cause for this decline, it seems likely that it is.

The Taxpayer Bill of Rights has helped in a number of ways. First, IRS management has been forced to confront and correct some of the more egregious abuses in the system as a result of more aggressive Congressional oversight. Second, the legislation prohibits use of the quota system for levies and seizures. Thus collection officers are less likely to feel pressure to make inappropriate or unjustified seizures. Third, and probably most importantly, the authority of the Problem Resolution Officers (PROs) under the Office of Ombudsman was enhanced.

As of January 1, 1989, PROs have had the authority to, in effect, enjoin inappropriate IRS collection activity or to require a correction of an IRS mistake by issuing a taxpayer assistance order if a taxpayer is suffering or is about to suffer a significant hardship. According to the Office of Ombudsman, in calendar year 1989, 15,445 applications for a taxpayer assistance order were filed. Of those, the Office determined that 6,680 did not involve a "significant hardship" and 8,765 did. Of the 6,680, evidently 71 percent were helped by the Office anyway. Of the 8,765 presenting a significant hardship, 67 percent, or about 5,870, were helped, and the remainder were not helped either because the law did not permit it or because after investigation it was determined that assistance was inappropriate. In all, only nine taxpayer assistance orders were issued and only one of those nine was reversed.

There is a need to determine whether the reason that so few taxpayer assistance orders are being issued is because the PROs are not being aggressive enough on tax-

payers' behalf or simply because collection officers, knowing of the PROs' greater authority, do not resist PROs when they are correct.

The Taxpayer Bill of Rights has strengthened the procedural safeguards for taxpayers when faced with a dispute with the IRS in a number of other ways. Some of the major provisions of the legislation include a requirement that the Service provide a written statement to taxpayers about their rights when subject to an IRS audit or collection matter. The IRS has complied with this requirement. The legislation enhanced taxpayer rights during an audit or examination interview, mandated that IRS deficiency notices have more clarity and gave taxpayers the right to sue the Federal Government for damages sustained because of unauthorized actions of an IRS employee.

The law now requires the IRS to give a taxpayer 30 days notice of the agency's intention to levy, as opposed to the previous requirement of 10 days notice. Moreover, under the law, the IRS is required to offer an accelerated appeals process so that taxpayers may challenge a levy on property that is considered to be essential to a taxpayer's business. Other provisions provide taxpayers with further safeguards, which ensure an administrative procedure for review of a lien notice filed in the public record. However, many of these procedural safeguards can be ignored if the IRS believes that the collection of tax is in jeopardy.

The Chamber believes that these antiseizure measures are some of the more significant procedural. safeguards for taxpayers who face a deficiency dispute with the IRS. Thus, IRS implementation of these provisions should be closely scrutinized to ensure IRS compliance, in practice, with the law.

STATISTICAL OVERVIEW OF THE PROBLEMS THAT TAXPAYERS FACE AND THE COMPLIANCE PROCESS

The vast majority of individual and small business persons are honest, hardworking taxpayers, whose only fault may be bewilderment due to the crushing complexity of the tax law and the recordkeeping necessary to comply with the law.

According to its most recent Annual Report, the IRS processed more than 194 million tax returns overall in 1988, including nearly 107 million individual returns in that year as well. The IRS is often attacked for its low audit or examination percentages. The *Wall Street Journal* reported on March 28, 1990, that the number of returns audited slumped to 985,000 in fiscal year 1989, which is merely 0.92 percent of returns filed, or about one in every 109 returns. If these statistics were the complete truth, then a belief that there is little likelihood of getting caught for tax evasion would probably be reasonable. But these statistics are far from the truth.

The real statistical story is about IRS computer-generated notices and the agency's service center examination program. Through service center correspondence in 1988, 18 million returns were corrected, resulting in the assessment of tax and penalties. Regarding all IRS enforcement matters that year, over 26.5 million penalties were assessed for a total amount of $10.9 billion. Thus, almost 17 percent of returns were "corrected." The fact that only a few were subject to a full audit does not mean that the IRS is failing to monitor taxpayers' returns.

Ironically, of the total penalties assessed in 1988, net penalties amounted to $6 billion, which works out to an abatement rate of 45 percent that year. Thus, it is clear that a significant number of the penalties imposed through the IRS computerized system are erroneous. IRS internal figures say that 9.1 percent of notices are in error—almost one in ten. The General Accounting Office has found, according to *Money Magazine,* that 47 percent of IRS letters to taxpayers are in error. These are unacceptable error rates. Any private business with these kinds of error rates would not be able to stay in business very long. And correcting these erroneous penalties can be a major headache. Moreover, the mere fact that they were paid without protest does not mean that they were accurately imposed. The expense and time involved in fighting a penalty often outweighs the amount at stake. A recent *Money Magazine*-Gallup poll showed that only 59 percent of taxpayers would fight an incorrect penalty under $50 and only 77 percent would fight an incorrect penalty under $100.

The Chamber hopes that taxpayer problems with tax penalties will decline because of the penalty reform provisions of the 1989 tax act. However, the abatement statistics continue to highlight the problems facing taxpayers.

FURTHER REFORM STILL NEEDED

The Chamber has identified a number of areas where the tax administration system should be improved. The remainder of this statement will address areas that the Chamber believes need improvement.

DAY-TO-DAY DEALINGS WITH THE IRS

When a taxpayer calls or writes to the IRS, he may or may not get someone who is helpful. But even if he does, he has no right or practical ability to talk to the same person again. Thus, the only person in the IRS with a knowledge of his case is more often than not unavailable and the taxpayer has to start all over again. This problem would, of course, be mitigated if the IRS had the same on-line computer capability that all major private firms have. If they had this on-line capability, then any IRS employee could pull up a taxpayer's file and at the end of a conversation, or as a result of correspondence, the taxpayer's communication could be noted. This would enable an IRS employee to note on the computer that: 'Taxpayer called; promised to send copy of canceled check to document payment of $311.12." The computer could then be instructed to cease additional dunning notices and further inappropriate collection activity could be stopped. Presently, it is virtually impossible to deal with the same person twice and it is terribly difficult to "turn-off" the computer.

Too much of the IRS's effort in the computer modernization area is devoted to enhancing document matching capability and not enough is devoted to bringing the taxpayer problem resolution capability from somewhere in the late 1960s into the 1990s. The IRS often makes this sound as if it is some kind of insurmountable task. But every single major private corporation in America has this capability. It is really a matter of either incompetence in the data processing management at the IRS or an utter lack of interest in being better able to service taxpayer complaints.

PROFESSIONAL FEES

The Taxpayer Bill of Rights made it much easier for taxpayers to be reimbursed for professional fees incurred as a result of inappropriate IRS actions. But there are at least two ways in which the professional fee reimbursement aspects of present law should be improved. First, section 7430(c) limits the recovery in most cases to $75 per hour. Like it or not, most private attorneys in the U.S. charge rates in excess of $75 per hour. Thus, a taxpayer is prevented by this provision from being adequately reimbursed for his actual out-of-pocket expenses to defend himself against a proceeding that was, by definition, not substantially justified. Moreover, even if the taxpayer substantially prevails with respect to the amount in controversy or the most significant issue presented, the taxpayer has to prove that the IRS's position was "not substantially justified." The IRS, and the government generally, has a duty to the public to bring only litigation that is warranted. If the government loses a case, that means that the courts have determined that the government wrongly caused a taxpayer to undertake untold heartache and expense. In some cases, the amount expended may almost ruin a taxpayer. The government's resources are virtually unlimited as compared to the taxpayer's. The government does not have, at present, sufficient restraint on its ability to litigate unwarranted cases. Requiring the government to establish that its case was substantially justified if it did not prevail would serve as a salutary check on its willingness to proceed with marginal cases and would establish a certain parity between the taxpayer and the government with respect to the financial costs of doubtful litigation.

DISCLOSURE OF IRS INFORMATION

David Burnham, in his book *A Law Unto Itself: Power, Politics and the IRS,* raises some troubling questions with respect to the operation of section 6103. As he notes (beginning on page 311), section 6103 by preventing disclosure of tax return information protects one of the most precious rights that Americans possess—the right to privacy. But he argues that the provision has been used to undermine the ability of Congress, the press and the public to adequately monitor the performance of the IRS. It would seem that greater public scrutiny and Congressional oversight of the internal workings of perhaps the most powerful agency in the government is warranted. If it is determined that section 6103, as presently drafted, is in practice unduly hindering the oversight capability of Congress or the press, then revisiting the language of 6103 would be in order. Certainly, all Americans would no doubt agree that the privacy of tax return data should remain inviolate. But it seems equally clear that vigilant Congressional and press oversight of the IRS is an important check on the ability and willingness of the IRS to abuse taxpayers.

PAYROLL TAX DEPOSIT SYSTEM

A major problem facing all business taxpayers is the payroll tax deposit system. These are the rules that require firms to deposit Social Security taxes and withhold

income tax with an authorized Federal depository. And these rules account for more of the day to day disputes with the IRS than any others.

Payroll taxes are more likely to impose a higher relative compliance burden on small businesses than other provisions of the Tax Code. For a small business, tax compliance costs are likely to be disproportionately high relative to income and consume a high amount of management time. Moreover, smaller businesses are often more labor-intensive than larger businesses.

Tax regulations set out the procedures under which employers deposit payroll taxes with an authorized Federal depository. Under the regulations, the frequency by which an employer is required to deposit such taxes increases as the amount of payroll deposits increases. Each month is divided into eight deposit periods, which end on the 3rd, 7th, 11th, 15th, 19th, 22nd, 25th, and last day of every month. To the extent that an employer owes $3,000 or more in payroll deposits at the end of any of these deposit periods, that firm is required to deposit those taxes within three (3) banking days. There are various other payroll deposit rules that are extremely complex and that pose a significant burden on small and large businesses alike.

The Chamber strongly recommends that the overall payroll tax deposit system be simplified. For small business, the Chamber recommends that the $3,000 threshold described above be increased to $10,000. Thus, an employer would not be required to make a payroll tax deposit during any of the eight monthly deposit periods until such time as the employer owes or has collected $10,000 or more in payroll deposits. This would reduce the frequency of deposit but would not address the root cause.

The Chamber has drafted an alternative payroll tax deposit system that would base the frequency of payroll deposits during a month on the number of persons employed by the business. Thus, all a firm would have to keep track of to determine how often its payroll taxes must be deposited would be the number of employees. The deposits, under our proposal, would be due on easy-to-remember dates such as the end of the month or middle of the month. Larger firms would still be required to pay within three days of making payroll.

Under the Fiscal Year 1990 (FY '90) budget reconciliation package, employers are required to deposit payroll taxes with a Federal depository by the close of the applicable banking day (instead of by the close of the third banking day) after any day on which payroll deposit accruals are at least $100,000. The effective date of the provision is for amounts required to be deposited after July 31, 1990. For purposes of the new law, the applicable banking day is the next banking day for 1990, the second banking day for 1991, the third banking day for 1992, and it reverts back to the next banking day for 1993 and 1994.

President Bush's FY '91 budget recommends that the payroll tax deposit rules for affected employers be made consistent for all years, which means that payroll deposits would be required to be made by the close of the next banking day.

The apparent rationale for requiring a payroll tax deposit speedup is that businesses should be able to comply easily with a measure of this type, especially when sophisticated computer hardware and software are generally available. However, even for large firms this is a difficult task, particularly if payroll accounting is done at more than one location. In fact, many firms have told us that they cannot do it and will be forced to make estimated payroll tax deposits. This will lead to greater uncertainty and more disputes. This is precisely what the system does not need. The business community, Congress and the Administration should be seeking ways to reduce the compliance burdens placed on the taxpaying public. Therefore, the Chamber recommends that the Administration's payroll deposit speedup proposal be opposed and that Congress enact legislation that would return to the three-day rule.

The FY '90 budget reconciliation legislation did take positive steps to reduce the unfairness of payroll tax penalties. Under the new law, a small business person is subject to a system of graduated penalties assessed according to the degree of lateness of the payroll deposit. The Chamber is generally supportive of the new graduated payroll deposit rules, except for the implementation of a 15 percent penalty (the highest level penalty under the graduated structure).

The Chamber does not agree with the necessity for the 15 percent penalty as part of the graduated payroll deposit structure. Moreover, it also has concerns about the procedural application of the 15 percent penalty itself. Since notice is given by the IRS by mail, a taxpayer may actually only receive a few days' notice before assessment of the 15 percent penalty. Those businesses which have already fully disclosed their payroll activities on their quarterly returns should be provided more than a few days' actual notice before the penalty increases by 50 percent, from a level of 10 percent under current law to 15 percent.

The Chamber recommends that Congress revisit the matter of payroll tax penalty rules. To the extent that it is not feasible to reduce the top graduated tax penalty

from 15 to 10 percent at this time, the Chamber strongly recommends that the 10-day notice procedure set forth be changed to conform to the 30-day notice requirement set forth for levies under section 6331 and that taxpayers who fully disclose their payroll on their quarterly return be exempt from the 15-percent penalty.

THE NEW FRONTIER IN TAX COMPLIANCE—EXTENSION OF THE ASSESSMENT PERIOD

Under current law, the IRS is generally required to examine a tax return and assess a deficiency of tax within three-years after the filing of the tax return. There are certain exceptions to the general three year statute of limitations that could extend the period of assessment, such as situations of fraud or intention to evade tax. Moreover, the taxpayer and the IRS may mutually agree to extend the assessment period as well.

The general statute of limitations for nonfraud-related tax cases has been traditionally maintained at three years in order to protect the personal rights of taxpayers and to ensure that they cannot indefinitely be subject to uncertainty and potential harassment by the government.

Unfortunately, there appears to be an effort underway to systematically extend the period of assessment to six years after the filing of a tax return. For example, the Foreign Tax Equity Act of 1990 (H.R. 4308) would provide the Secretary of the Treasury with the authority to extend the assessment period to six years regarding a deficiency involving a transaction between a U.S. subsidiary and its foreign parent.

As another example, the House discussion draft to modify Section 2036(c) also contains an extension of the statute of limitations. This latter House proposal would generally extend the gift tax statute of limitations from three years to six years for transfers subject to the provisions of the draft legislation. Further, the statute of limitations would be unlimited for transfers subject to the legislation but which have not been reported.

The rationale for extending the statute of limitations to six years is probably based, in part, on the widely publicized IRS audit rate of 0.92 percent of returns filed in fiscal year 1989. The Chamber must emphasize that, as discussed above, the real IRS audit rate is something very different.

The Chamber fears that once Congress starts down the path of instituting a six-year tax assessment period for certain taxpayers or transactions, the precedent and the policy rationale will have been set for extending the six-year statute of limitations to all taxpayers and all transactions.

In all likelihood, an extension of the assessment period will not do anything to significantly address the so-called tax gap or tax compliance problems that the IRS must address. If the IRS cannot sufficiently audit returns within three years of when a tax return is filed, the Service is unlikely to be able to audit such returns within a six year period of time. More likely, an extension of the assessment period will merely provide the IRS with the ability to postpone making critical decisions about pending tax cases. To the extent that there is a backlog of tax cases that must be reviewed by the IRS, there is a high probability that the backlog of tax cases would grow and not decline.

The real cost to taxpayers is the cost associated with keeping books and records for longer periods of times, the loss of key personnel familiar with the underlying transaction, the significant loss of personal rights and the uncertainty associated with doubling the number of open years.

PENSIONS

The IRS has recently made it clear that it intends to dramatically step up its audit rate of small firms' pension plans. This is an attractive area for the IRS because the pension laws are so complex and the rules so technical that small businesses often inadvertently violate the rules. Particularly at risk are those that do not hire a lawyer every year to revise their plan to take into account this year's change in the rules. The payoff to the IRS if it uncovers a violation is frightfully high. The IRS disqualifies the plan and brings the entire value of the plan into income in the year of disqualification.

Two changes urgently need to be made. The law must be simplified. And penalties short of total disqualification for 'technical noncompliance with rules such as the top-heavy, nondiscrimination or coverage rules should be instituted. A small business's entire retirement program should not be destroyed for technical noncompliance. There should be some measure of proportionality between the offense and the penalty.

INDEPENDENT CONTRACTORS

An area of continuing and escalating concern to small businesses and an area that leads to a great many disputes between taxpayers and the IRS is the legal definition of an employee versus an independent contractor. Many business persons, ranging from fishermen to loggers to floor coverers to computer consultants, do business as independent contractors rather than establishing an employer-employee relationship. The IRS seems to have targeted this issue as one in which they will conduct aggressive audits. Under present law, the issue revolves around a multi-pronged legal test that is not susceptible of certain resolution in most cases. Thus, taxpayers are often forced to litigate at great expense.

This is an area in which much injustice is being done. Yet a simple solution does not present itself. The Chamber has established an Independent Contractor Working Group to try to craft an approach to this problem that would provide certainty and provide maximum flexibility for businesses and give due considerations to the needs of the fisc.

Thank you.

PREPARED STATEMENT OF JOHN F. CONNOR

MY NAME IS JOHN F. CONNOR. I AM A GS12 REVENUE OFFICER IN THE PHILADELPHIA DISTRICT. I AM CURRENTLY ASSIGNED TO GROUP 11 IN THE DISTRICT OFFICE AT 600 ARCH ST. IN PHILADELPHIA.

I COME BEFORE YOU TODAY OUT OF CONCERN FOR WHAT HAS BECOME AN INTOLERABLE STATE OF AFFAIRS IN THE COLLECTION DIVISION IN THE PHILADELPHIA DISTRICT. I AM CONVINCED THAT THE "CRITICAL ELEMENTS" WHICH THE I.R.S NOW USES TO MEASURE THE PERFORMANCE OF REVENUE OFFICERS ARE ACTUALLY BEING USED TO THE ULTIMATE HARM OF BOTH THE I.R.S COLLECTION PERSONNEL AND THE AMERICAN PUBLIC.

THE REQUIREMENTS IMPOSED BY THE CRITICAL ELEMENTS ARE IMPOSSIBLE TO MEET. IT IS A 58-POINT CHECKLIST, IN OUTLINE FORM, AND MANY OF THE HEADINGS MERELY REFER TO SECTIONS OF THE INTERNAL REVENUE MANUAL.

THE I.R.S.'s COLLECTION QUALITY MEASUREMENT SYSTEM (CQMS) APPLIES THE CRITICAL ELEMENTS WITH DRACONIAN RIGOR WHEN REVIEWING CASES. THAT MEANS, FOR EXAMPLE, THAT A REVENUE OFFICER CAN COLLECT FULL PAYMENT, BUT IF HE NEGLECTS TO DOCUMENT THAT HE ACTUALLY ASKED FOR IT CQMS WILL MAKE A NEGATIVE FINDING. INITIALLY IT CAN MEAN NO MERIT PAY INCREASE, AND ULTIMATELY IT CAN MEAN YOU ARE FIRED.

THE VOLUME AND COMPLEXITY OF THE CRITICAL ELEMENTS RESULTS IN WHAT I HAVE NICKNAMED "THE BULLSEYE EFFECT." SINCE THE ELEMENTS ARE VIRTUALLY IMPOSSIBLE TO MEET, THE EMPLOYEE REALIZES THAT HE OR SHE IS CONTINUALLY AT RISK, VULNERABLE TO ADVERSE FINDINGS IN A WORK PERFORMANCE REVIEW. THUS, THEY FEEL AS IF A HUGE "BULLSEYE" HAS BEEN PLACED ON THEIR BACKS; IN TURN, THEY FEEL PRESSURED TO PUT THAT "BULLSEYE" ON THE TAXPAYER'S BACK.

THE CQMS USES THESE CRITICAL ELEMENTS TO GENERATE STATISTICS WHICH MEASURE THE PERFORMANCE WITHIN THE DISTRICT. THESE SAME STATISTICS FORM THE BASIS OF THE I.R.S's MERIT PAY SYSTEM. IN THIS WAY, THE "BULLSEYE EFFECT" ORIGINATES AT THE HIGHEST LEVEL OF MANAGEMENT, WHERE IT CAN BE FREELY USED AS DESIRED THROUGHOUT THE CHAIN OF COMMAND UNTIL EVERYONE WITHIN THE COLLECTION NETWORK LIVES AND WORKS "AT RISK."

WITH THE CRITICAL ELEMENTS, THE COLLECTION MISSION IS RADICALLY SKEWED TOWARDS MEETING A SET OF PERFORMANCE STANDARDS. THE BUSINESS OF FAIRNESS, INTEGRITY, PUBLIC CONFIDENCE AND COLLECTING THE PROPER TAX BECOMES A FUNCTION OF A SYSTEM OF MEASUREMENT, WHEN RIGHTLY IT SHOULD BE THE OTHER WAY AROUND.

THERE IS NO MORE DRASTIC EXAMPLE OF THE DELETERIOUS EFFECTS OF THIS INVERSION THAN WHEN COLLECTION PERSONNEL ACTUALLY MEET WITH THE PUBLIC. GIVEN THE RIGOR WITH WHICH THE CQMS APPLIES THE CRITICAL ELEMENTS TO COLLECTION PERSONNEL, THOSE PERSONNEL CAN HARDLY ESCAPE BRINGING THAT SAME RIGOR TO THEIR ENCOUNTERS WITH TAXPAYERS. THAT'S BECAUSE CQMS CHECKLISTS ARE ROUTINELY PUT IN ALL TAX CASES TO GUARANTEE TOTAL COMPLIANCE WITH THE STANDARDS. AND YOU MUST REMEMBER -- SOMEONE'S MERIT PAY HANGS IN THE BALANCE.

THIS STRICT APPLICATION OF THE CRITICAL ELEMENTS AS THE ONLY WARRANTED MEANS OF SOLVING THE DELINQUENCY IN THE FIELD IS THE COUP DE GRAS IN A METHOD OF ADMINISTERING THE TAX LAW THAT INEVITABLY REDUCES ITSELF TO "LOCATING THE BULLSEYE."

WHAT USED TO BE AN OBSESSION WITH PRODUCTION WITHIN THE I.R.S. HAS BEEN REPLACED WITH AN OBSESSION WITH THE MEASUREMENT OF THAT PRODUCTION. THE RESULT IS SUPPOSED TO BE QUALITY, BUT AS YOU CAN SEE, THAT IS NOT THE CASE. MISSION HAS YIELDED TO METHOD, AND TAX ADMINISTRATION HAS YIELDED TO A CONTINUOUS SCRAMBLING FOR SELF-PRESERVATION. AND THE AMERICAN PEOPLE ARE THE LOSERS.

IN THE BOOK OF MATTHEW, THERE IS A STORY ABOUT A SPIRIT WHO HAS BEEN EXORISED AND HAS NOWHERE TO GO AND WANDERS, LOOKING FOR A HOME. HE RETURNS TO THE MAN WHOM HE ORIGINALLY POSESSED AND FINDS THE MAN CLEAN AND IN ORDER. THE SPIRIT THEN GETS SEVEN OTHER SPIRITS MORE EVIL THAN HE AND REPOSESSES THE MAN. THE SCRIPTURE CONCLUDED: "THE LAST STATE OF THAT MAN BECOMES WORSE THAN THE FIRST." TO A GREAT DEGREE, I THINK THAT IS WHAT HAS HAPPENED WITH THE I.R.S. IN ITS ATTEMPT TO CLEANSE ITSELF WITH AN EMPHASIS ON QUALITY, THEY ARE REVERTING TO AN EMPHASIS UPON STATISTICAL MEASUREMENTS AND PRODUCTION THAT IS WORSE THAN EVER BEFORE. THANK YOU FOR GIVING ME THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY.

PREPARED STATEMENT OF KAY M. COUNCIL

Mr. Chairman:

My name is Kay M. Council. I live in High Point, North Carolina. I am 48 years old, and I am a widow. I came home one evening in June 1988 and found the lights on, the house empty and a note from my husband:

> My dearest Kay —
>
> I have taken my life in order to provide capital for you. The IRS and its liens which have been taken against our property illegally by a runaway agency of our government have dried up all sources of credit for us. So I have made the only decision I can. It's purely a business decision. I hope you can understand that.
>
> I love you completely,
>
> Alex
>
> You will find my body on the lot on the north side of the house.

I don't remember many details from the rest of that night, but I will never get over what I lost that night — what the IRS did to us, what it drove my husband to do. He was 49 years old.

Four months later, finally able to pay our attorneys with money from Alex's life insurance, I went to court and beat the IRS. The court entered a judgment barring the IRS from collecting $300,000 in tax, penalties and interest it claimed that we owed. The court agreed that we owed nothing. The court ordered the IRS to cancel the tax lien that it had placed on our property, an illegal tax lien that had ruined our personal finances and our business.

Alex had a development company that was building a residential development in Pfafftown, N.C., the town where we lived. When the IRS placed the illegal lien on our property in May 1987, he was preparing to start another development. But no one wants to lend money to someone who has a tax lien. So the development fell through.

After the IRS acted illegally, our business was practically ruined. Our income from the business then barely covered our living expenses. We owed $112,000 on a construction loan for our home but could not refinance it because of the lien. We faced losing our home when the loan came due.

People talk to me about being angry at Alex for what he did. I try to be but when I sit down and think this out, he was right. There was no other way, except to just give up. If we had given up, we would have lost our home and our business, and we still could not have paid the IRS all that they claimed we owed. We could not give up — Alex could not give up — because we knew the IRS was wrong.

The IRS was wrong from the day they sent us the first notice. They were wrong. We were innocent from day one, and the court decisions and court orders say that. But look at what was done to my life. People sit back and say, "Well, this is a terrible story but it's surely an exception to the rule, and this sort of thing could never happen to me."

They are wrong. This kind of thing should never have happened to me and Alex. We weren't criminals. We weren't trying to do anything wrong, and we didn't do anything wrong. We just got caught up in the middle of a big IRS screw-up, and we couldn't get out of it.

It began in 1979. We were living in a suburb of San Francisco, where Alex was a vice president of a mortgage insurance company that he had helped start. Alex received a bonus. We invested the money in real estate and in oil and gas leases. On the advice of our accountant and our financial consultant, we also bought rights to two paintings offered by an art company in New York. The idea was that we could sell lithographs of the paintings and use other marketing tools available to eventually recoup our investment and make a profit. It was to have been a little business for me to run. But it didn't work out, and we claimed a write-off of about $70,000 in our 1979 tax return.

The IRS audited the return and told us that our accountant was wrong, that it did not consider the art investment a legitimate tax write-off. We expected the IRS to deny the write-off and send a notice of deficiency that would give us 90 days to petition the Tax Court. We planned to fight the claim in Tax Court. If we had lost, we could have scraped together the money and paid the tax. But the IRS did not do that.

If we had received the notice, my husband would be alive. We could have fought the notice and paid the tax if we lost. There were other people who got such notices through the same process; they were fortunate enough that they got theirs and they were able to pay them. They lost money, but they didn't go through the hell that the IRS put us through.

We didn't hear from the IRS during the next couple of years. We lost money on our investments in California, and in 1983 we moved back home to North Carolina, where Alex started the housing development. Then the IRS sent us a bill for $183,021 — tax of $115,895 plus penalties and interest. This was in September 1983, four months after the statute of limitations ran out. We were dumbstruck.

In an affidavit filed in federal court in November 1987, Alex described his attempts to find out what had happened.

"Prior to this bill, neither my accountant . . . nor I had received an audit report, a 30-day letter, a 90-day letter or any other notice of assessment. Since that time I have been attempting to determine why I never received these documents or any other notice, which foreclosed any administrative or Tax Court review of the proposed deficiency . . . which efforts were wholly unsuccessful until very recently. The only communication I had received from the IRS since 1983 indicated receipt of my letters requesting the above information, bills threatening collection procedures, and notices of intent to levy on my assets."

The IRS maintained that it had sent us a certified letter containing the required notice of deficiency three weeks before the statute of limitations ran out. We never received such notice and our accountant never received such notice, and we tried repeatedly to get the IRS to show us a copy of the notice and proof that it was mailed. It would not. We tried to get the IRS to give us the number of the certified letter so that we could go to the postal records ourselves and try to trace it. The IRS did not respond.

We tried again and again to get the IRS to check into it and resolve it. We had been doing that from the day we first received the tax bill. Their attitude was simply to ignore us. We would get in touch with the problems resolution officer, and he would ask for all of this information, which we would supply him with. They were supposed to get back to us, and then months would go by and we would hear nothing. We would try to get in contact with them. Every time, for some reason, the person we had been working with was no longer in that office, or somebody else was our new resolution officer. And then we would go through the same process again, sending all of this information in. We never got any satisfaction. We were totally ignored.

I think the IRS ignored us because they knew that they didn't have a case, that they were wrong. If they thought they had a case, then why didn't they come in and take our assets, as they did to so many other people? Why did they ignore us for so many years? I feel that they said to themselves that we'll just sit back and see what happens.

If they had gone to the postal records to find out what happened to the certified letter, the whole thing could have been avoided and my husband would be alive. But they would not. Alex is dead because of the IRS's arrogance and incompetence.

After two years, we finally received a copy of the notice of deficiency in 1985. In 1987, after a four year wait, the IRS sent us a copy of its only proof of mailing — a certified mail list showing that the notice was mailed at a post office in San Francisco on April 15, 1983. But the IRS's mail list had our address wrong. We lived at 71 Corte Del Bayo in Larkspur, California. The address on the IRS list was 74 Corte Del Bayo. To us, this seemed to explain why we never received the notice; the IRS had sent it to the wrong address.

The IRS argued in U.S. Middle District Court that the mistake on the mail list didn't mean that the letter was sent to the wrong address. But it had no proof; all it had was the mail list with the incorrect address. We argued in court that the IRS could have found out what happened to the notice by going to the post office and looking at its certified mail records. It did not do this, despite our repeated queries starting in October 1983. By the time the IRS bothered to check, the post office had destroyed the records.

The IRS also argued that we knew that an assessment was likely and implied that we should have taken action ourselves to get the IRS to act before the statute of limitations ran out. That was another totally ridiculous statement, and the judge agreed in his judgment against the IRS in December 1988. Federal law, he said, "does not place upon plaintiffs the burden of hounding the IRS for delivery of a possible notice of deficiency."

Some of my friends and relatives think that I should be happy, that I have accomplished what Alex wanted me to accomplish: I beat the IRS. They ask, "Why don't you get on with your life and be a happy woman?" It's not that simple. Right now I'm fighting for my financial life. I still have that $132,000 mortgage plus interest to pay off at the Millbrook development. My legal fees were close to $70,000, and I still owe my attorneys about $14,000 plus interest even though the court ordered in August 1989 the IRS to pay them $27,900. The IRS dropped the appeal of this order in December, and the check finally came last month.

Alex took his life so I would have money to keep fighting the IRS. He believed that our lawyers were not pushing our case because we didn't have any more money to pay them. I don't think I would have ever gotten into a courtroom if my attorneys hadn't known that I had $250,000 from Alex's life insurance.

What if Alex and I had not had the money to hire the attorneys to start with? If you're poor, what do you do? There's something wrong when the IRS can accuse you of something and assume you are guilty and destroy your life. Aren't you supposed to be innocent until proven guilty? They said, "You're guilty." And I had to fight to prove I was innocent, and, sure, I proved it. Why don't I feel good about it? I always felt that if I beat the IRS I would feel good, that I could say, "All right, Alex, your death wasn't for nothing; we proved we were innocent." Big deal. I keep winning all these victories; I lost the war, a long time ago.

After Alex's death, I was left running a business that I really did not have the knowledge to run. But I had no choice. I had to sell my home at Pfafftown for much less that it was worth in order to

pay off the construction loan that was due on it. I could not get the house financed because of the tax lien.

When I bought my house in High Point, I had to use money from the insurance settlement and pay cash for it. I could not get financing because of the tax lien. When I had to buy a car, I had to pay cash for that. And it continues, even though the court made the IRS remove the lien. A few weeks ago I went to buy a vacuum cleaner. The salesman said that I could have 90 days to pay cash for it, but he went ahead and applied for financing on it. They turned me down because of the tax lien that is still on my credit report. I thought that, since the IRS puts these tax liens on your credit report, when the lien is released they would have it removed. But it doesn't work that way; it's my responsibility. The credit bureau said that there is no way I can get the lien off my credit report, that it stays on there for seven years. All I can do is attach a statement to the report explaining what happened. So I'm still feeling the effects of the IRS action against us, even though I beat the IRS in court. And I'm going to feel the effects of it, because it's on my credit record and every time I apply for credit I have to sit down and explain to people. I will have to do that for the next seven years.

IRS Commissioner Fred Goldberg was on "Good Morning America" the other day talking about an article in "Money" magazine which said that American citizens pay billions of dollars that they don't owe, simply because the IRS sends out inaccurate notices. Goldberg said "Sure, people pay money they may not owe. We make mistakes." He agreed that taxpayers should fight the IRS. "Grab us by the neck and tell us," he said.

How do you grab them by the neck? How do you get to anybody in the IRS? We tried for five years, and all we got was nothing. And he says, "Grab us by the neck." Who is the IRS? The only people I have ever seen that were IRS were people that I saw in the courtroom. Other than that, I have never been able to have any contact in any way with the IRS.

The IRS should not be in the position to say to the taxpayer, "You're guilty of this." And the taxpayer should not be put in the position of spending every dime that they have, to prove that they're innocent. Look what I went through to prove my innocence. You talk about winning battles; look at the battles I won. But I lost the war because my husband is dead.

I should feel some satisfaction that I beat the IRS, that I got a $27,900 check from them to pay a portion of my attorney's fees. I don't feel good about any of it. I feel cheated.

I was cheated of my rights as a citizen. I was cheated of growing old with the man I love. I lost my best friend. I now have to start a new life and a new career at the age where I should be able to enjoy my children and grandchildren. I worked for 20 years as a professional, but I have not been in the job market since 1982. Our children have no father, only the emotional devastation left in their life to try and deal with. Our grandchildren have no "pop," that's the name they use for the grandfather they loved dearly. Our granddaughter thinks her pop got sick and died. How do you explain the IRS and suicide to a five-year-old? It seems to me that somebody has to be held accountable for the destruction to me and my family.

Yet I am told I cannot sue the IRS for damages, economical or personal. How do you put a price tag on a life? I can't sue them for the illegal tax lien they put on us. I had no rights. The IRS has them all.

People ask me why I am doing this, because it just devastates me every time I have to go through this, every time I go back to the night when Alex died. All I can say is I thought that beating the IRS would give some meaning to Alex's death, but it hasn't. There has to be more.

There has to be something done to control the IRS, to keep it from destroying people's lives. And I really believe that if enough little people like me keep coming forward, there are going to have to be some changes.

PREPARED STATEMENT OF FRED T. GOLDBERG, JR.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO REVIEW THE IRS' IMPLEMENTATION OF THE TAXPAYER BILL OF RIGHTS THAT YOU WERE SO INSTRUMENTAL IN ENACTING NEARLY 16 MONTHS AGO. IN MY TESTIMONY, I WILL DISCUSS WHAT WE HAVE DONE TO IMPLEMENT BOTH THE LETTER AND SPIRIT OF THE LAW AND HIGHLIGHT OUR PLANS TO MAKE IRS EVEN MORE RESPONSIVE TO TAXPAYERS IN THE YEARS AHEAD.

WITH ME TODAY ARE MIKE MURPHY, THE SENIOR DEPUTY COMMISSIONER; CHARLY BRENNAN, THE DEPUTY COMMISSIONER OF OPERATIONS; HAP SHASHY, CHIEF COUNSEL; AND DAMON HOLMES, THE TAXPAYER OMBUDSMAN. ALL OF US AND THE OTHER IRS OFFICIALS HERE WILL BE AVAILABLE TO ANSWER ANY QUESTIONS YOU OR THE OTHER MEMBERS MAY HAVE AT THE CONCLUSION OF MY OPENING STATEMENT.

I. IRS COMMITTED TO THE TAXPAYER BILL OF RIGHTS

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, AS SPONSORS OF THE TAXPAYER BILL OF RIGHTS, YOU MORE THAN ANYONE RECOGNIZE THAT THE WHOLE IS GREATER THAN THE SUM OF ITS PARTS. ALTHOUGH EACH OF THE 21 PROVISIONS THAT MAKE UP THE TAXPAYER BILL OF RIGHTS IS IMPORTANT IN ITS OWN RIGHT, THE MOST IMPORTANT ASPECT OF THIS LEGISLATION IS THAT IT PUTS NEW EMPHASIS ON TAXPAYER RIGHTS. REGARDLESS OF WHETHER A TAXPAYER IS DUE A REFUND, OWES THE GOVERNMENT TAXES, IS BEING AUDITED, OR IS ASKING US A QUESTION, THAT INDIVIDUAL DESERVES TO BE TREATED FAIRLY AND WITH RESPECT. THAT IS THE FUNDAMENTAL RIGHT TAXPAYERS SHOULD EXPECT AND THEY SHOULD RECEIVE NOTHING LESS.

SAFEGUARDING TAXPAYER RIGHTS IS THE RESPONSIBILITY OF 120,000 IRS EMPLOYEES THROUGHOUT THE UNITED STATES AND ABROAD, IN OUR 10 SERVICE CENTERS, 63 DISTRICT OFFICES AND OVER 1,000 POSTS-OF-DUTY. WHILE WE AT THE NATIONAL OFFICE IN WASHINGTON, D.C. HAVE DEVELOPED PLANS AND TRAINING PROGRAMS AND ESTABLISHED PROCEDURES AND INTERNAL CONTROLS TO IMPLEMENT THE TAXPAYER BILL

OF RIGHTS AND HAVE CLOSELY MONITORED OUR PROGRESS, IT IS OUR EMPLOYEES ON THE FRONT-LINES WHO MUST MAKE IT WORK. IN THEIR DAY-TO-DAY DEALINGS WITH THE TAXPAYING PUBLIC, THEY ARE THE ONES WHO MAKE THE TAXPAYER BILL OF RIGHTS A REALITY.

WHEN THE SYSTEM BREAKS DOWN -- AND IT OCCASIONALLY WILL WHEN DEALING WITH ABOUT 200 MILLION RETURNS IN AN ENVIRONMENT OF COMPLEX AND CHANGING RULES AND OUTDATED COMPUTER SYSTEMS -- IT IS THE SPECIAL RESPONSIBILITY OF THE TAXPAYER OMBUDSMAN AND THE EMPLOYEES OF OUR PROBLEM RESOLUTION PROGRAM TO INTERVENE ON THE TAXPAYER'S BEHALF. LOCATED IN OUR NATIONAL OFFICE AND IN EACH REGIONAL OFFICE, SERVICE CENTER AND DISTRICT OFFICE, THEY HAVE THE AUTHORITY AND EXPERTISE TO CUT THROUGH THE RED TAPE AND TO PROVIDE AN IMPARTIAL RESOLUTION OF A TAXPAYER'S PROBLEM.

PROTECTING TAXPAYER RIGHTS IS THE FOUNDATION OF TAX ADMINISTRATION. BUT IT IS ONLY ONE PART OF THE EQUATION. WE ALSO NEED LAWS THAT TAXPAYERS UNDERSTAND AND A TAX SYSTEM THAT IS RESPONSIVE TO THEIR NEEDS. WITH THE CONTINUED SUPPORT OF CONGRESS AND THE ADMINISTRATION, I AM CONFIDENT THAT WE CAN WORK TOGETHER TO BUILD SUCH A SYSTEM.

HERE ON THE TABLE ARE EXAMPLES OF THE TRAINING MATERIAL, INTERNAL GUIDELINES AND CHANGES TO OPERATING PROCEDURES ISSUED TO IMPLEMENT THE TAXPAYER BILL OF RIGHTS. THESE DOCUMENTS ARE AVAILABLE TO THE SUBCOMMITTEE TO INCLUDE IN THE RECORD AS APPROPRIATE.

II. <u>OVERVIEW OF THE TAXPAYER BILL OF RIGHTS</u>

OVERALL, I BELIEVE THAT THE IRS HAS DONE AN EXCELLENT JOB IN IMPLEMENTING BOTH THE LETTER AND THE SPIRIT OF THE TAXPAYER BILL OF RIGHTS. WE HAVE DEVELOPED AND CLOSELY MONITORED A DETAILED IMPLEMENTATION PLAN CONSISTING OF 145 MAJOR ACTIONS. WE HAVE EMPHASIZED TO ALL OUR EMPLOYEES THE SIGNIFICANCE OF THIS LEGISLATION AND TO DATE IMPLEMENTED 134 OF THESE ACTIONS. THE IRS RECEIVED NO ADDITIONAL FUNDS TO COVER THE EXPENSES RELATED TO THE IMPLEMENTATION OF THE TAXPAYER BILL OF RIGHTS. TO FUND THESE EXPENSES, RESOURCES HAD TO BE REDIRECTED FROM LESS CRITICAL PROGRAMS.

THE REMAINING ACTIONS THAT ARE STILL UNDERWAY INVOLVE FINALIZING CERTAIN REGULATIONS AND PROCEDURES WHICH WE EXPECT TO COMPLETE IN THE UPCOMING MONTHS. IN MY TESTIMONY TODAY, I WOULD LIKE TO DESCRIBE THE STEPS THAT WE HAVE TAKEN TO DATE TO:

- INFORM TAXPAYERS OF THEIR RIGHTS AND RESPONSIBILITIES,
- STRENGTHEN OUR PROBLEM RESOLUTION PROGRAM,
- ENSURE FAIR AND IMPARTIAL ENFORCEMENT ACTIVITY,
- IMPROVE THE QUALITY OF OUR CUSTOMER SERVICE PROGRAMS,
- IMPROVE THE ISSUANCE OF TAXPAYER GUIDANCE, AND
- MONITOR OUR PROGRESS TO ENSURE THAT THE TAXPAYER BILL OF RIGHTS IS WORKING AS INTENDED.

I WOULD ALSO LIKE TO ADDRESS WHAT REMAINS TO BE DONE TO MAKE IRS MORE RESPONSIVE TO TAXPAYERS IN THE FUTURE THROUGH SIMPLIFYING OUR TAX LAWS AND REGULATIONS, MODERNIZING OUR OUTDATED COMPUTER SYSTEMS AND INVESTING IN A LONG-TERM COMMITMENT IN THE RESOURCES NEEDED TO IMPROVE OUR SYSTEM OF TAX ADMINISTRATION FOR THE BENEFIT OF THE TAXPAYING PUBLIC.

III. THE TAXPAYER BILL OF RIGHTS IS WORKING

MY TESTIMONY TODAY COVERS KEY SECTIONS OF THE LEGISLATION AND HOW WE IMPLEMENTED EACH OF THEM, AND SHARE WITH YOU SOME OF THE OPERATIONAL DATA WE HAVE THAT LEAD US TO BELIEVE THE TAXPAYER BILL OF RIGHTS IS WORKING AS INTENDED.

A. INFORMING TAXPAYERS OF THEIR RIGHTS

FOR OUR SYSTEM OF TAX ADMINISTRATION TO WORK PROPERLY, TAXPAYERS MUST BE FULLY AWARE OF THEIR RIGHTS AND RESPONSIBILITIES. THE TAXPAYER BILL OF RIGHTS THAT YOU AUTHORED ADDRESSED THIS NEED. SPECIFICALLY, THE ACT REQUIRED THAT WE PREPARE A STATEMENT, IN SIMPLE, NONTECHNICAL TERMS, OF TAXPAYERS' RIGHTS AND IRS' ENFORCEMENT PROCEDURES AND THAT WE PROVIDE THIS STATEMENT TO ALL TAXPAYERS WE CONTACT WITH RESPECT TO THE DETERMINATION OR COLLECTION OF THEIR TAXES.

PUBLICATION 1, YOUR RIGHTS AS A TAXPAYER, IS A FOUR-PAGE PAMPHLET THAT OUTLINES TAXPAYERS' RIGHTS AND OUR PROCEDURES IN HELPFUL, NONTECHNICAL TERMS. (SEE APPENDIX I). WE SEND THIS PUBLICATION WITH OUR INITIAL EXAMINATION APPOINTMENT LETTER, OUR INITIAL COLLECTION NOTICE, AND OUR SERVICE CENTER CORRESPONDENCE, SUCH AS REQUESTS FOR INFORMATION ABOUT APPARENT MISMATCHES OF FORM 1099 INFORMATION.

WHEN OUR EXAMINATION AND COLLECTION EMPLOYEES FIRST MEET WITH A TAXPAYER, THEY ARE REQUIRED TO INQUIRE WHETHER THE TAXPAYER RECEIVED PUBLICATION 1 AND WHETHER THEY HAVE ANY QUESTIONS ABOUT THEIR RIGHTS AND IRS PROCEDURES. THE PUBLICATION IS AVAILABLE IN ALL OF OUR OFFICES AND WILL BE SENT TO A TAXPAYER ON REQUEST. WE HAVE DISTRIBUTED MORE THAN 25 MILLION COPIES OF PUBLICATION 1, INCLUDING A SPANISH LANGUAGE VERSION. WE HAVE ALSO SOLICITED COMMENTS FROM CONGRESS AND THE TAX COMMUNITY TO MAKE SURE THAT THE PUBLICATION IS UNDERSTANDABLE AND REFLECTS THE SPIRIT OF THE LAW.

WE APPRECIATED YOUR SUGGESTIONS AND INCORPORATED YOUR CHANGES INTO THE FINAL VERSION OF THE PUBLICATION.

THE FIRST PARAGRAPH OF PUBLICATION 1, HIGHLIGHTS WHAT TAXPAYERS EXPECT AND IRS' COMMITMENT TO ENSURE THESE RIGHTS.

> "AS A TAXPAYER, YOU HAVE THE RIGHT TO BE TREATED FAIRLY, PROFESSIONALLY, PROMPTLY, AND COURTEOUSLY BY INTERNAL REVENUE SERVICE EMPLOYEES. OUR GOAL AT THE IRS IS TO PROTECT YOUR RIGHTS SO THAT YOU WILL HAVE THE HIGHEST CONFIDENCE IN THE INTEGRITY, EFFICIENCY, AND FAIRNESS OF OUR TAX SYSTEM. TO ENSURE THAT YOU ALWAYS RECEIVE SUCH TREATMENT, YOU SHOULD KNOW ABOUT THE MANY RIGHTS YOU HAVE AT EACH STEP OF THE TAX PROCESS."

I THINK THAT STATEMENT SUMS UP OUR COMMITMENT TO THE TAXPAYER AND TO THE TAXPAYER BILL OF RIGHTS.

WE HAVE DONE FAR MORE THAN DISTRIBUTE INFORMATION AS THE LAW REQUIRES. WE HAVE EDUCATED TAXPAYERS ABOUT THEIR RIGHTS AND

RESPONSIBILITIES THROUGH NATIONAL AND LOCAL TELEVISION AND RADIO BROADCASTS, IN THE SPEECHES OUR EXECUTIVES AND EMPLOYEES HAVE MADE, IN OUR TAXPAYER EDUCATION EFFORTS, AND IN NEWS RELEASES FOR NEWSPAPERS THROUGHOUT THE COUNTRY.

FOR EXAMPLE, LAST YEAR IRS REPRESENTATIVES EXPLAINED AND ANSWERED QUESTIONS ABOUT TAXPAYER'S RIGHTS ON PBS, THE LEARNING CHANNEL, C-SPAN, BIZNET, FNN, AND THE TELEMUNDO NETWORK IN ADDITION TO MANY LOCAL TELEVISION AND RADIO TALK AND CALL-IN SHOWS. WE HAVE PREPARED AND DISTRIBUTED NEWS RELEASES THAT WERE MADE AVAILABLE TO NEWSPAPERS ALL OVER THE COUNTRY. OUR EXECUTIVES AND EMPLOYEES HAVE SPOKEN ABOUT THE TAXPAYER BILL OF RIGHTS AND OUR IMPLEMENTATION OF IT AT MANY PRACTITIONER AND TAXPAYER GATHERINGS. OUR TRAINING COURSES FOR OUR VOLUNTEER INCOME TAX ASSISTORS (VITA VOLUNTEERS), OUR UNDERSTANDING TAXES COURSE FOR HIGH SCHOOL STUDENTS, AND OUR TAX WORKSHOPS FOR SMALL BUSINESSES HAVE BEEN REVISED TO INCLUDE A DISCUSSION OF THE RIGHTS OF TAXPAYERS. WE HAVE REVISED PUBLICATIONS THAT ARE READ BY MANY TAXPAYERS, SUCH AS OUR "GUIDE TO FREE TAX SERVICES" (SEE APPENDIX II) TO HIGHLIGHT THE TAXPAYER BILL OF RIGHTS. WE ARE, I THINK, JUSTIFIABLY PROUD OF THESE EFFORTS, MADE IN THE SPIRIT OF THE LAW, TO MAKE TAXPAYER'S AWARE OF THEIR RIGHTS.

B. <u>STRENGTHENED OUR PROBLEM RESOLUTION PROGRAM</u>

I PREVIOUSLY DISCUSSED THE IMPORTANT ROLE THAT OUR PROBLEM RESOLUTION PROGRAM PLAYS IN SAFEGUARDING THE RIGHTS OF TAXPAYERS. THE ACT STRENGTHENS THIS AUTHORITY BY GRANTING TO THE TAXPAYER OMBUDSMAN, THE STATUTORY AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS WHEN A TAXPAYER IS SUFFERING OR IS ABOUT TO SUFFER A SIGNIFICANT HARDSHIP AS A RESULT OF THE WAY THE TAX LAWS ARE ADMINISTERED.

IN JANUARY 1989, IRS IMPLEMENTED AN IRS-WIDE TAXPAYER ASSISTANCE ORDER PROGRAM. THE LAW REQUIRES THAT THE IRS ISSUE TAXPAYER ASSISTANCE ORDERS IF TAXPAYERS SUFFERED A SIGNIFICANT HARDSHIP AS A RESULT OF THE MANNER IN WHICH IRS ADMINISTERED THE

INTERNAL REVENUE LAW. WE EXPANDED THE DEFINITION TO CONSIDER ALL CASES OF TRUE HARDSHIP IN ORDER TO TAKE ANOTHER LOOK AT THESE CASES. FOR EXAMPLE, IF A TAXPAYER IS FACED WITH THE POTENTIAL LOSS OF A HOUSE OR BUSINESS, WE LOOK AT THAT CASE. WE MAY NOT ULTIMATELY STOP COLLECTION ACTION IN THESE CASES IF THE TAXPAYER OWES THE TAX AND HAS NOT PAID, BUT THE PROBLEM RESOLUTION OFFICER DOES LOOK AT IT TO MAKE SURE THE IRS HAS PROPERLY ASSESSED AND IS PROPERLY COLLECTING THE TAX. IN MANY CASES WE ARE ABLE TO EXPEDITE AGREEMENTS WITH TAXPAYERS TO PAY THEIR TAX LIABILITIES.

THE PROBLEM RESOLUTION OFFICE ALSO EXPEDITES CLAIMS FOR REFUNDS WHEN TAXPAYERS HAVE OVERPAID THEIR TAXES AND NEED THE REFUND QUICKLY TO AVOID A TRUE FINANCIAL HARDSHIP.

THE TAXPAYER OMBUDSMAN HAS DELEGATED AUTHORITY TO ISSUE TAXPAYER ASSISTANCE ORDERS TO OUR PROBLEM RESOLUTION OFFICERS. EACH DISTRICT, COMPLIANCE CENTER, SERVICE CENTER, AND REGIONAL OFFICE IN THE COUNTRY HAS A PROBLEM RESOLUTION OFFICER WHO HAS BEEN SPECIALLY TRAINED TO RESOLVE TAXPAYER ASSISTANCE ORDER CASES. IN FACT, ALL OF OUR EMPLOYEES WHO COME INTO CONTACT WITH THE PUBLIC HAVE BEEN GIVEN TAXPAYER ASSISTANCE ORDER TRAINING. A SUBSTANTIAL NUMBER (25 PERCENT) OF THE APPLICATIONS FOR TAXPAYER ASSISTANCE ORDERS ARE INITIATED BY THESE EMPLOYEES.

WE DEVELOPED FORM 911, APPLICATION FOR ASSISTANCE ORDER TO RELIEVE HARDSHIP, THAT TAXPAYERS MAY USE TO REQUEST A TAXPAYER ASSISTANCE ORDER. (SEE APPENDIX III). TAXPAYERS DO NOT HAVE TO COMPLETE FORM 911 TO RECEIVE TAXPAYER ASSISTANCE ORDER HELP. THE AVAILABILITY OF THIS SPECIAL ASSISTANCE WAS HIGHLY PUBLICIZED IN NEWSPAPERS THROUGHOUT THE COUNTRY, IN SPEECHES TO TAXPAYERS AND PRACTITIONER GROUPS, AND IN OUR OWN PUBLICATIONS.

SINCE ENACTMENT, WE HAVE RECEIVED NEARLY 18,000 REQUESTS FOR TAXPAYER ASSISTANCE ORDERS. OF THESE, ABOUT 8,000 DID NOT MEET THE SIGNIFICANT HARDSHIP CRITERIA. EXAMPLES OF TAXPAYERS WHO DID NOT MEET THE CRITERIA INCLUDE THE FOLLOWING:

- WHERE ENFORCEMENT ACTION WAS NOT PENDING,
- WHERE THE TAXPAYER HAD THE FUNDS TO PAY THE BALANCE DUE BUT THOUGHT THE ORDER COULD BE USED TO DELAY PAYMENT, AND
- WHERE THE TAXPAYER'S PROBLEM WAS NOT WITH IRS.

MANY TAXPAYERS WHO DID NOT MEET THE HARDSHIP CRITERIA STILL NEED HELP IN DEALING WITH THEIR TAX PROBLEMS. WE WERE ABLE TO HELP 5,500 OF THESE TAXPAYERS THROUGH OUR REGULAR PROBLEM RESOLUTION PROGRAM OR THROUGH REFERRAL TO OTHER IRS FUNCTIONS.

OF THE NEARLY 10,000 TAXPAYERS WHO WERE SUFFERING A SIGNIFICANT HARDSHIP, MORE THAN 7,000 WERE ASSISTED IMMEDIATELY THROUGH THE EFFORTS OF PROBLEM RESOLUTION OFFICERS AND THE MANAGEMENT OF THE IRS FUNCTION INVOLVED. THE KINDS OF ACTIONS THAT WERE TAKEN TO RELIEVE HARDSHIPS INCLUDED ISSUING EXPEDITED REFUNDS AND STOPPING OR ALTERING ENFORCEMENT ACTION. ABOUT 2,500 TAXPAYERS WERE NOT ULTIMATELY GIVEN RELIEF. MOST WHO FELL INTO THIS GROUP WERE TAXPAYERS WHO REFUSED TO GIVE US INFORMATION THAT WOULD SUBSTANTIATE THEIR CLAIMED HARDSHIP; THOSE WHO COULD NOT BE HELPED BECAUSE OF THE LAW; AND THOSE WHO HAD A GENERAL PATTERN OF NON-COMPLIANCE.

THE OMBUDSMAN IS CONTINUOUSLY MONITORING THE EFFECTIVENESS AND UNIFORMITY OF THE TAXPAYER ASSISTANCE ORDER PROGRAM. WE KNOW THAT OUR PROGRAM IS NOT PERFECT 100 PERCENT OF THE TIME, BUT I WANT TO ASSURE YOU THAT IS OUR GOAL. THE OMBUDSMAN, DAMON HOLMES, WILL BE HAPPY TO ANSWER QUESTIONS YOU MAY HAVE AT THE END OF MY STATEMENT.

C. ENSURED FAIR AND IMPARTIAL ENFORCEMENT

ONE OF THE PRIMARY RESPONSIBILITIES OF IRS IS TO ENSURE COMPLIANCE WITH THE FEDERAL TAX LAWS. OUR COLLECTION AND EXAMINATION FUNCTIONS PLAY A CRUCIAL ROLE IN ACCOMPLISHING THIS MISSION. ALTHOUGH OWING TAX TO THE FEDERAL GOVERNMENT OR UNDERGOING AN IRS EXAMINATION MAY NOT BE A SOUGHT AFTER

EXPERIENCE, I BELIEVE THAT OUR IMPLEMENTATION IS HELPING PROVIDE FAIRER AND MORE IMPARTIAL TREATMENT OF TAXPAYERS DURING THIS PROCESS.

1. LEVY AND LIEN PROVISIONS

THE ACT MANDATES CERTAIN CHANGES TO THE COLLECTION PROCESS. ONLY MINOR OPERATIONAL CHANGES WERE NEEDED TO IMPLEMENT SOME OF THE NEW PROVISIONS. FOR EXAMPLE, THE CODIFICATION OF INSTALLMENT AGREEMENTS REQUIRED ONLY MINIMAL PROCEDURAL CHANGES SINCE WE ALREADY HAD IN PLACE A PROCEDURE TO ALLOW TAXPAYERS TO RESOLVE THEIR TAX LIABILITIES THROUGH INSTALLMENT PAYMENTS. HOWEVER, OTHER PROVISIONS OF THE STATUTE REQUIRED MORE EXTENSIVE REVISIONS AND HAVE POSED GREATER PROBLEMS TO IMPLEMENT. FOR EXAMPLE, BANKS ARE NOW REQUIRED TO HOLD LEVIED FUNDS FOR A PERIOD OF 21 DAYS PRIOR TO SENDING THE MONEY TO THE IRS. WE HAVE MADE EXTENSIVE EFFORTS TO INFORM BANKS OF THIS REQUIREMENT, BUT A RECENT INTERNAL AUDIT REVIEW INDICATED THAT BANKS WERE NOT ALWAYS COMPLYING WITH THIS REQUIREMENT.

WE HAVE HELD MEETINGS WITH THE MAJOR BANKING, CREDIT UNION AND SAVINGS AND LOAN TRADE ASSOCIATIONS, ISSUED NATIONAL PRESS RELEASES, PUBLICIZED THE CHANGES LOCALLY AND SENT SPECIALLY PREPARED INFORMATION TO MORE THAN 32,000 BANKS AND CREDIT UNIONS INFORMING THEM OF THESE NEW RULES AND INCLUDED INFORMATION ON THE NEW LEVY RULES IN MORE THAN 300,000 LEVIES. THIS RULE IS IMPORTANT, PARTICULARLY IN SIGNIFICANT HARDSHIP SITUATIONS BECAUSE ONCE FUNDS HAVE BEEN CREDITED TO A TAXPAYER'S ACCOUNT, STATUTORILY THEY CANNOT BE RETURNED. THE TAXPAYER BILL OF RIGHTS CONTAINS NO SANCTION FOR A FAILURE ON THE PART OF A QUALIFYING INSTITUTION TO HOLD FUNDS FOR THE REQUIRED PERIOD.

THE ACT FURTHER REQUIRES THAT THE IRS INSTITUTE AN ADMINISTRATIVE APPEAL PROCESS FOR THE FILING OF AN ERRONEOUS TAX LIEN. THE LEGISLATION EXPLICITLY PERMITS THE APPEAL OF AN ERRONEOUS TAX LIEN WHEN THE UNDERLYING LIABILITY IS IMPROPERLY ASSESSED OR THE TAX LIABILITY HAD ALREADY BEEN SATISFIED. WE

EXPANDED THE SCOPE BY REGULATION TO PERMIT APPEAL OF A LIEN WHERE THE LIABILITY WAS NO LONGER COLLECTIBLE BECAUSE THE STATUTORY PERIOD FOR COLLECTION HAD EXPIRED AT THE TIME A LIEN WAS FILED. TAXPAYERS ARE NOTIFIED OF THEIR RIGHT TO APPEAL AN ERRONEOUS LIEN BY PUBLICATION 1 AND BY THE COLLECTION PROCESS NOTICE. (SEE APPENDICES IV AND V). IN ADDITION, THE COPY OF THE LIEN WHICH THE IRS SENDS TO THE TAXPAYER CONTAINS INSTRUCTIONS COVERING THE ADMINISTRATIVE APPEAL PROCESS.

WE TRACKED THE EFFECT OF THIS PROVISION IN TEN MEDIUM SIZED DISTRICTS FOR A SIX MONTH PERIOD STARTING IN AUGUST, 1989. NINETY FIVE APPEALS WERE RECEIVED ON A TOTAL OF 79,000 RECORDED LIENS. WE FOUND THAT 12 APPEALS (ABOUT 12.5 PERCENT OF THE APPEALS RECEIVED) QUALIFIED FOR RELEASE OF THE LIEN. IN THE SAMPLE ONLY ONE-TENTH OF ONE PERCENT OF NOTICES FILED WERE APPEALED AND LESS THAN ONE-FOURTH OF ONE PERCENT OF THE LIENS APPEALED WERE ERRONEOUS.

2. USE OF ENFORCEMENT STATISTICS

THE STATUTE PROHIBITS THE USE OF ENFORCEMENT STATISTICS TO EVALUATE EMPLOYEES WHO DIRECTLY COLLECT TAXES OR THE IMMEDIATE MANAGERS OF EMPLOYEES WHO COLLECT TAXES. THE STATUTE REQUIRES DISTRICT DIRECTORS TO CERTIFY TO THE COMMISSIONER, ON A QUARTERLY BASIS, THAT STATISTICS ARE NOT BEING USED IN AN INAPPROPRIATE MANNER. WHILE NOT REQUIRED TO DO SO BY STATUTE, WE EXTENDED THE CERTIFICATION REQUIREMENT TO INCLUDE SERVICE CENTER DIRECTORS, THUS INSURING THAT ALL COLLECTION EMPLOYEES ARE TREATED IN LIKE MANNER. THE CERTIFICATION PROCEDURES REQUIRE THE REGIONAL COMMISSIONERS TO ENSURE THAT CORRECTIVE ACTION HAS BEEN ADDRESSED AND PRIOR TO FORWARDING THE CERTIFICATIONS. THE COMMISSIONER REVIEWS THE CERTIFICATIONS TO ENSURE THAT CORRECTIVE ACTION HAS BEEN TAKEN IN ALL CASES. SINCE THE CERTIFICATION PROCESS BEGAN, 25 INSTANCES OF IMPROPER USE OF ENFORCEMENT STATISTICS HAVE BEEN REPORTED THROUGH THIS PROCESS. HOWEVER, MOST OF THE INSTANCES OF IMPROPER USE INVOLVED INAPPROPRIATE WORDING ON EMPLOYEE

EVALUATION DOCUMENTS. IN THE INSTANCES INVOLVING INAPPROPRIATE WORDING, THE OFFENDING WORDING OR DOCUMENTS WAS REMOVED OR WITHDRAWN.

BECAUSE SUCCESSFUL IMPLEMENTATION DEPENDS ON OUR EMPLOYEES ATTITUDES IN DEALING WITH TAXPAYERS, COLLECTION LAUNCHED A NATIONAL TRAINING EFFORT TO IMPROVE SERVICE TO TAXPAYERS. THAT COURSE, QUALITY CUSTOMER SERVICE AND ANOTHER, MANAGING STATISTICS FOR MANAGERS (P-1-20), DEALT WITH COMMUNICATING THE SPIRIT OF THE TAXPAYER BILL OF RIGHTS. (SEE APPENDIX VI). THE QUALITY CUSTOMER SERVICE COURSE EMPHASIZES THE IMPORTANCE OF A POSITIVE APPROACH TOWARD TAXPAYERS AND FOCUSES ON TAXPAYER RIGHTS AND EMPLOYEE INTERPERSONAL SKILLS. MANAGING STATISTICS FOR MANAGERS, DELIVERED TO THE FIELD IN JULY, 1989, DEALS WITH THE APPROPRIATE AND INAPPROPRIATE USE OF ENFORCEMENT STATISTICS AND WAS MANDATORY FOR ALL FIELD MANAGERS WITHOUT REGARD TO FUNCTION. IN ADDITION WE ISSUED OVERVIEW TRAINING WHICH COVERED THE HIGHLIGHTS OF THE TAXPAYER BILL OF RIGHTS AND FOLLOWED THAT UP WITH A MORE DETAILED COURSE COVERING THE SPECIFICS OF THE ACT.

3. SEIZURE ACTIVITY

SEIZURES OF PROPERTY HAVE DECLINED FOR THE LAST FOUR FISCAL YEARS. USING FISCAL YEAR 1986 AS A BASE LINE, THE NUMBER OF SEIZURES CONDUCTED IN FISCAL YEAR 1989 DECLINED APPROXIMATELY 58 PERCENT, FROM MORE THAN 22,000 TO AROUND 13,000. BASED ON THE NUMBER OF SEIZURES MADE DURING THE FIRST FOUR MONTHS IN FISCAL YEAR 1990, WE ANTICIPATE THAT THIS TREND WILL CONTINUE AND WE ESTIMATE THAT NO MORE THAN 11,000 SEIZURES WILL BE MADE DURING THIS FISCAL YEAR.

CONGRESS EXPRESSED ITS CONCERN OVER THE USE OF SEIZURE AUTHORITY IN SEVERAL PROVISIONS OF THE TAXPAYER BILL OF RIGHTS. ONE OF THE MOST SENSITIVE PROVISIONS DEALT WITH THE SEIZURE OF A PRINCIPAL RESIDENCE. THE LAW NOW REQUIRES THE APPROPRIATE DISTRICT DIRECTOR OR ASSISTANT DISTRICT DIRECTOR TO PRE-APPROVE, IN WRITING, THE SEIZURE OF A PRINCIPAL RESIDENCE. TAXPAYERS ARE

ALLOWED AN EXPEDITED REVIEW OF SEIZURES INVOLVING PERSONAL PROPERTY THAT IS NECESSARY TO THE MAINTENANCE OF A BUSINESS ACTIVITY. PROPERTY WITH A FAIR MARKET VALUE LESS THAN THE COST OF SALE HAS BEEN EXCLUDED FROM ENFORCEMENT ACTIVITY. IN GENERAL, FEWER SEIZURES ARE BEING MADE, BUT SEIZED PROPERTY IS MORE LIKELY TO BE SOLD THAN IN THE PAST, INDICATING THAT OTHER METHODS OF ACCOUNT RESOLUTION ARE BEING PURSUED FIRST. THERE HAS BEEN A 47 PERCENT DECLINE IN THE TOTAL NUMBER OF RESIDENTIAL SEIZURES OVER THIS PERIOD, FROM APPROXIMATELY 6,300 IN FY 1986 TO ABOUT 3,000 IN FY 1989.

ALONG WITH THE REDUCTION IN SEIZURE ACTIVITY THERE HAS BEEN A REDUCTION IN THE DOLLARS COLLECTED FROM SEIZURES. IN FY 1986, WE COLLECTED APPROXIMATELY $235 MILLION FROM SEIZURE CASES. IN FY 1989, WE COLLECTED ONLY $170 MILLION FROM SEIZURE CASES WITH A REDUCTION FROM THE AVERAGE PERCENTAGE COLLECTED ON THE AMOUNT DUE GOING FROM 19 PERCENT IN FY 1986 TO 13 PERCENT IN FY 1989.

4. INTERVIEWS

PRIOR TO THE ACT, TAXPAYERS WERE ALLOWED ADMINISTRATIVELY TO RECORD INTERVIEWS. HOWEVER, AFTER ENACTMENT WE PROVIDED NEW PROCEDURES AND ADDITIONAL TRAINING TO OUR EMPLOYEES TO ENSURE THESE RIGHTS WERE PROTECTED. PUBLICATION 1 TELLS TAXPAYERS THAT THEY HAVE THE RIGHT TO RECORD INTERVIEWS AND ABOUT THE SIMPLE PROCEDURE NOTIFYING US 10 DAYS BEFORE THE MEETING AND THE NEED TO BRING THEIR OWN RECORDING EQUIPMENT. CONVERSELY, IF THE IRS DECIDES TO MAKE A RECORDING WE MUST PROVIDE THE TAXPAYER NOTIFICATION OF OUR INTENTION TO DO SO. IF WE MAKE A RECORDING, WE WILL PROVIDE, UPON PAYMENT OF COSTS, A DUPLICATE TAPE OR A TRANSCRIPT OF THE INTERVIEW TO THE TAXPAYER.

ONE OF THE MORE SENSITIVE AREAS IN THE EXAMINATION PROCESS CONCERNED THE MANDATORY ATTENDANCE OF TAXPAYERS AT EXAMINATIONS EVEN WHEN THEY WERE REPRESENTED BY QUALIFIED AND AUTHORIZED REPRESENTATIVES. THE TAXPAYER BILL OF RIGHTS ALLOWS AUTHORIZED REPRESENTATIVES TO ATTEND EXAMINATIONS IN PLACE OF THE TAXPAYER, OTHER THAN EXAMINATIONS RELATED TO A SUMMONS PROCEEDING. OUR

FIELD EMPLOYEES HAVE BEEN NOTIFIED TO HONOR ALL SUCH REQUESTS FROM PROPERLY AUTHORIZED INDIVIDUALS. WE HAVE NOTED NO PARTICULAR PROBLEMS WITH THIS PROCEDURE DURING THE IMPLEMENTATION PHASE OF THE TAXPAYER BILL OF RIGHTS PROCEDURES. TAXPAYERS ARE NOW GRANTED THE RIGHT TO SUSPEND NON-SUMMONS RELATED EXAMINATIONS IF THEY WISH TO SEEK ADVICE FROM A QUALIFIED THIRD PARTY. THIS CODIFIES PREVIOUS ADMINISTRATIVE PRACTICE AND DOES NOT APPEAR TO HAVE BEEN A CONCERN OF EITHER TAXPAYERS OR PRACTITIONERS DURING THE IMPLEMENTATION PHASE OF THE TAXPAYER BILL OF RIGHTS' PROVISIONS.

THE OTHER MAJOR AREA OF CONCERN IN THE EXAMINATION PROCESS DEALS WITH THE TIME AND PLACE OF THE EXAMINATION, AN ISSUE OF INTEREST NOT ONLY TO TAXPAYERS BUT TO THE PRACTITIONER COMMUNITY AS WELL. TEMPORARY REGULATIONS GOVERNING THE CRITERIA FOR TIME AND PLACE OF EXAMINATION WERE TO HAVE BEEN ISSUED LAST NOVEMBER.

D. IMPROVING THE QUALITY OF CUSTOMER SERVICE

THE IRS PROMOTES COMPLIANCE WITH THE TAX LAWS NOT ONLY THROUGH OUR ENFORCEMENT EFFORTS BUT THROUGH OUR TAXPAYER ASSISTANCE EFFORTS AS WELL. THE TAXPAYER BILL OF RIGHTS MADE THREE IMPORTANT IMPROVEMENTS IN THE AREA OF CUSTOMER SERVICE. I WOULD LIKE TO DISCUSS WITH YOU THESE CHANGES AND TELL YOU OF THE IRS'S ACTIONS TO IMPROVE THE QUALITY OF ITS CUSTOMER SERVICE.

1. ASSISTANT COMMISSIONER (TAXPAYER SERVICES)

FIRST, THE LAW MANDATED AN ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES WHO IS RESPONSIBLE FOR TELEPHONE AND WALK-IN ASSISTANCE, THE DESIGN AND PRODUCTION OF TAX AND INFORMATIONAL FORMS AND TAXPAYER EDUCATIONAL SERVICES. THE ASSISTANT COMMISSIONER FOR TAXPAYER SERVICES, JOINTLY WITH THE TAXPAYER OMBUDSMAN, MUST ANNUALLY REPORT TO CONGRESS CONCERNING THE QUALITY OF SERVICES PROVIDED BY THE IRS.

THE EFFECT OF THE CREATION OF THIS NEW OFFICE UPON IRS OPERATIONS HAS BEEN SIGNIFICANT. THERE IS INCREASED MANAGEMENT FOCUS ON BOTH TAXPAYER SERVICE AND FORMS AND PUBLICATIONS

ACTIVITIES. A NOTEWORTHY EXAMPLE IS THE IMPROVEMENT IN TAXPAYER ACCURACY RATE FOR THIS FILING SEASON. ACCORDING TO THE INTEGRATED TEST CALL SURVEY SYSTEM, THE ACCURACY RATE MEASURED SO FAR THIS FILING SEASON IS 76.2 PERCENT; LAST YEAR IT WAS 61.4 PERCENT. THE IMPROVEMENT IS DUE TO EFFORTS THAT WERE UNDERWAY WELL BEFORE THESE CHANGES IN MANAGEMENT RESPONSIBILITY. HOWEVER, THE TAXPAYER BILL OF RIGHTS HAS FOCUSED EXECUTIVE ATTENTION ON THE IMPORTANCE OF A QUALITY CUSTOMER SERVICE PROGRAM TO THE IRS MISSION. THIS INCREASED ATTENTION HAS FACILITATED STAFF ACCEPTANCE OF INNOVATIVE CHANGES AND THEREFORE HAS UNDOUBTEDLY SPEEDED UP THE PROCESS OF IMPROVEMENT.

2. ERRONEOUS ADVICE

SECOND, TAXPAYERS MUST BE ABLE TO RELY ON THE ADVICE THEY RECEIVE FROM IRS. UNDER THE TAXPAYER BILL OF RIGHTS THE IRS IS REQUIRED TO ABATE ANY PORTION OF ANY PENALTY OR ADDITION TO TAX THAT CAN BE ATTRIBUTABLE TO ERRONEOUS WRITTEN ADVICE FURNISHED BY THE IRS THAT WAS SPECIFICALLY REQUESTED IN WRITING AND WAS REASONABLY RELIED UPON IN DETERMINING THE TAX LIABILITY OF THE TAXPAYER.

OUR POLICY CALLS FOR WAIVING CERTAIN PENALTIES THAT HAVE RESULTED FROM ERRONEOUS ADVICE GIVEN BY AN IRS EMPLOYEE ON THE TOLL-FREE TELEPHONE SYSTEM. SUCH PENALTIES ARE GENERALLY WAIVED IF TAXPAYERS SHOW "REASONABLE CAUSE" FOR TAKING POSITIONS ON THEIR RETURNS GIVING RISE TO A PENALTY. THE INFORMATION THAT ASSISTS IN DETERMINING WHETHER THERE IS REASONABLE CAUSE INCLUDES WHETHER THE TAXPAYER ATTEMPTED TO FIND ANSWERS TO QUESTIONS FROM IRS FORMS, INSTRUCTIONS OR PUBLICATIONS, THE QUESTION ASKED AND SPECIFIC FACTS RELATED BY THE TAXPAYER TO THE IRS EMPLOYEE, AND THE ANSWER THE TAXPAYER RECEIVED FROM THE IRS.

3. IRS NOTICES

THIRD, THE TAXPAYER BILL OF RIGHTS REQUIRES THAT CERTAIN NOTICES CONTAIN THE FOLLOWING INFORMATION:

- A DESCRIPTION OF THE BASIS FOR AND AMOUNTS OF TAX DUE;
- INTEREST; AND
- ADDITIONS TO TAX AND PENALTIES.

SINCE MOST OF THESE NOTICES ARE GENERATED BY COMPUTER, NEW NOTICE LANGUAGE AND COMPUTATIONS HAD TO BE DEVELOPED AND PROGRAMMED. IT WAS NECESSARY TO MAKE REVISIONS TO 31 OF OUR NOTICES IN ORDER TO MEET THE REQUIREMENTS OF THE TAXPAYER BILL OF RIGHTS. THESE CHANGES HAVE BEEN MADE AS OF JANUARY 1990.

ALSO, PROGRAMMING WAS COMPLETED DURING THE 1989 FISCAL YEAR WHICH HAS ALLOWED US TO SEND OUT NOTICES EXPLAINING INTEREST AND PENALTY CALCULATIONS TO TAXPAYERS WHO REQUEST MORE INFORMATION. WE CALL THEM PINEX NOTICES. SO FAR WE HAVE ISSUED APPROXIMATELY 19,500 OF THESE NOTICES IN RESPONSE TO TAXPAYER INQUIRIES.

FURTHERMORE, THE IRS HAS REDESIGNED THE DISCREPANCY NOTICE IN RESPONSE TO CONCERNS RAISED BY PRACTITIONERS THAT LAWS ON DISCLOSURE OF TAX INFORMATION MAKE IT DIFFICULT TO EFFECTIVELY REPRESENT CLIENTS WITH RESPECT TO ISSUES ARISING FROM THE DOCUMENT MATCHING PROGRAM. THE NOTICE NOW INCLUDES A LIMITED POWER OF ATTORNEY AUTHORIZATION. THIS CHANGE SHOULD RESULT IN MORE EXPEDITIOUS RESOLUTION OF DISCREPANCY CASES.

4. IRS CORRESPONDENCE

THE IRS REALIZES THAT OUR WRITTEN COMMUNICATIONS MUST BE IMPROVED TO ENSURE THAT TAXPAYERS UNDERSTAND THE INFORMATION THAT WE ARE PROVIDING AND WHAT ACTION IS REQUIRED ON THEIR PART. TO ACCOMPLISH THIS, THE IRS HAS INITIATED EFFORTS TO IMPROVE THE QUALITY OF OUR CORRESPONDENCE. IN LATE FY 1989, THE IRS ESTABLISHED A GROUP, UNDER THE TAXPAYER OMBUDSMAN, TO REVIEW NOTICES FOR CLARITY AND QUALITY. THIS GROUP WILL REWRITE NOTICES ACCORDING TO STANDARDS DEVELOPED BY AN OUTSIDE VENDOR AND ADOPTED BY THE IRS. THE SERVICE HAS REVIEWED ITS PROCEDURES FOR COMPOSING LETTERS AND HAS BEGUN USING NEW TECHNOLOGY TO HELP EMPLOYEES PREPARE THE CORRECT LETTER FOR THE PARTICULAR SITUATION.

SEVERAL OF OUR SERVICE CENTERS ARE NOW USING A PROFESSIONAL LETTER SYSTEM (PLS), A PROTOTYPE PROGRAM, TO IMPROVE CORRESPONDENCE, THIS NEW CORRESPONDENCE PROGRAM IS A STAND-ALONE SYSTEM WHICH ALLOWS EXAMINERS TO TAILOR THEIR LETTERS TO EACH INQUIRY, THEREBY MAKING THEIR CORRESPONDENCE MORE RESPONSIVE TO THE TAXPAYER. THE LETTERS ARE PROOFREAD AND SIGNED BY THE EXAMINER THAT CREATED THE LETTER. THE SYSTEM RETAINS LETTERS IN A COMPUTER HARD DRIVE FOR 30 DAYS ALLOWING INSTANT RETYPE OR LATER RESEARCH WHICH PROVIDES OUR EMPLOYEES WITH BETTER ACCESS AND AVAILABILITY TO TAXPAYER CORRESPONDENCE RECORDS THAN EVER BEFORE.

WHILE THE PROFESSIONAL LETTER SYSTEM IS STILL IN THE FORMATIVE STAGE AND PROBLEMS STILL HAVE TO BE WORKED OUT BEFORE SUCH A SYSTEM COULD BE IMPLEMENTED SERVICE-WIDE, IT SHOWS GREAT PROMISE IN HELPING THE IRS PREPARE QUALITY CORRESPONDENCE THAT IS MORE RESPONSIVE TO TAXPAYERS AND THAT IS EASIER FOR THEM TO READ AND UNDERSTAND. A SAMPLE LETTER IS INCLUDED IN APPENDIX VII.

THE IRS IS ALSO TESTING AN EXPERT SYSTEM IN THE PHILADELPHIA SERVICE CENTER WHICH AT LONG RANGE WILL TIE INTO OUR COMPUTER SYSTEMS. THIS SYSTEM WILL GIVE US THE ADVANTAGES OF EVEN GREATER FLEXIBILITY TO OUR TAX EXAMINERS BY PROVIDING ON-LINE ACCESS TO OUR INTEGRATED DATA RETRIEVAL SYSTEM.

E. IMPROVING TAXPAYER GUIDANCE

ONE OF MY MAJOR GOALS IS TO SIMPLIFY REGULATIONS AND TO MAKE THEM UNDERSTANDABLE TO BOTH PRACTITIONERS AND THE TAXPAYING PUBLIC. THE TAXPAYER BILL OF RIGHTS ALSO SEEKS TO IMPROVE THE REGULATORY PROCESS. UNDER THE LAW, THE IRS IS REQUIRED TO SOLICIT COMMENTS FROM THE SMALL BUSINESS ADMINISTRATION (SBA) AFTER THE PUBLICATION OF PROPOSED REGULATIONS OR BEFORE THE PROMULGATION OF FINAL REGULATIONS. THE SBA IS ALLOWED FOUR WEEKS AFTER RECEIPT OF A REGULATION TO PROVIDE COMMENTS ON THE IMPACT OF THE REGULATION ON SMALL BUSINESSES.

IT FURTHER REQUIRES THAT ALL TEMPORARY REGULATIONS BE ISSUED SIMULTANEOUSLY IN PROPOSED FORM. TEMPORARY REGULATIONS CAN

REMAIN IN EFFECT FOR NO MORE THAN THREE YEARS AFTER THEY ARE ISSUED.

OUR CURRENT PROCEDURE IS TO SEND ALL PROPOSED REGULATIONS TO SBA AT THE SAME TIME THAT THEY ARE PUBLISHED IN THE FEDERAL REGISTER. THIS ENSURES THAT THE SBA HAS ADEQUATE TIME TO COMMENT BEFORE THE ISSUANCE OF THE FINAL REGULATION. TO DATE, APPROXIMATELY 100 DOCUMENTS HAVE BEEN SENT TO THE SBA FOR COMMENT. WE RECENTLY MET WITH OFFICIALS AT THE SBA TO REVIEW THIS PROCESS TO ENSURE ITS FUTURE SUCCESS.

F. MONITORING OUR PROGRESS

THE INTERNAL AUDIT DIVISION OF THE IRS' INSPECTION SERVICE PERFORMS INDEPENDENT REVIEWS OF ALL IRS OPERATIONS. YOU AND YOUR STAFF, MR. CHAIRMAN, HAVE RECEIVED COPIES OF SELECTED INTERNAL AUDIT REPORTS IN RECENT YEARS.

INTERNAL AUDIT CONDUCTED AN ON-LINE REVIEW OF IRS' IMPLEMENTATION OF THE TAXPAYER BILL OF RIGHTS. THE REVIEW WAS CONDUCTED DURING THE PLANNING AND IMPLEMENTATION PHASES SO THAT IMMEDIATE CORRECTIVE ACTIONS COULD BE TAKEN IF NEEDED.

THE FINDINGS BY INTERNAL AUDIT IDENTIFIED SEVEN ITEMS FOR WHICH CORRECTIVE OR ADDITIONAL ACTIONS APPEARED TO BE WARRANTED.

THE SEVEN MAJOR AREAS IDENTIFIED BY THE INTERNAL AUDIT REPORT WERE:

1. THE FAILURE OF FINANCIAL INSTITUTIONS TO HOLD LEVIED FUNDS FOR 21 DAYS AFTER THE RECEIPT OF THE LEVY;
2. PROBLEMS IN TRAINING SOME OF OUR FIELD EMPLOYEES;
3. THE NEED FOR MORE TIMELY FEEDBACK FOR OUR TEST CALL PROGRAM ON TAXPAYER ASSISTANCE ORDERS;
4. THE LACK OF CLARITY OF THE FINAL BALANCE DUE NOTICE SENT TO TAXPAYERS BEFORE LEVY;
5. MINOR PROBLEMS WITH MAILING NOTICES TO TAXPAYERS AND HAVING NEW FORMS AVAILABLE IN OUR LOCAL OFFICES;
6. NEEDED IMPROVEMENTS TO OUR INTERNAL PROCEDURES CONCERNING REGULATIONS SENT TO THE SMALL BUSINESS ADMINISTRATION AND;

7. THE NEED TO ESTABLISH A ROUTINE WAY OF ISSUING EXPEDITED REFUNDS IN SIGNIFICANT HARDSHIP CASES.

MOST OF THESE ISSUES WERE RESOLVED DURING IMPLEMENTATION BY THE ASSISTANT COMMISSIONER OR THE CHIEF COUNSEL AREAS INVOLVED. WE ARE CONTINUING TO MONITOR THE PROGRESS AND WILL TAKE ADDITIONAL CORRECTIVE ACTION AS NECESSARY.

IV. THERE IS MORE TO BE DONE

WE VIEW THE TASK OF GUARANTEEING TAXPAYERS' RIGHTS AS AN ONGOING PROCESS. IN ADDITION TO ALL THE IRS HAS DONE SO FAR, WE WILL CONTINUE TO REVISE PROCEDURES AS WE RECEIVE FEEDBACK FROM TAXPAYERS, PRACTITIONERS, AND THE CONGRESS. THE IRS WILL CONTINUE THE TRAINING AND MONITORING OF ITS EMPLOYEES TO ENSURE THAT WE EFFECTIVELY UNDERSTAND AND APPLY THE TAXPAYER BILL OF RIGHTS. ALSO, EFFORTS WILL CONTINUE TO EDUCATE ALL TAXPAYERS CONCERNING THEIR RIGHTS IN DEALING WITH THE IRS.

FURTHERMORE, WE ARE CURRENTLY EXPLORING CHANGES IN SEVERAL AREAS. WE ARE CONSIDERING ESTABLISHING AN ADMINISTRATIVE REVIEW OF SEIZURES, SIMILAR TO THE PROCEDURE CONGRESS HAS REQUIRED THE IRS TO USE WHEN A TAXPAYER APPEALS THE FILING OF AN ERRONEOUS TAX LIEN. WE ARE ALSO CONSIDERING A LEGISLATIVE PROPOSAL TO ENABLE THE IRS TO RETURN MONEY TO A TAXPAYER WHEN A BANK RESPONDS TO A LEVY BEFORE THE NEW 21 DAY HOLDING PERIOD EXPIRED AND WE WOULD HAVE OTHERWISE RELEASED THE LEVY BASED ON HARDSHIP. INTERNAL AUDIT WILL REVIEW ALL OUR TRAINING PROGRAMS DURING THE NEXT 12 - 18 MONTHS TO ENSURE THAT ALL THE PROVISIONS OF THE TAXPAYER BILL OF RIGHTS HAVE BEEN INCORPORATED INTO OUR BASIC EMPLOYEE TRAINING PROGRAMS. FINALLY, AN ACTION PLAN HAS BEEN DEVELOPED TO GET NEEDED REGULATORY GUIDANCE TO THE PUBLIC AS QUICKLY AS POSSIBLE.

A. MAKING IRS MORE RESPONSIVE TO TAXPAYERS

MR. CHAIRMAN, WHILE THE TAX SYSTEM TODAY IS ALIVE AND WELL, THE CONSTANT TAX LAW CHANGES WE'VE SEEN THROUGHOUT THE 1980'S,

THE COMPLEXITY OF TAX LAWS AND REGULATIONS, AND THE FREQUENT, LENGTHY DELAYS IN RESOLVING TAXPAYERS' PROBLEMS POSE A REAL THREAT TO THE VOLUNTARY COMPLIANCE SYSTEM. I BELIEVE THAT THE AMERICAN PEOPLE DO NOT MIND PAYING TAXES AS MUCH AS THEY OBJECT TO THE PAIN OF THE PROCESS. I BELIEVE IT REQUIRES THE CONCURRENT EFFORT OF THE IRS, TREASURY, AND THE CONGRESS TO ENACT AND ENFORCE RULES IN A WAY THAT ENCOURAGES TAXPAYERS WHO WANT TO COMPLY WITH OUR TAX LAWS TO DO SO IN THE EASIEST WAY POSSIBLE.

THE IRS CAN UPHOLD ITS PART OF THIS EFFORT BY BECOMING MORE RESPONSIVE TO TAXPAYERS. IN FACT, ONE OF MY MAJOR GOALS AS COMMISSIONER IS TO SEE THAT RESPONSIVENESS, QUALITY, AND SERVICE REMAIN THE FOUNDATIONS OF IRS OPERATIONS.

LET ME BRIEFLY REVIEW FOR YOU THREE AREAS IN WHICH WE ARE STRIVING TO BE MORE RESPONSIVE: TAX SIMPLIFICATION; TAX SYSTEM MODERNIZATION; AND QUALITY SERVICE.

B. TAX SIMPLIFICATION

DURING THE NINE MONTHS THAT I'VE SERVED AS COMMISSIONER, I'VE MADE FREQUENT SPEECHES AROUND THE COUNTRY ON THE NEED TO SIMPLIFY LAWS, REGULATIONS, AND ADMINISTRATIVE PROCEDURES. WHILE IT IS IMPORTANT TO RECOGNIZE THE CONTRIBUTION OF TAX LEGISLATION IN THE 1980'S -- PARTICULARLY THE TAX REFORM ACT OF 1986, WHICH SIMPLIFIED THE SYSTEM FOR TENS OF MILLIONS OF AMERICANS -- THE FRENZY AND CUMULATIVE IMPACT OF REPEATED TAX LAW CHANGES ALONG WITH INTERPRETATIONS OF THOSE CHANGES HAVE IMPOSED A STAGGERING BURDEN OF COMPLEXITY, UNCERTAINTY, AND ADMINISTRATIVE COSTS ON INDIVIDUAL TAXPAYERS AND BUSINESSES, AS WELL AS ON THE IRS.

IF TAXPAYERS CANNOT UNDERSTAND OUR LAWS AND REGULATIONS, OR IF COMPLIANCE WITH THOSE REQUIREMENTS IS PROHIBITIVELY EXPENSIVE, THEY WILL TAKE SHORTCUTS AND NOT FULLY COMPLY. EVERY ONE PERCENT DROP IN COMPLIANCE COSTS THE TREASURY MORE THAN $5 BILLION IN LOST REVENUE. IT FOLLOWS THAT IF IRS EMPLOYEES CANNOT UNDERSTAND AND EXPLAIN THOSE LAWS AND REGULATIONS, WE WILL HAVE A HARD TIME ADMINISTERING AND ENFORCING THEM.

THE CHALLENGE OF TAX ADMINISTRATION IN THE 1990'S IS TO EASE THE BURDEN ON THE AMERICAN TAXPAYER. THIS EXTENDS FAR BEYOND LEGISLATION, EVEN BEYOND THE SCOPE OF THE TAXPAYER BILL OF RIGHTS, AND GOES TO THE CORE OF OUR MISSION. OUR GOALS ARE TO MAKE IT EASIER FOR TAXPAYERS TO COMPLY AND TO IMPROVE THE ACCURACY AND SPEED WITH WHICH WE RESPOND TO THEM. I AM VERY MUCH AWARE THAT THE QUALITY OF SERVICE WE PROVIDE IN THESE AREAS IS THE FIRST STEP TO IMPROVING COMPLIANCE.

C. TAX SYSTEM MODERNIZATION

AS YOU ARE AWARE, MR. CHAIRMAN, TAX SYSTEM MODERNIZATION IS ONE OF THE IRS'S MAJOR INITIATIVES, AND THE PRESIDENT HAS SELECTED THE MODERNIZATION OF TAX ADMINISTRATION AS A PRESIDENTIAL MANAGEMENT OBJECTIVE FOR HIS ADMINISTRATION. TECHNOLOGY IS RAPIDLY CHANGING, AND WE MUST BE PREPARED TO DEAL WITH CONTINUED GROWTH IN INFORMATION AND THE LIMITS ON OUR CURRENT CAPACITY THAT WE WILL FACE IN THE NEAR FUTURE.

WE DO NOT HAVE TO WAIT TO REALIZE GAINS FROM OUR EFFORTS BECAUSE MODERNIZATION IS ALREADY SHOWING BENEFITS AND WILL PRODUCE EVEN MORE BENEFITS DURING THE NEXT 18 MONTHS. FOR EXAMPLE:

- CERTAIN TAXPAYERS IN ALL 50 STATES CAN NOW TAKE ADVANTAGE OF FILING THEIR RETURNS ELECTRONICALLY. COMPARED TO LAST YEAR, THERE HAS BEEN AN INCREASE OF OVER 270 PERCENT SO FAR IN THE NUMBER OF TAXPAYERS FILING ELECTRONICALLY, AND ARE RECEIVING THEIR REFUND IN ONLY 2 TO 3 WEEKS INSTEAD OF AN AVERAGE 6 TO 8 WEEKS. WELL OVER 3.6 MILLION TAXPAYERS HAVE FILED ELECTRONICALLY THIS YEAR.

- FASTER REFUNDS ARE CERTAINLY AN IMPORTANT PART OF THE STORY. BUT MANY OF US BELIEVE THAT QUALITY IMPROVEMENT IS AN EQUALLY IMPORTANT ASPECT OF ELECTRONIC FILING. THE ERROR RATE ASSOCIATED WITH PAPER RETURNS (E.G., MATH ERRORS, AS WELL AS OUR OWN TRANSCRIPTION ERRORS)

IS RUNNING AT APPROXIMATELY 14.6 PERCENT THIS YEAR. WHILE THIS REPRESENTS A SIGNIFICANT IMPROVEMENT OVER PRIOR YEARS, THE ERROR RATE FOR ELECTRONICALLY FILED RETURNS IS LESS THAN 5 PERCENT! MOREOVER, ERRORS ASSOCIATED WITH ELECTRONICALLY FILED RETURNS ARE GENERALLY IDENTIFIED EARLY IN THE PROCESS AND ARE ALMOST ALWAYS RESOLVED WITHIN A MATTER OF DAYS AFTER FILING.

- WE WILL BE PILOT TESTING THE FIRST PHASE OF OUR AUTOMATED UNDERREPORTER SYSTEM LATER THIS YEAR. WHEN FULLY IMPLEMENTED, IT WILL GIVE OUR SERVICE CENTER EMPLOYEES IMMEDIATE ACCESS TO CASE INFORMATION, PERMIT RESOLUTION OF CASES BY TELEPHONE, AND GREATLY REDUCE THE NEED FOR PROTRACTED CORRESPONDENCE WITH TAXPAYERS.

- DURING 1990 AND 1991 WE WILL CONTINUE TO TEST VARIOUS ONE-STOP SERVICE CONCEPTS THAT ARE ALREADY REDUCING THE RUN-AROUND AND DIFFICULTIES THAT TAXPAYERS CONFRONT IN THEIR DEALINGS WITH US.

- OUR FRESNO SERVICE CENTER WILL TEST A PROJECT DESIGNED TO RECORD TAXPAYER CORRESPONDENCE IN A MORE TIMELY FASHION, THUS PREVENTING MAILING UNNECESSARY SUBSEQUENT NOTICES. FEWER NOTICES MEAN FEWER HASSLES FOR EVERYONE.

TAX SYSTEM MODERNIZATION WILL REDUCE ERRORS ON THE FRONT-END OF OUR PROCESSING SYSTEM SO THAT THE SYSTEM WILL CONTAIN MORE ACCURATE INFORMATION ON TAXPAYER ACCOUNTS. THE NET RESULT WILL BE FEWER ERRONEOUS NOTICES AND LEVIES, WHICH COST BOTH IRS AND TAXPAYERS TIME AND MONEY TO RESOLVE, AND WHICH WILL ALLOW US TO DEVOTE OUR RESOURCES TO TRULY DELINQUENT ACCOUNTS.

THE NEW SYSTEM WILL ALSO ALLOW FASTER ACCESS TO ACCOUNT INFORMATION CURRENTLY MAINTAINED ON TAXPAYERS. IT WILL ENABLE US

TO RESOLVE TAXPAYERS' INQUIRIES AND SETTLE THEIR ACCOUNTS FASTER, WHILE ALSO PROVIDING FIELD PERSONNEL WITH MORE TIMELY INFORMATION TO DETERMINE APPROPRIATE COLLECTION ACTION. AN EXAMPLE IS A PROJECT THAT WILL ALLOW OUR SERVICE CENTER EMPLOYEES TO HAVE ACCESS TO THE LATEST AND MOST ACCURATE ACCOUNT DATA, INFORMATION NOT NOW AVAILABLE ON AUTOMATED COLLECTION SYSTEM (ACS) TERMINALS.

TWO TAXPAYER SERVICE-RELATED PILOT PROGRAMS OF INTEREST ARE CURRENTLY UNDERWAY IN DALLAS AND BOSTON. THE DALLAS TEST USES SOFTWARE WHICH ALLOWS OUR ASSISTORS TO RAPIDLY RESEARCH A DATA BASE FOR REFERENCE MATERIALS WHICH REFLECT THE IRS POSITION ON TAX SUBJECTS. THE TEST ALSO INCLUDES SOFTWARE WHICH ALLOWS US TO AUTOMATICALLY RECORD TAXPAYER REQUESTS FOR FORMS AND PUBLICATIONS, AND TO AUTOMATICALLY SEND THESE REQUESTS TO OUR DISTRIBUTION CENTERS. THIS SYSTEM ALSO GENERATES MANAGEMENT INFORMATION ON THE AGE, TYPE, STATUS AND OTHER CHARACTERISTICS OF THE TAXPAYERS' REQUESTS FOR INFORMATION. IN BOSTON, AN "EXPERT" OR KNOWLEDGE-BASED SYSTEM IS BEING TESTED THAT PROMPTS OUR ASSISTORS WITH APPROPRIATE QUESTIONS, PROVIDES ADDITIONAL DETAILED EXPLANATIONS, PERFORMS CALCULATIONS, AND AN ANSWER TO THE QUESTION BASED ON SPECIFIC INFORMATION GIVEN BY THE TAXPAYER. TAXPAYERS WILL RECEIVE MORE ACCURATE AND COMPLETE INFORMATION, REDUCING THE NUMBER OF TIMES THEY HAVE TO CALL IRS FOR ADDITIONAL INFORMATION IN ORDER TO COMPLETE ACCURATE RETURNS.

I BELIEVE THAT THE FUTURE OF OUR TAX SYSTEM HINGES ON TAX SYSTEMS MODERNIZATION. WE MUST SUCCEED -- OR FACE VERY SERIOUS COMPUTER CAPACITY SHORTAGES BY THE MID-1990'S. WE MUST SUCCEED IF WE ARE TO PROVIDE THE LEVEL OF QUALITY IN TAX ADMINISTRATION THAT THE AMERICAN PUBLIC HAS EVERY RIGHT TO EXPECT AND DEMAND FROM OUR GOVERNMENT, THE SAME LEVEL OF QUALITY PROVIDED BY MOST PRIVATE SECTOR FINANCIAL FIRMS.

SYSTEMS MODERNIZATION IS A LONG-TERM EFFORT THAT WILL NOT BE COMPLETED FOR MANY YEARS AND REQUIRES A SIGNIFICANT CAPITAL INVESTMENT. AT THE SAME TIME, HOWEVER, THE PLAIN FACT IS THAT WE ARE ALREADY SEEING DEMONSTRABLE AND SIGNIFICANT BENEFITS. I HAVE ALREADY MENTIONED ELECTRONIC FILING AND OUR TAXPAYER SERVICE

PROJECTS IN BOSTON AND DALLAS. THERE ARE OTHERS; I WOULD LIKE TO MENTION ONE. PHASE I OF THE ON-LINE ENTITY PROJECT ("OLE"), A SYSTEM TO IMPROVE DATA WE ENTER INTO OUR PROCESSING SYSTEMS, HAS BEEN UP AND RUNNING IN OUR MEMPHIS SERVICE CENTER SINCE LAST FALL. IT IS NOW IN PLACE IN FIVE ADDITIONAL SERVICE CENTERS AND WILL BE IMPLEMENTED IN THE REMAINING FOUR SERVICE CENTERS BY THE SPRING. WE KNOWN THAT OLE HAS ALREADY CONTRIBUTED TO THE IMPROVED QUALITY OF OUR PROCESSING OPERATIONS THIS YEAR. WHEN SUBSEQUENT PHASES ARE FULLY IMPLEMENTED IN 1991 AND 1992, WE ARE CERTAIN THAT IT WILL GENERATE SIGNIFICANT QUALITY IMPROVEMENTS IN OUR SERVICE CENTER OPERATIONS.

D. INVESTMENTS IN TAX ADMINISTRATION

SINCE BECOMING COMMISSIONER, I HAVE BECOME INCREASINGLY AWARE OF THE ENORMITY OF THE CHALLENGES THE IRS FACES AS WE ENTER THE DECADE OF THE 1990'S. IN ADDITION TO ADDRESSING AN EVER GROWING WORKLOAD, WE MUST BE ABLE TO MEET THE HEIGHTENED EXPECTATIONS OF THE AMERICAN PUBLIC FOR QUALITY SERVICE - EXPECTATIONS THAT ENCOMPASS STRICT ADHERENCE TO THE TAXPAYER BILL OF RIGHTS AND ITS PRINCIPALS.

TODAY, I WANT TO ASSURE YOU OF THE ORGANIZATIONAL COMMITMENT OF IRS TO THOSE PRINCIPLES. I ALSO WANT TO RESPECTFULLY REMIND YOU AND YOUR COLLEAGUES, HOWEVER, THAT MAINTAINING THAT COMMITMENT REQUIRES THAT WE HAVE THE RESOURCES TO DO OUR JOB WELL AND TO RETAIN AND RECRUIT HIGH QUALITY PERSONNEL. WHILE IRS RESOURCES HAVE GROWN FROM A 1981 BUDGET OF $2.5 BILLION PROVIDING FOR ALMOST 85,000 STAFF YEARS TO $5.5 BILLION AND 115,000 STAFF YEARS IN 1990, WE HAVE SEEN A WIDENING DISPARITY BETWEEN THE TOTAL BUDGET AVAILABLE AND THE INCREASED COSTS OF A VARIETY OF FUNCTIONS. THESE INCREASES RESULTED FROM A COMBINATION OF BOTH INTERNAL AND EXTERNAL FACTORS, INCLUDING:

- NATURAL GROWTH IN THE NUMBER OF TAX RETURNS FILED, WHICH ULTIMATELY AFFECTS EVERY PROGRAM WE OPERATE;
- LEGISLATED PAY RAISES;

- INTERNAL ACTIONS TO IMPROVE THE QUALITY OF THE WORKFORCE;
- INCREASING COSTS OF MAINTAINING OUR OUTDATED TECHNOLOGY AT A TIME WHEN WE MUST INVEST IN A TAX MODERNIZATION SYSTEM FOR THE 1990'S AND BEYOND; AND
- COST INCREASES TO COVER INFLATION BY OTHER AGENCIES (GENERAL SERVICES ADMINISTRATION, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION).

THROUGHOUT 1988 AND 1989 WE TOOK THE DIFFICULT STEPS NECESSARY TO ADDRESS DEFICITS THAT AROSE FROM THESE AND OTHER FACTORS. FOR THE PAST 15 MONTHS, WE HAVE BEEN PAYING THE PIPER, ESPECIALLY IN THE CONTEXT OF THE FY 1990 UNBUDGETED PAY RAISE, SEQUESTRATION, AND THE FOLLOWING ITEMS:

- A PARTIAL OR COMPLETE HIRING FREEZE IN MOST OF OUR PROGRAM ACTIVITIES THAT WILL NOT BE LIFTED FOR MONTHS TO COME.
- A PARTIAL FREEZE ON PROMOTIONS THROUGHOUT THE SERVICE SINCE LAST NOVEMBER.
- PROGRAM CUTBACKS THAT WILL REMAIN IN PLACE FOR MONTHS TO COME: CUTBACKS THAT HAVE COST, AND WILL CONTINUE TO COST, MILLIONS OF DOLLARS IN REVENUE; CUTBACKS THAT HAVE REDUCED OUR LEVEL OF SERVICE TO TAXPAYERS THIS FILING SEASON.
- STRUCTURAL IMBALANCE IN OUR BUDGET; A CONTINUING FAILURE TO INVEST IN OUR FUTURE -- PROVIDING EMPLOYEES WITH MANDATORY TRAINING, BUT FAILING TO PROVIDE OUR EMPLOYEES WITH SUPPLEMENTAL OR SPECIAL TRAINING AND OTHER TOOLS THEY NEED TO DO THEIR JOBS PROPERLY.

THE IRS BUDGET FOR FY 1991 IS A GOOD BUDGET. IT PROVIDES THE FUNDING TO BEGIN TO ALLEVIATE THESE SHORTFALLS, AND PROPERLY FUNDS IRS OPERATIONS, WHILE SIMULTANEOUSLY MAKING INVESTMENTS

TOWARD A LONG-RANGE PLAN OF IMPROVING THE TAX SYSTEM. TO BE MOST EFFECTIVE, HOWEVER, IT MUST BE THE FIRST INSTALLMENT IN A SERIES OF MODEST BUT DEPENDABLE INCREASES DESIGNED TO ADEQUATELY FUND THE IRS'S MYRIAD RESPONSIBILITIES AND IMPROVEMENT INITIATIVES. I RESPECTFULLY URGE YOUR SUPPORT FOR CONTINUED INVESTMENTS IN TAX ADMINISTRATION.

V. CONCLUSION

I HOPE MY REMARKS HERE TODAY HAVE INDICATED THE DEPTH OF OUR COMMITMENT TO MAKING THE TAXPAYER BILL OF RIGHTS A REALITY. I BELIEVE IT IS A POSITIVE PIECE OF LEGISLATION FOR BOTH TAXPAYERS AND THE IRS, AND I COMMEND YOU FOR ENACTING IT.

I ALSO WANT TO THANK YOU FOR YOUR LEADERSHIP AND INITIATIVE ON SJ RES. 255, WHICH DESIGNATED THE 1990 FILING SEASON AS THE "20TH ANNIVERSARY OF IRS-SPONSORED VOLUNTEER PROGRAMS SEASON". WE ARE DEEPLY INDEBTED TO THOUSANDS OF VOLUNTEERS, MORE THAN 90,000 VOLUNTEERS THIS YEAR ALONE, WHO HAVE HELPED TAXPAYERS AND IRS SINCE 1970, AND VERY MUCH APPRECIATE YOUR RECOGNITION OF THEIR EFFORTS.

MY COLLEAGUES AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU OR THE MEMBERS MAY HAVE.

APPENDIX I

PUBLICATION NUMBER 1

YOUR RIGHTS AS A TAXPAYER

Your Rights AS A TAXPAYER

As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by Internal Revenue Service employees. Our goal at the IRS is to protect your rights so that you will have the highest confidence in the integrity, efficiency, and fairness of our tax system. To ensure that you always receive such treatment, you should know about the many rights you have at each step of the tax process.

Department of the Treasury
Internal Revenue Service
Publication No. 1 (6-88)

Free Information and Help in Preparing Returns

You have the right to information and help in complying with the tax laws. In addition to the basic instructions we provide with the tax forms, we make available a great deal of other information.

Taxpayer publications. We publish over 100 free taxpayer information publications on various subjects. One of these, Publication 910, *Guide to Free Tax Services*, is a catalog of the free services and publications we offer. You can order all publications and any tax forms or instructions you need by calling us toll-free at 1-800-424-FORM (3676).

Other assistance. We provide walk-in tax help at many IRS offices and recorded telephone information on many topics through our *Tele-Tax* system. The telephone numbers for *Tele-Tax*, and the topics covered, are in certain tax forms' instructions and publications. Many of our materials are available in Braille (at regional libraries for the handicapped) and in Spanish. We provide help for the hearing impaired via special telephone equipment.

We have informational videotapes that you can borrow. In addition, you may want to attend our education programs for specific groups of taxpayers, such as farmers and those with small businesses.

In cooperation with local volunteers, we offer free help in preparing tax returns for low-income and elderly taxpayers through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs. You can get information on these programs by calling the toll-free telephone number for your area.

Copies of tax returns. If you need a copy of your tax return for an earlier year, you can get one by filling out Form 4506, *Request for Copy of Tax Form*, and paying a small fee. However, you often only need certain information, such as the amount of your reported income, the number of your exemptions, and the tax shown on the return. You can get this information free if you write or visit an IRS office or call the toll-free number for your area.

If you have trouble clearing up any tax matter with the IRS through normal channels, you can get special help from our Problem Resolution Office, as explained later.

Privacy and Confidentiality

You have the right to have your personal and financial information kept confidential. People who prepare your return or represent you *must* keep your information confidential.

You also have the right to know why we are asking you for information, exactly how we will use any information you give, and what might happen if you do not give the information.

Information sharing. Under the law, we can share your tax information with State tax agencies and, under strict legal guidelines, the Department of Justice and other federal agencies. We can also share it with certain foreign governments under tax treaty provisions.

Courtesy and Consideration

You are always entitled to courteous and considerate treatment from IRS employees.

Representation and Recordings

Throughout your dealings with us, you can represent yourself, or, generally with proper written authorization, have someone represent you in your absence. During an interview, you can have someone accompany you.

If you want to consult an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, we will stop and reschedule the interview. We cannot suspend the interview if you are there because of an administrative summons.

You can generally make an audio recording of an interview with an IRS Collection or Examination officer. You must notify us 10 days before the meeting and bring your own recording equipment. We also can record an interview. If we do so, we will notify

you 10 days before the meeting and you can get a copy of the recording at your expense.

Payment of Only the Required Tax

You have the right to plan your business and personal finances so that you will pay the least tax that is due under the law. You are liable only for the correct amount of tax. Our purpose is to apply the law consistently and fairly to all taxpayers.

If Your Return is Questioned

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change. Or, you may receive a refund.

Examination and inquiries by mail. We handle many examinations and inquiries entirely by mail. We will send you a letter with either a request for more information or a reason why we believe a change needs to be made to your return. If you give us the requested information or provide an explanation, we may or may not agree with you and we will explain the reasons for any changes. You should not hesitate to write to us about anything you do not understand. If you cannot resolve any questions through the mail, you can request a personal interview. You can appeal through the IRS and the courts. You will find instructions with each inquiry or in Publication 1383, *Correspondence Process*.

Examination by interview. If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If the time or place we suggest is not convenient, the examiner will try to work out something more suitable. However, the IRS makes the final determination of how, when, and where the examination will take place. You will receive an explanation of your rights and of the examination process either before or at the interview.

If you do not agree with the examiner's report, you may meet with the examiner's supervisor to discuss your case further.

Repeat examinations. We try to avoid repeat examinations of the same items, but this sometimes happens. If we examined your tax return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the repeat examination.

Explanation of changes. If we propose any changes to your return, we will explain the reasons for the changes. It is important that you understand these reasons. You should not hesitate to ask about anything that is unclear to you.

Interest. You must pay interest on additional tax that you owe. The interest is charged from the due date of the return. But if our error caused a delay in your case, and this was grossly unfair, we may reduce the interest. Only delays caused by procedural or mechanical acts not involving the exercise of judgment or discretion qualify. If you think we caused such a delay, please discuss it with the examiner and file a claim for refund.

Business taxpayers. If you are in an individual business, the rights covered in this publication generally apply to you. If you are a member of a partnership or a shareholder in a small business corporation, special rules may apply to the examination of your partnership or corporation items. The examination of partnership items is discussed in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*. The rights covered in this publication generally apply to exempt organizations and sponsors of employee plans.

An Appeal of the Examination Findings

If you don't agree with the examiner's findings, you have the right to appeal them. During the examination process, you will be given information about your appeal rights. Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases*, explains your appeal rights in detail and tells you exactly what to do if you want to appeal.

Appeals Office. You can appeal the findings of an examination within the IRS through our Appeals Office. Most differences can be settled through this appeals system without expensive and time-consuming court trials. If the matter cannot be settled to your satisfaction in Appeals, you can take your case to court.

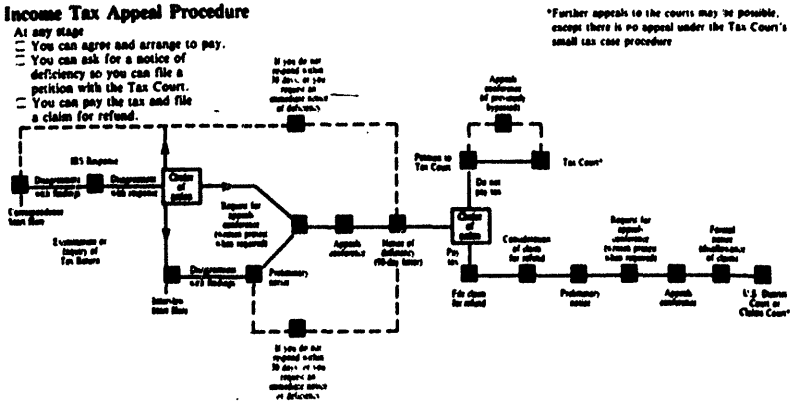
Appeals to the courts. Depending on whether you first pay the disputed tax, you can take your case to the U.S. Tax Court, the U.S. Claims Court, or your U.S. District Court. These courts are entirely independent of the IRS. As always, you can represent yourself or have someone admitted to practice before the court represent you.

If you disagree about whether you owe additional tax, you generally have the right to take your case to

Income Tax Appeal Procedure

At any stage
- You can agree and arrange to pay.
- You can ask for a notice of deficiency so you can file a petition with the Tax Court.
- You can pay the tax and file a claim for refund.

*Further appeals to the courts may be possible, except there is no appeal under the Tax Court's small tax case procedure



the U.S. Tax Court if you have not yet paid the tax. Ordinarily, you have 90 days from the time we mail you a formal notice (called a "notice of deficiency") telling you that you owe additional tax, to file a petition with the U.S. Tax Court. You can request simplified small tax case procedures if your case is $10,000 or less for any period or year. A case settled under these procedures cannot be appealed.

If you have already paid the disputed tax in full, you may file a claim for refund. If we disallow the claim or do not take action within 6 months, then you may take your case to the U.S. Claims Court or your U.S. District Court.

Recovering litigation expenses. If the court agrees with you on most issues in your case, and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. To do this, you must have used all the administrative remedies available to you within the IRS. This includes going through our Appeals system and giving us all the information necessary to resolve the case.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, will help you more fully understand your appeal rights.

Fair Collection of Tax

Whenever you owe tax, we will send you a bill describing the tax and stating the amounts you owe in tax, interest, and penalties. Be sure to check any bill you receive to make sure it is correct. You have the right to have your bill adjusted if it is incorrect, so you should let us know about an incorrect bill right away.

If we tell you that you owe tax because of a math or clerical error on your return, you have the right to ask us to send you a formal notice (a "notice of deficiency") so that you can dispute the tax, as discussed earlier. You do not have to pay the additional tax at the same time that you ask us for the formal notice, if you ask for it within 60 days of the time we tell you of the error.

If the tax is correct, we will give you a specific period of time to pay the bill in full. If you pay the bill within the time allowed, we will not have to take any further action.

We may request that you attend an interview for the collection of tax. You will receive an explanation of your rights and of the collection process either before or at the interview.

Your rights are further protected because we are not allowed to use tax enforcement results to evaluate our employees.

Payment arrangements. You should make every effort to pay your bill in full. If you can't, you should pay as much as you can and contact us right away. We may ask you for a complete financial statement to determine how you can pay the amount due. Based on your financial condition, you may qualify for an installment agreement. We will give you copies of all agreements you make with us.

If we approve a payment agreement, the agreement will stay in effect only if:

- You give correct and complete financial information,
- You pay each installment on time,
- You satisfy other tax liabilities on time,
- You provide current financial information when asked, and
- We determine that collecting the tax is not at risk.

Following a review of your current finances, we may change your payment agreement. We will notify you 30 days before any change to your payment agreement and tell you why we are making the change.

We will not take any enforcement action (such as recording a tax lien, or levying on or seizing property), until after we have tried to contact you and given you the chance to voluntarily pay any tax due. Therefore, it is very important for you to respond right away to our attempts to contact you (by mail, telephone, or personal visit). If you do not respond, we may have no choice but to begin enforcement.

Release of liens. If we have to place a lien on your property (to secure the amount of tax due), we must release the lien no later than 30 days after finding that you have paid the entire tax and certain charges, the assessment has become legally unenforceable, or we have accepted a bond to cover the tax and certain charges.

Recovery of damages. If we knowingly or negligently fail to release a lien under the circumstances described above, and you suffer economic damages because of our failure, you can recover your actual economic damages and certain costs.

If we recklessly or intentionally fail to follow the laws and regulations for the collection of tax, you can recover actual economic damage and costs.

In each of the two situations above, damages and costs will be allowed within the following limits. You must exhaust all administrative remedies available to you. The damages will be reduced by the amount which you could have reasonably prevented. You must bring suit within 2 years of the action

Incorrect lien. You have the right to appeal our filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. If we agree, we will issue a certificate of release, including a statement that we filed the lien in error.

A lien is incorrect if:

- You paid the entire amount due before we filed the lien,
- We made a procedural error in a deficiency assessment, or
- We assessed a tax in violation of the automatic stay provisions in a bankruptcy case.

Levy. We will generally give you 30 days notice before we levy on any property. The levy may be given to you in person, mailed to you, or left at your home or workplace. We cannot place a levy on your property on a day on which you are required to attend a collection interview.

Property that is exempt from levy. If we must seize your property, you have the legal right to keep:

- Necessary clothing and schoolbooks,
- A limited amount of personal belongings, furniture, and business or professional books and tools,
- Unemployment and job training benefits, workers' compensation, welfare, certain disability payments, and certain pension benefits,
- The income you need to pay court-ordered child support,
- Mail,
- An amount of weekly income equal to your standard deduction and allowable personal exemptions, divided by 52, and
- Your main home, except in certain situations.

If your bank account is levied after June 30, 1989, the bank will hold your account up to the amount of the levy for 21 days. This allows you to resolve your tax bill before the bank turns over the funds to the IRS.

We generally must release a levy issued after June 30, 1989, if:

- You pay the tax, penalty, and interest for which the levy was made,
- The IRS determines the release will help collect the tax,
- You have an approved installment agreement for the tax on the levy,
- The IRS determines the levy is creating an economic hardship, or

The fair market value of the property exceeds the amount of the levy and release would not hinder the collection of tax.

If at any time during the collection process you do not agree with the collection officer, you can discuss your case with his or her supervisor.

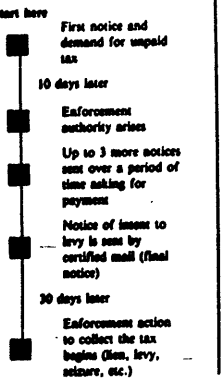
If we seize your property, you have the right to request that it be sold within 60 days after your request. You can request a time period greater than 60 days. We will comply with your request unless it is not in the best interest of the government.

Access to your private premises. A court order is not generally needed for a collection officer to seize your property. However, you don't have to allow the employee access to your private premises, such as your home or the non-public areas of your business, if the employee does not have court authorization to be there.

Withheld taxes. If we believe that you were responsible for seeing that a corporation paid us income and social security taxes withheld from its employees, and the taxes were not paid, we may look to you to pay an amount based on the unpaid taxes. If you feel that you don't owe this, you have the right to discuss the case with the collection officer's supervisor. Also, you generally have the same IRS appeal rights as other taxpayers. Because the U.S. Tax Court has no jurisdiction in this situation, you must pay at least part of the withheld taxes and file a claim for refund in order to take the matter to the U.S. District Court or U.S. Claims Court.

The Collection Process

To stop the process at any stage, you should pay the tax in full. If you cannot pay the tax in full, contact us right away to discuss possible ways to pay the tax.



Publications 586A, *The Collection Process (Income Tax Accounts)*, and 594, *The Collection Process (Employment Tax Accounts)*, will help you understand your rights during the collection process.

Refund of Overpaid Tax

Once you have paid all your tax, you have the right to file a claim for a refund if you think the tax is incorrect. Generally, you have 3 years from the date you filed the return or 2 years from the date you paid the tax (whichever is later) to file a claim. If we examine your claim for any reason, you have the same rights that you would have during an examination of your return.

Interest on refunds. You will receive interest on any income tax refund delayed more than 45 days after the later of either the date you filed your return or the date your return was due.

Checking on your refund. Normally, you will receive your refund about 6 weeks after you file your return. If you have not received your refund within 8 weeks after mailing your return, you may check on it by calling the toll-free *Tele-Tax* number in the tax forms' instructions.

If we reduce your refund because you owe a debt to another Federal agency or because you owe child support, we must notify you of this action. However, if you have a question about the debt that caused the reduction, you should contact the other agency.

Cancellation of Penalties

You have the right to ask that certain penalties (but not interest) be cancelled (abated) if you can show reasonable cause for the failure that led to the penalty (or can show that you exercised due diligence, if that is the applicable standard for that penalty).

If you relied on wrong advice you received from IRS employees on the toll-free telephone system, we will cancel certain penalties that may result. But you have to show that your reliance on the advice was reasonable.

If you relied on incorrect written advice from the IRS in response to a written request you made after January 1, 1989, we will cancel any penalties that may result. You must show that you gave sufficient and correct information and filed your return after you received the advice.

Special Help to Resolve Your Problems

We have a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. If you have a tax problem that you cannot clear up through normal channels, write to the Problem Resolution Office in the district or Service Center with which you have the problem. You may also reach the Problem Resolution Office by calling the IRS taxpayer assistance number for your area.

If you suffer or are about to suffer a significant hardship because of the administration of the tax laws, you may request assistance on Form 911, *Application For Assistance Order to Relieve Hardship*. The Taxpayer Ombudsman or a Problem Resolution Officer will review your application and may issue a Taxpayer Assistance Order (TAO). You can get copies of Form 911 in IRS offices or by calling toll-free 1-800-424-FORM (3676).

Protection of Your Rights

The employees of the Internal Revenue Service will explain and protect your rights as a taxpayer at all times. If you feel that this is not the case, you should discuss the problem with the employee's supervisor. Your local Problem Resolution Officer will assist you if you are unable to resolve the problem with the supervisor.

Taxpayer Assistance Numbers

You should use the telephone number shown in the white pages of your local telephone directory under U.S. Government, Internal Revenue Service, Federal Tax Assistance. If there is not a specific number listed, call toll-free 1-800-424-1040. You can also find these phone numbers in the instructions for Form 1040.

You may also use these numbers to reach the Problem Resolution Office. Ask for the Problem Resolution Office when you call.

U.S. taxpayers abroad may write for information to:

Internal Revenue Service
Attn: IN:C:TPS
950 L'Enfant Plaza South, S.W.
Washington, D.C. 20024

You can also contact your nearest U.S. Embassy for information about what services and forms are available in your location.

APPENDIX II

PUBLICATION 910

GUIDE TO FREE TAX SERVICES

(EXCERPTS)

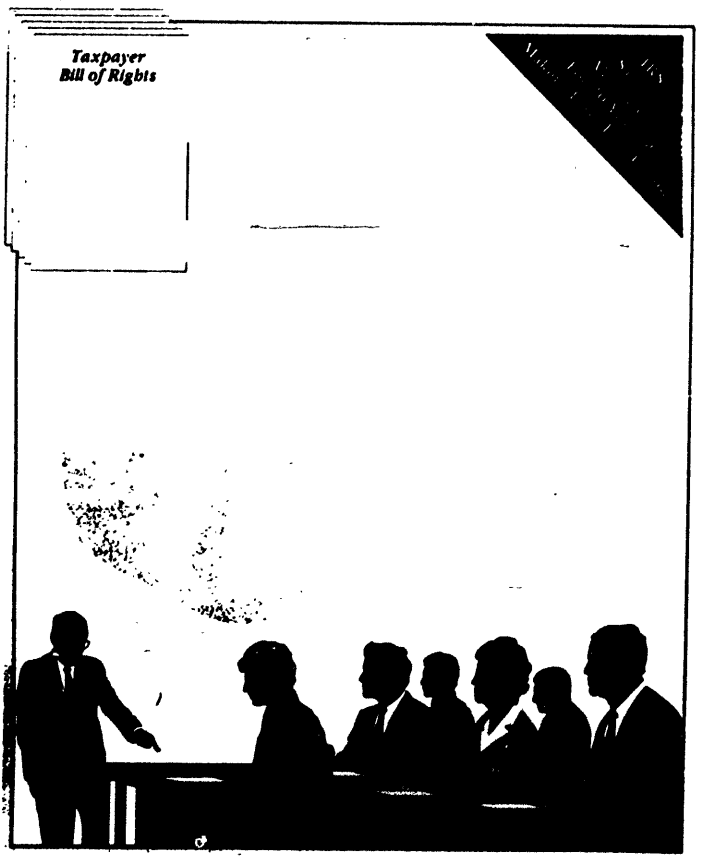
Department of the Treasury
Internal Revenue Service

Guide to Free Tax Services

For Tax Year 1989

Inside Free Publications Free Phone Service
Free Person-to-Person Assistance, and
Tax Return Filing Tips

Publication 910 (Rev. 11-89)



Fast Refund

If you expect a tax refund for 1989, instead of mailing your return to IRS, you may want to have it filed electronically. When you file electronically you receive your refund in about 3 weeks, or, in about 2 weeks if you have it deposited directly into your savings or checking account. Many professional tax return preparers offer electronic filing in addition to their return preparation services. If you prepare your own return, you can still file electronically. A fee may be charged for electronic transmission of your return. For more information on electronic filing see "Tele-Tax Information (Topic 112)" on page 6 in this publication. For a list of those in your area who can file your return electronically, call IRS. Use *only* the telephone number for your area listed on page 5 of this publication. Use a local city number only if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

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"Make Your Taxes Less Taxing"

To make your taxes less taxing, the IRS provides free tax information and services. This publication is a reference to the year-round, free tax services and free tax publications the IRS offers.

Assistance includes: toll-free telephone service, including recorded tax information and automated refund information; tax assistance programs, such as Volunteer Income Tax Assistance, Tax Counseling for the Elderly, the Small Business Tax Education Program, Community Outreach Tax Assistance, and audiovisual instructional materials that are available for loan to groups.

This publication also contains information on filing your return, on the benefits of electronic filing, on checking the status of your refund and on the Problem Resolution Program which helps taxpayers solve tax problems they have been unable to resolve through normal IRS channels.

If you have any questions about our free tax services, call *only* the IRS telephone number for your area. These numbers are listed on page 5 of this publication. Use a local city number only if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

Free Tax Services

Most of your tax questions can be answered by reading the package of tax forms and instructions you receive each year from IRS. If you need more information you can turn to our many free tax publications, education programs, audiovisual materials, and other services. And, of course, you may call IRS toll-free or visit your local IRS office with questions about your tax account or general information about IRS procedures and services or about the tax law.

Telephone Service

Toll-free telephone assistance is available in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. By using the toll-free system, you can get answers to your tax questions and pay only local charges. There is no long distance charge for your call.

During periods of peak demand for telephone assistance you may get a busy signal. Demand may be lower early in the morning or later in the week, so you may want to call at those times. Use only the telephone number listed for your area on page 5 of this publication. Use a local city number if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

Tele-Tax

Tele-Tax is the IRS toll-free telephone service which provides both recorded tax information and automated refund information.

Recorded Tax Information. Recorded tax information is available on about 140 topics such as filing requirements, dependents, itemized deductions, tax credits and free services available. Recorded tax information is available 24 hours a day, 7 days a week, if you use a push-button (tone signaling) phone. It is available during regular office hours if you use a rotary (dial) or push-button (pulse dial) phone.

Automated Refund Information. Refund information will be available beginning March 1, 1990. It can take up to eight weeks to process a refund. If you call about the status of your refund and that information is not available at that time, please wait seven days before calling again. This will allow sufficient time for the computerized information to be updated.

When you call, have a copy of your tax return available because you will need to supply the first social security number shown on the return, the filing status, and the exact amount of the refund.

Refund information is available Monday through Friday, 7:00 a.m. to 11:30 p.m. if you are using a push-button (tone signaling) telephone (hours may vary in your area). If you are using a rotary (dial) or push-button (pulse dial) phone, it is available Monday through Friday during regular office hours.

A complete list of telephone numbers, topics and instructions on how to use Tele-Tax are on pages 6 and 7.

To Order Forms and Publications

Order tax forms and publications by using the order blank on page 29 of this publication, or by calling toll-free 1-800-424-3676

Telephone Service for the Hearing-Impaired

Toll-free telephone tax assistance is available for hearing-impaired taxpayers who have access to TV/Telephone-TTY equipment. The hours of operation are:

January 1 through April 16	8:00 a.m. to 6:45 p.m. Eastern Standard Time
April 16 through December 31	8:00 a.m. to 4:30 p.m. Eastern Standard Time

Residents of the U.S., including Alaska, Hawaii, Puerto Rico, and the Virgin Islands, call 1-800-428-4732. Residents of Indiana call 1-800-382-4059.

Information for the Blind

Braille tax materials are available at regional libraries for the blind and physically handicapped in conjunction with the Library of Congress. These materials include Publications 17, *Your Federal Income Tax*, and 334, *Tax Guide for Small Business*, and Forms 1040, 1040A, and 1040EZ, and instructions.

Walk-In Service

Although the Internal Revenue Service will not prepare your tax return for you, assistors are available at most IRS offices throughout the country to help you as you prepare your own individual federal tax return. An assistor will "walk through" a return with you and a number of other taxpayers in a group setting.

If you want assistance with your tax return, you should bring with you the package of tax forms and instructions you received in the mail and all Forms W-2 and Forms 1099 showing interest or other income. You should also bring any other information (such as a copy of last year's return) which will help us help you.

At most IRS offices you can also obtain tax forms, publications and help with questions about IRS notices or bills.

International Service

For taxpayers outside the United States, the Internal Revenue Service has full-time permanent staff at 14 U.S. Embassies and Consulates around the world. These offices maintain a supply of tax forms and publications and can help with account problems and answer your questions about notices and bills.

In addition, during the filing season, from January 1 through June 15 each year, taxpayer service representatives travel to many cities worldwide to offer taxpayers help with their tax returns. In 1990 they will visit approximately 139 cities in 72 countries. You may call your nearest U.S. Embassy, Consulate or IRS office listed below to find out

when and where assistance will be available in your area. All IRS offices are open Monday through Friday except Riyadh, Saudi Arabia, which is open Saturday through Wednesday.

These IRS telephone numbers are local numbers. Please check with your telephone company for any country or city codes required if you are outside the local dialing area. The Nassau and Ottawa numbers include the United States area codes.

Bonn, West Germany	339-2119
Caracas, Venezuela	285-3111, ext. 333
London, England	408-8076 or 408-8077
Manila, Philippines	521-7116, ext. 613 or 644
Mexico City, Mexico	(525) 211-0042, ext. 3559
Nassau, Bahamas	(809) 322-1181
Ottawa, Canada	(613) 238-5335
Paris, France	4296-1202
Riyadh, Saudi Arabia	488-3800, ext. 206
Rome, Italy	4674-2560
Sao Paulo, Brazil	881-6511, ext. 267
Singapore	338-0251, ext. 245
Sydney, Australia	261-9275
Tokyo, Japan	224-5466

You can also write to the Assistant Commissioner (International), 950 L'Enfant Plaza SW, Washington DC 20024, USA, for answers to your technical or tax account questions.

Volunteer and Education Programs

The IRS has a number of programs designed to help you understand your rights and obligations under our nation's tax system. Volunteers trained by the IRS are an important part of all these programs, and during 1990 IRS will be celebrating the 20th anniversary of IRS-sponsored volunteer programs. To volunteer, or for times and locations of available services in your community, call the IRS and ask for the Taxpayer Education Coordinator. Use *only* the telephone number for your area listed on page 5 of this publication. Use a local city number only if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

Community Outreach Tax Assistance

Groups of taxpayers having common tax concerns such as retirees, farmers, small business owners and employees, can get free tax help from IRS assistors or trained volunteers at convenient community locations. The assistance may be provided during the day, in the evening, or on weekends. Groups may benefit from two kinds of Community Outreach Tax Assistance. One kind provides line-by-line income tax return preparation help for taxpayers who want to prepare their own returns. The other kind provides tax seminars discussing various tax topics.

Outreach sessions may be co-sponsored by community organizations and other government agencies.

Volunteer Income Tax Assistance

The Volunteer Income Tax Assistance (VITA) Program provides free help to people with basic tax returns. After completing IRS training, VITA volunteers provide free help to handicapped, elderly, and non-English-speaking taxpayers at libraries, community colleges, schools, shopping malls, and other convenient locations in the community.

Tax Counseling for the Elderly

Tax Counseling for the Elderly (TCE) provides free tax help to people 60 or older, especially those who are disabled or who have special needs. Volunteers who provide tax counseling are often retired individuals who are associated with non-profit organizations that receive grants from the IRS. The grants are used to help pay out-of-pocket expenses for the volunteers to travel wherever there are elderly who need help, whether they are homebound, in retirement homes, or at special TCE sites. Sites are located conveniently in neighborhood centers, libraries, churches and other places in the community.

Small Business Tax Education Program

Small business owners and other self-employed individuals can learn what they need to know about business taxes through a unique partnership between IRS and community-based educational facilities. Seminars, workshops and in-depth tax courses, offered in a variety of settings, provide training on starting a business, recordkeeping, business tax return preparation and employer responsibilities. Tax topics including self-employment tax issues and employment taxes are also covered. Resource materials provide instruction through practical examples and reinforcement exercises.

The costs for this program vary. Some courses are offered free as a community service. Courses offered through an educational facility may include costs for course materials in addition to tuition. Still others are offered at a nominal fee to offset the administrative costs of sponsoring organizations.

Bank, Post Office and Library Program

The IRS supplies free tax preparation materials to more than 16,000 banks and post offices and 14,000 libraries and reference areas in technical schools, military bases, prisons, community colleges and other locations. The materials at libraries may include reproducible tax forms, reference sets of IRS publications and audiovisual materials on the preparation of Forms 1040EZ, 1040A, 1040, and Schedules A and B. Banks, post offices and other sites have supplies of Forms 1040EZ, 1040A and 1040 available.

Student Tax Clinics

Student Tax Clinics, sponsored by law and graduate accounting schools, are staffed by student volunteers who provide free tax assistance. Students who have received special permission from the IRS may represent taxpayers before the IRS during IRS examination and appeals proceedings.

Understanding Taxes

This is an introductory tax course taught in high schools, junior high schools and basic adult education classes nationwide that instructs students on how to fill out their tax returns. Because many of them already are working, this instruction has immediate practical value. Students also learn about the history, politics and economics of taxation and about taxpayer rights and responsibilities. Teachers are provided with free instructional materials, including videotapes and computer software and, in many areas, may be able to enroll in workshops to help them prepare for course instruction.

Print and Audiovisual Information

The IRS provides a variety of print and audiovisual tax information materials to the news media for dissemination to the public. Special programming includes radio and TV shows that allow viewers to phone in their tax questions. For example, the IRS produces tax clinics for broadcast on public television stations. The clinics highlight the various tax forms and schedules, address changes in the tax law, give helpful filing hints and provide information on where to get free assistance. Newspapers and other print media across the country also receive materials for their readers from IRS.

The IRS provides many local libraries with audio cassettes and videocassettes containing simple, step-by-step instructions on how to fill out Forms 1040EZ, 1040A, 1040 and Schedules A and B.

IRS-produced films and videotapes are available for loan, without charge, directly from the IRS to interested groups or organizations. To order the film of your choice, call the Public Affairs Officer at your local IRS office. Use *only* the telephone number for your area listed on page 5 of this publication. Use a local city number only if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

"Taxes and the Single Parent"

The situations of three single parents and how tax law affect them are portrayed in this film. One parent is an accountant who explains the tax laws that relate to dependents, alimony, child care expenses, working students, etc. (15 min.) (3/4" and VHS videocassettes.)

"The IRS Tax Guide to Retirement"

Seniors' pressing tax concerns are addressed in a question and answer format. An IRS representative answers tax questions about pensions, social security benefits, IRAs, and the sale of a home. Special tax benefits and sources of free IRS tax help are also discussed. (17 min.) (3/4", and VHS videocassettes.)

"Tax Forms '89"

A line-by-line guide on how to fill out Forms 1040EZ, 1040A, 1040 and Schedules A and B. It explains how to choose the right tax return and discusses filing status, deductions, credits, tax computations, and other topics. (90 mins.) (3/4", and VHS videocassettes.) (Updated versions available by January of each year.)

"Why Us, the Lakens?"

This film, narrated by Lyle Waggoner, highlights taxpayers' rights during an IRS tax audit and their appeal rights. It follows Jeff and Kathy Laken, whose tax return has been selected for an IRS audit. Unhappy with the audit finding, the Lakens appeal and the viewer learns how the audit procedure and the appeals system work. (28 mins.) (16mm film and 3/4" videocassettes.)

"¿Por Qué Nosotros, Los Garcia?"

This Spanish-language film explains taxpayers' examination and appeal rights in a similar fashion to "Why Us, the Lakens?" (28 min.) (16mm film and 3/4" videocassettes.)

"¿Por Qué Los Impuestos?"

Realizing that there is a lack of knowledge about the U.S. tax system in the Hispanic community, the editor of a Spanish weekly newspaper assigns an eager cub reporter to the story. The reporter uncovers the history of taxation, how taxes are used, the rights and responsibilities of taxpayers, and the different kinds of IRS assistance available. The film is especially suitable for social studies and history courses at adult education and community centers. (10 mins.) (16mm film and 3/4" videocassettes, 1/2" VHS.)

Filing Your Return

Before You File

Form W-4, Employee's Withholding Allowance Certificate. Each time you start working for an employer you will be asked to complete and turn in a Form W-4. Your employer will know how much federal tax to withhold from your wages based on the Form W-4 information. By the end of the year, the amount of tax withheld should be about the same as your federal income tax liability. If the number of allowances you are entitled to claim changes, it is your responsibility to complete another Form W-4 so that the correct amount of federal income tax will be withheld.

Social security number for dependents. For 1989 tax returns, you must supply the social security number of any person age 2 or over whom you claim as a dependent on your tax return. If you have a dependent who does not have a social security number, contact the nearest Social Security Administration office for Form SS-5, *Application for a Social Security Number Card.*

Form W-2, Wage and Tax Statement. Your employer must provide a Form W-2 showing wages, other compensation and amounts deducted for federal, state, local, and social security taxes. (If you filed Form W-5, *Earned Income Credit Advance Payment Certificate*, with your employer, the amount of the advance earned income credit paid to you during the year will also be included on your Form W-2.) Copy B of each Form W-2 must be attached to your federal income tax return.

Part-year job. — If you work for an employer for only part of a year, your employer may either give you a Form W-2 at the time you leave your job or wait until the end of the year to provide the W-2.

More than one job. — If you worked for more than one employer during the year, each employer must provide a Form W-2. If you changed jobs and moved, give your former employer your new address so the Form W-2 can be mailed to you.

Incorrect W-2. — If you receive a Form W-2 with any incorrect or illegible information, ask your employer for a corrected form. Your employer should mark the corrected form "Corrected by Employer." A special form (Form W-2c) may be used for this purpose. Copy B of the corrected form must be filed with your federal income tax return.

No W-2. — If you do not receive your Form W-2 from any employer by January 31, you should contact that employer and ask for it. If, after contacting your employer, you do not receive your Form W-2 by February 15, call the IRS toll-free number for your area and request assistance. You will be asked to provide your name, address, social security number, and the name, address and, if known, employer identification number of your employer.

Even if you do not receive a Form W-2 from an employer, do not delay filing your return by the due date. File your individual tax return and attach Form 4852, a substitute for Form W-2 available from IRS, or a statement giving your name and social security number, the employer's name, address and employer identification number, the total wages you received, and the amount of federal income tax withheld from your pay. If you are not sure of these amounts, you should estimate them to the best of your knowledge.

If you have already filed a return and later receive a Form W-2 with information that does not match the information on your return, you should file Form 1040X, *Amended U.S. Individual Income Tax Return*, to correct the error. For information on amending your return, please see page 27.

Estimated tax. If you are self-employed or have other income not subject to income tax withholding, you may be required to make estimated tax payments. Generally, estimated tax is the amount of tax that you estimate you will owe, which will not be paid through withholding.

Estimated tax is usually paid four times a year, with the first payment due by April 15 (April 16, 1990). Because you may be charged a penalty for underpayment of estimated tax, it is important that you pay your estimated tax on time.

For additional information on who must pay estimated taxes and how and when to make payments, please get IRS Publication 505, *Tax Withholding and Estimated Tax.*

Recordkeeping. Preparing your income tax return will be easier if you have up-to-date and complete records. A well-organized and maintained system of recordkeeping will also help you to answer questions if your return is selected for examination or if you are billed for additional tax.

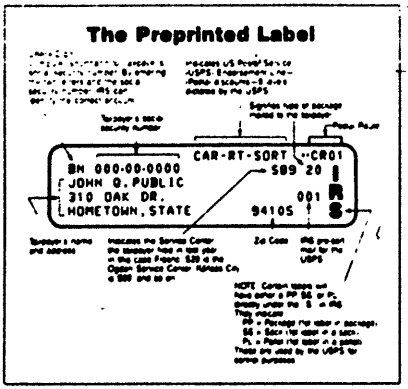
You should keep these records as long as there is any possibility that an entry on your return may be questioned. You should keep records such as receipts, cancelled checks and other documents that prove an item of income, deduction or credit on your return until the statute of limitations for the return expires. This is usually three years from the date the return was due or filed, or two years from the date the tax was paid, whichever is later. There is no statute of limitations when a return is false or fraudulent or when no return is filed.

Some records, such as property records, should be kept indefinitely since they may be needed to prove the amount of gain or loss if the property is sold. Copies of income tax returns should also be kept indefinitely. They will help you prepare future tax returns.

For additional information on recordkeeping, please see Publication 552, *Recordkeeping for Individuals*, or Publication 583, *Taxpayers Starting a Business.*

Your Tax Package

The IRS will mail a tax package to you containing either Form 1040 and related schedules, or Form 1040A, or Form 1040EZ, depending on which form you filed previously. You should receive this package in late December or early January. If not, you can pick up forms at many IRS offices. Some banks, post offices, and libraries also have forms and schedules.



Start early. By filing a complete and accurate return as soon as you can, you will help us to help you "make your taxes less taxing."

Preprinted label. Your tax package contains a preprinted name and address label. Attaching it to your return will speed the processing of your return and the issuing of any refund.

Make any necessary changes directly on the label. Even if you don't use the tax form in the tax package you received, you should attach the label to the tax return you do file. If you go to a tax return preparer, VITA site, etc., to have your return completed, ask the person who prepares your retur.. to use the preprinted label.

Preaddressed envelope. Use the preaddressed envelope to mail your return. Using it will speed the processing of your return because this envelope is coded for electronic sorting by type of tax return. If you do not have a preaddressed envelope or if you moved during the year, mail your return to the Internal Revenue processing center servicing the area where you now live. Service Center addresses are on page 26 of this publication.

Social security number. Your social security number is your taxpayer identification number and must appear on every individual tax return, statement or document.

Write your social security number on your check or money order when you pay any tax to the IRS.

If you file a tax return without using the IRS preprinted label, write your social security number in the appropriate space on the return.

If you are married, give the social security numbers for both you and your spouse, whether you file jointly or separately. If you file a joint return, list your social security numbers in the same order as you show your first names the return. For tax year 1989 you must also include social security number of any dependent age 2 or ol claimed on your return

If your name changes for reasons such as marriage divorce, notify the Social Security Administration so that name on IRS records is the same name the Social Secu Administration has on its records. If you fail to notify t Social Security Administration, the IRS may have difficu processing your return and issuing any refund due.

Tax deductions and credits. Deductions or credits duce the amount of tax a taxpayer owes. Allowable dedu tions include those for medical expenses, charitable con butions, and some state and local taxes. Many deductio are allowable only to taxpayers who itemize deductions Schedule A (Form 1040). Certain types of deductions a subject to special rules and limitations.

Allowable credits include the earned income credit, t child and dependent care credit, and the credit for t elderly and the disabled.

Deductions and credits are discussed in several free t publications. For a list of these publications, please s page 9.

Double Check Your Return Before Mailing

Take a moment to do the following:

- ❑ Put the preprinted address label on your return, an make any necessary corrections to your name, a dress, and social security number;
- ❑ Attach Copy B of all Forms W-2;
- ❑ Attach all required forms and related schedules;
- ❑ Check your return for arithmetic errors;
- ❑ Sign and date your return (on a joint return, boti husband and wife must sign);
- ❑ If you o additional tax, attach your check or money order pa, able to "Internal Revenue Service." Remem ber to write your social security number, daytime tele phone number, tax form number, and the ta:: year o your check or money order;
- ❑ Make a copy of the return for your records;
- ❑ Use the envelope that came in the tax package to mai your return. If you do not have the preprinted envelope address an envelope to the IRS Service Center for your state. Be sure to attach correct postage.

If you file early, you may expect to receive your refund within four to six weeks. If you do not get your refund within 8 weeks after filing your return, you may call the Internal Revenue Service. See page 6 for information on how to use Automated Refund Information.

Avoid These Common Errors

Following is a list of the most common errors taxpayers make on their Forms 1040, 1040A and 1040EZ. Explanations are provided to help you avoid making these errors. Check your tax return because errors such as those listed

below may delay any refund you may be expecting.

1. Medical and dental expenses on Schedule A are figured incorrectly.
   — You must know the amount of your adjusted gross income before you can figure the limitation on medical and dental expenses. Form 1040 must be completed (through the line for adjusted gross income) before you can figure medical and dental expenses. Check your math for these entries.
2. Earned income credit is figured incorrectly.
   — You may be entitled to a credit of up to $910 if your adjusted gross income is less than $19,340. The Earned Income Credit Worksheet in the Form 1040 or 1040A instructions is used to figure the credit. The amount of your credit is determined by your earned income and adjusted gross income. To determine the correct amount of your credit, follow the line-by-line instructions on the worksheet.
3. Incorrect tax entered from tax tables.
   — First, take the amount shown on the taxable income line of your Form 1040EZ, 1040, or 1040A and find the line in the tax table showing that amount. Next, find the column for your marital status (married filing jointly, single, etc.) and read down the column. The amount shown where the income line and filing status column meet is your tax.
4. Social Security Tax, instead of Federal Income Tax Withheld, was entered on your tax return.
   — Form W-2 shows both the Federal Income Tax (Box 9) and FICA (Social Security Tax) (Box 11) withheld. Remember to use the amount in Box 9 on your return to calculate your total income tax withheld.
5. Form 2441, Child and Dependent Care Expenses, has computation errors.
   — Verify your addition, subtraction and multiplication. Use the correct percentage for your adjusted gross income.
6. Incorrect refund or balance due.
   — Verify your addition and subtraction. If your total payments are more than your total tax, you are due a refund. A "Balance Due" is computed when your taxes due are more than the amounts you have already paid.
7. Earned income credit not claimed.
   — This is a special credit that can help some taxpayers who have a child and have incomes below a certain level. For more information on whether you qualify, refer to the instructions in your tax package.
8. Computation error when income amounts were totalled.
   — Verify the addition of all income amounts on your return.
9. Taxable amount of social security benefits was figured incorrectly.
   — If you received social security or equivalent railroad retirement benefits in 1989, you will receive a Form SSA-1099 or Form RRB-1099 showing the amount. Use the Social Security Benefits Worksheet in the tax form instructions to figure the amount that may be taxable.

For a Faster Refund — File Electronically

It's FAST — You will receive your income tax refund three weeks or less from the time IRS gets your return. You can also choose to have IRS send your refund directly to your savings or checking account by "Direct Deposit."

It's ACCURATE — Electronic filers (tax return preparers or transmitters) who send your return over telephone lines are notified by IRS that it has been received and accepted. Minor errors can be corrected within days instead of weeks.

It's SIMPLE — You don't need a computer or fancy equipment. Contact an electronic filer in your area.

Call IRS and ask about electronic filing or ask for a list of accepted electronic filers in your area. Use *only* the number listed on page 5 of this publication. Use a local city number only if it is not a long distance call for you. Please do not dial 1-800 when using a local city number.

Where To File

If an addressed envelope came with your return, please use it. If you do not have one, or if you moved during the year, mail your return to the **Internal Revenue Service Center** for the place where you live. No street address is needed.

If you live in: ▼	Use this address: ▼
Florida, Georgia, South Carolina	Atlanta, GA 39901
New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Illinois, Iowa, Minnesota, Missouri, Wisconsin	Kansas City, MO 64999
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia	Philadelphia, PA 19255
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Kansas, New Mexico, Oklahoma, Texas	Austin TX 73301
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
California (all other counties), Hawaii	Fresno, CA 93888
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Memphis, TN 37501
American Samoa	Philadelphia, PA 19255
Guam	Commissioner of Revenue and Taxation 855 West Marine Dr Agana, GU 96910
Puerto Rico (or if excluding income under section 933) Virgin Islands: Nonpermanent residents	Philadelphia, PA 19255
Virgin Islands: Permanent residents	V I. Bureau of Internal Revenue Lockharts Garden No. 1 A Charlotte Amalie, St. Thomas, VI 00802
Foreign country. U.S. citizens and those filing Form 2555 or Form 4563	Philadelphia, PA 19255
All A.P.O. or F.P.O addresses	Philadelphia, PA 19255

After You File

Refunds

If at least 8 weeks have elapsed since you mailed your 1989 tax return, your can call a special IRS Tele-Tax telephone number to find out the status of your refund. Refund information will be available beginning March 1, 1990. Refund files are updated every seven days. When you call, you need to know the first social security number shown on the return, the filing status, and the exact amount of the refund. For details on how to use this service, see "How to Use Tele-Tax" on page 6.

When All Else Fails, Use The Problem Resolution Program

Taxpayers who have been unable to resolve their problems after attempting to resolve them through normal Internal Revenue Service channels may use the Problem Resolution Program (PRP).

PRP personnel are taxpayer advocates. They have the authority to cut through red tape and the taxpayer generally deals with one person and is kept informed of the case's progress.

Taxpayers can contact PRP by calling the IRS assistance number listed on page 5 of this publication or by writing their local Internal Revenue Service District Director and asking for Problem Resolution assistance.

While PRP staffs do everything they can to help taxpayers, there are some things they cannot do. Appeals of decisions made in tax examinations, Freedom of Information Act requests, Privacy Act inquiries and complaints about hiring practices are all outside of PRP's authority.

When You Make A Mistake, Amend Your Return

If you find that you did not report income, did not claim deductions or credits you could have claimed, or claimed deductions or credits you should not have claimed, you can correct your return by filing a Form 1040X, *Amended U.S. Individual Income Tax Return*. Generally, this form must be filed within three years from the date you filed your original return or within two years from the date you paid your tax, whichever is later.

File Form 1040X with the IRS Service Center for the area in which you live. See the Service Center list on page 26.

Your state tax liability may be affected by a change made on your federal income tax return. For more information on this, contact your state tax authority.

When You Need A Copy of Prior Year Returns

You can obtain a copy of your prior year tax return by completing Form 4506, *Request for Copy of Tax Form*, and mailing it to the Service Center where you filed the return. Service Center addresses are listed on the back of Form 4506. The charge is $4.25 for each year's return. This fee must be sent to the Service Center along with your Form 4506 or written request.

A taxpayer's authorized representative can request a copy of a taxpayer's prior year return. The representative must attach a signed copy of Form 2848, *Power of Attorney and Declaration of Representative*, or other document authorizing him or her to act for the taxpayer.

If you do not have a Form 4506, you can send the Service Center a written request containing the following information: your name, your social security number, and, if you filed a joint return, the name and social security number of your spouse; the form number; the tax period; and your current address. You must sign this request. If you filed a joint return, only one of you must sign this request. You should allow 45 days to receive your copy of the return.

Tax account information is free. You can get a printed copy of the information in your tax account by contacting most local IRS offices. The information will be mailed to you, generally within two weeks after your request. The tax account information you will receive includes: name and social security number, marital status, type of return filed, tax shown on return, adjusted gross income, taxable income, self-employment tax and the number of exemptions.

IRS Examination of Returns

If the IRS selects your return for examination, you may be asked to produce records such as cancelled checks, receipts or other supporting documents to verify entries on your return.

You may act on your own behalf or you may have an attorney, certified public accountant, or an individual enrolled to practice before the IRS represent or accompany you. Anyone can accompany you to an examination; however, the person that represents you must have a valid power of attorney.

Not all examinations result in changes in tax liability. If the examination of your return shows that you overpaid your tax, you will receive a refund. However, if the examination of your return shows that you owe additional tax, payment is expected. If you disagree with the findings of the examination, you can appeal. Your appeal rights will be explained to you.

As mentioned in an earlier section of this publication, under "Taxpayer Education Programs," Student Tax Clinics are available in some IRS districts to help taxpayers during examinations and appeals proceedings.

Collection of Unpaid Taxes

The Internal Revenue Service checks tax returns for mathematical accuracy and to see if the correct payment has been made. If tax is owed, the IRS will send a notice of tax due. Generally, you are then required by law to make payment within 10 days of the date of the bill.

If the tax is not paid on time, the law provides for interest and penalties. A federal tax lien may also be filed on the unpaid liability, interest and penalties. There is also a penalty for failure to file a return by the due date.

If you believe a bill from IRS is wrong, contact the IRS immediately with the information necessary to support your position. If an adjustment is justified, we will make the necessary correction to your account.

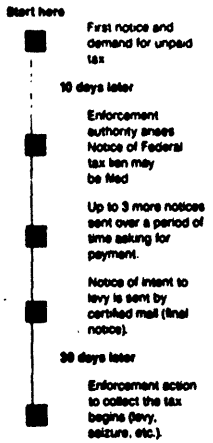
If you cannot pay the entire amount due, contact your local IRS office. Depending on your financial condition, installment payments or deferred collection action may be arranged. Interest and penalties will continue to accrue until the liability is fully paid.

If you neglect the notice of tax due or refuse to pay, IRS may enforce collection by levy on assets, including income, or by the seizure and sale of property.

More information on the collection process and on your rights, is in Publication 586A, *The Collection Process (Income Tax Accounts)*, and Publication 594, *The Collection Process (Employment Tax Accounts)*.

The Collection Process

To stop the process at any stage, you should pay the tax in full. If you cannot pay the tax in full, contact us right away to discuss possible ways to pay the tax.



Where To Send Your Order for Free Forms and Publications

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Delaware—P O Box 25866 Richmond VA 23289
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Nevada—Rancho Cordova CA 95743 0001
New Hampshire—P O Box 25866 Richmond VA 23289
New Jersey—P O Box 25866 Richmond VA 23289
New Mexico—Rancho Cordova CA 95743 0001
New York—P O Box 25866 Richmond VA 23289
North Carolina—P O Box 25866 Richmond VA 23289
North Dakota—P O Box 9903 Bloomington IL 61799
Ohio—P O Box 9903 Bloomington IL 61799
Oklahoma—P O Box 9903 Bloomington IL 61799
Oregon—Rancho Cordova CA 95743 0001
Pennsylvania—P O Box 25866 Richmond VA 23289
Rhode Island—P O Box 25866 Richmond VA 23289
South Carolina—P O Box 25866 Richmond VA 23289
South Dakota—P O Box 9903 Bloomington IL 61799
Tennessee—P O Box 9903 Bloomington IL 61799
Texas—P O Box 9903 Bloomington IL 61799
Utah—Rancho Cordova CA 95743 0001
Vermont—P O Box 25866 Richmond VA 23289
Virginia—P O Box 25866 Richmond VA 23289
Washington—Rancho Cordova CA 95743 0001
West Virginia—P O Box 25866 Richmond VA 23289
Wisconsin—P O Box 9903 Bloomington IL 61799
Wyoming—Rancho Cordova CA 95743 0001

Foreign Addresses—Taxpayers with mailing addresses in foreign countries should send the order blank to either Forms Distribution Center P O Box 25866 Richmond VA 23289 or Forms Distribution Center Rancho Cordova CA 95743 0001, whichever is closer Send letter requests for other forms and publications to Forms Distribution Center, P O Box 25866, Richmond VA 23289

Puerto Rico—Forms Distribution Center, P O Box 25866 Richmond, VA 23289

Virgin Islands—V I Bureau of Internal Revenue Lockharts Garden No 1A, Charlotte Amalie, St Thomas, VI 00802

Order Blank—We will send you 2 copies of each form and 1 copy of each set of instructions or publication you circle Please cut the order blank on the dotted line and be sure to print or type your name and address accurately on the other side. This will be the label used to return material to you Enclose the order blank in your own envelope and address your envelope to the IRS address shown above for your state To help reduce waste, please order only the items you think you will need to prepare your return Use the blank spaces to order items not listed If you need more space, attach a separate sheet of paper listing the additional items you need Be sure to allow 2 weeks to receive your order

Detach at This Line

Order Blank

Circle Desired Forms, Instructions, and Publications

1040	Schedule C (1040)	1040 ES (1990)	2903 & Instructions	8615	Pub 504	Pub 527	Pub 929
Instructions for 1040 & Schedules	Schedule D (1040)	1040X & Instructions	4562 & Instructions	8606 & Instructions	Pub 505	Pub 529	
1040A	Schedule D-1 (1040)	2106 & Instructions	4868	Pub 1	Pub 508	Pub 545	
Schedule 1 (1040A)	Schedule E (1040)	2119 & Instructions	5213 & Instructions	Pub 2	Pub 521	Pub 563	
1040EZ	Schedule F (1040)	2210 & Instructions	8332	Pub 463	Pub 523	Pub 584	
1040X & 1040EZ Instructions	Schedule H (1040) & Instructions	3441 & Instructions	8582 & Instructions	Pub 501	Pub 524	Pub 910	
Schedules A&B (1040)	Schedule SE (1040)	3468 & Instructions	8606	Pub 502	Pub 525	Pub 917	

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APPENDIX III

FORM 911

APPLICATION FOR TAXPAYER ASSISTANCE

ORDER TO RELIEVE HARDSHIP

Form 911 (Rev. January 1990)

Department of the Treasury – Internal Revenue Service

Application for Taxpayer Assistance Order (ATAO) to Relieve Hardship

Note: Filing this application may result in extending the statutory period of limitations. *(See instructions.)*

Section I. Taxpayer Information

1. Name(s) as shown on tax return	3. SSN/EIN	5. Spouse's SSN
	4. Tax form	6. Tax period ended
8. Current address *(number and street, apt. no., rural route)*	7. City, town, or post office, state, and zip code	
9. Person to contact	10. Telephone number ( )	12. Best time to call

11. Description of problem *(If more space is needed, attach additional sheets.)*

12. Description of significant hardship and relief requested *(If more space is needed, attach additional sheets.)*

13. Signature of taxpayer or Corporate Officer *(See instructions.)*	14. Date	15. Signature of spouse shown in block 1	16. Date

Section II. Representative Information *(If applicable)*

17. Name of authorized representative		18. Firm name
19. Street address or P.O. Box		20. City, town or post office, state, and zip code
21. Telephone number ( )	22. Best time to call	23. Centralized Authorization File (CAF) number
24. Signature		25. Date

Section III. *(For Internal Revenue Service only)*

26. Name of initiating employee	27. ☐ IRS identified ☐ Taxpayer request	28. Telephone	29. Function	30. Office	31. Date

Form 911 (Rev. 1-90)

Instructions

Purpose of form – You should use Form 911, Application for Taxpayer Assistance Order *(ATAO)* to Relieve Hardship to apply for a review by the Taxpayer Ombudsman or his designee, of actions being taken by the Internal Revenue Service. Such application may be made in cases where you are undergoing or about to undergo a significant hardship because of the manner in which the Internal Revenue laws are being administered. This application can not be used to contest the merits of any tax liability. If you disagree with the amount of tax assessed, please see Publication 1, Your Rights As A Taxpayer. While we are reviewing your application, we will take no further enforcement action. We will contact you after our review to advise you of our decision. The Internal Revenue Code requires us to suspend applicable statutory periods of limitation until a decision is made on your request.

Where to file – This application should be addressed to the Internal Revenue Service, Problem Resolution Office in the district where you live. Call the local Taxpayer Assistance number listed in your telephone directory or 1-800-424-1040 for the address of the Problem Resolution Office in your district. If you live overseas, mail your request to the Assistant Commissioner *(International)*, Internal Revenue Service, Problem Resolution Office, P.O. Box 144817, L'Enfant Plaza Station, Washington, DC 20026-4817.

CAUTION: Requests submitted to the incorrect office may result in delays. We will acknowledge your request within one week of receiving it. If you do not hear from us within 10 days *(15 days for overseas addresses)* of submitting your application, please contact the Problem Resolution Office in the IRS office to which you sent your application.

Section I. Taxpayer Information

1. Name(s) as shown on tax return. Enter your name as it appeared on the tax return for each period you are requesting assistance. If your name has changed since the return was submitted, you should still enter the name as it appeared on your return. If you filed a joint return, enter both names.

2. SSN/EIN. Enter your social security number *(SSN)* or the employer identification number *(EIN)* of the business, corporation, trust, etc., for the name you showed in block 1. If you are married, and the request is for assistance on a problem involving a joint return, enter the social security number in block 2 for the first name listed in block 1.

3. Spouse's SSN. If the problem involves a joint return, enter the social security number for the second name listed in block 1.

4. Tax form. Enter the tax form number of the tax form you filed for which you are requesting assistance. For example, if you are requesting assistance for a problem involving an individual income tax return, enter "1040." If your problem involves more than one tax form, include the information in block 11.

5. Tax period ended. If you are requesting assistance on an annually filed return, enter the calendar year or the ending date of the fiscal year for that return. If the problem concerns a return filed quarterly, enter the ending date of the quarter involved. If the problem involves more than one tax period, include the information in block 11.

6 and 7. Self-explanatory.

8. Person to contact. Enter the name of the person to contact about the problem. In the case of businesses, corporations, trusts, estates, etc., enter the name of a responsible official.

9. Telephone number. Enter the telephone number, including area code, of the person to contact.

10. Self-explanatory.

11. Description of problem. Describe the action(s) being taken *(or not being taken)* by the Internal Revenue Service that are causing you significant hardship. If you know it, include the name of the person, office, telephone number, and/or address of the last contact you had with IRS. Please include a copy of the most recent correspondence. If any, you have had with IRS regarding this problem.

12. Description of significant hardship and relief requested. Describe the significant hardship which is being caused by the Internal Revenue Service's action *(or lack of action)* as outlined in Section I, block 11. Please tell us what kind of relief you are requesting.

13 and 15. Signature(s). In order to suspend applicable statutory periods of limitations, you must sign this form in Section I, block 13 and block 15, if applicable, or your authorized representative, acting in your behalf, must sign in Section II, block 24. If your name has changed from the name that appears in Section I, block 1, sign using your current legal name. If the request is for assistance on a problem involving a joint return, both you and the spouse shown in block 1 must sign this form in order for the statutory period of limitations to be suspended. If one of the taxpayers is no longer living, the taxpayer's spouse or personal representative must sign the form and write "deceased" after the deceased taxpayer's name. If the taxpayer is your dependent child who can not sign this application because of age or other reasons, you may sign your child's name in the space provided followed by the words "By *(your signature)*, parent *(or guardian)* for minor child." If the application is being made for other than an individual taxpayer, a person having authority to sign the return should sign the application. Enter the date the application is signed.

Section II. Representative Information

If you are the taxpayer and you wish to have a representative act in your behalf, your representative must have a power of attorney or tax information authorization on file for the tax form(s) and period(s) involved. Complete Section II, blocks 17 through 23. *(See Form 2848, Power of Attorney and Declaration of Representative and Instructions for more information.)*

If you are an authorized representative and are submitting this request on behalf of the taxpayer identified in Section I, complete blocks 17 through 23. Sign and date this request in block 24 and block 25 and attach a copy of Form 2848, or the power of attorney.

23. Centralized Authorization File *(CAF)* number. Enter the representative's CAF number. The CAF number is the unique number that Internal Revenue Service assigns to a representative after a valid Form 2848 is filed with an IRS office.

(For IRS Use only)

ATAO code	Date of determination	Statute suspended ☐ No ☐ Yes: _____ days
How received	PRO signature	

APPENDIX IV

PUBLICATION 586A

THE COLLECTION PROCESS

(INCOME TAX ACCOUNTS)

Publication 586A
(Rev. 7-89)

The Collection Process (Income Tax Accounts)

Existe una versión de esta publicación en español la Publicación 5866, que puede obtener en la oficina local del Servicio de Impuestos Internos

Introduction

Liability for Unpaid Taxes

Notice and Demand. Each tax return filed with the Internal Revenue Service is checked for math errors and security and to see if appropriate payment has been made. If all the tax has not been paid we will send you a bill (including the interest and penalties) which is a notice of tax due and demand for payment. In most cases you are given 10 days from the date of the notice of tax due before we may take enforced collection action. However, if we have reason to believe that collection is endangered we may issue a notice and demand immediate payment. If immediate payment is not made, enforced collection action may be taken without regard to the 10-day period normally provided. See Information under Levy regarding Final Notice (Notice of Intent to Levy) 30-day period.

Corrective Action. If you owe taxes because not enough tax was withheld from your wages you should file a new Form W-4 (Employee's Withholding Allowance Certificate) with your employer(s) claiming a lower number of withholding allowances. For assistance in computing the correct number of withholding allowances, see Publication 919, "Is My Withholding Correct?"

Payment Procedure

Tax Bill Computer Error. If you believe you bill contains an error, you should immediately reply in writing to the office which sent the bill. You should send copies of any records with your reply which would help in correcting the error. If we determine you are correct, we will adjust your account after you pay any tax, interest, and penalty still due.

Unable to Make Full Payment. If you cannot pay your bill in full, you should pay as much as you can and write us immediately explaining your circumstances. We may ask you to complete a Collection Information Statement so that we can review your financial condition to determine how you can pay the amount due.

If you have assets we can identify which could readily be sold, encumbered, or used to secure a loan to pay the taxes, we may ask you to do so. We may ask you to secure a commercial loan if we determine that you are able to do so. If you neglect or refuse to pay in full, we may take enforced collection action.

Installment Payments. If we determine that you can only pay the tax liability through installments we will help you prepare a form showing your monthly income and expenses to determine the amount you can pay. In certain cases we can arrange, through a payroll deduction, for your employer to withhold and regularly pay to us amounts deducted from your pay, or allow you to pay by other means such as electronic transfer from your bank account.

Once an installment agreement is granted, you must make each payment on time. If payment cannot be made timely, notify us of the circumstances. You must pay all future taxes as they become due. We do returns timely and provide nonpayroll withheld information when requested. During the time you are making payments, interest and penalty will accrue.

[illegible] If you believe that the amount we will collect each month will cause you undue hardship, you may request that we consider your financial condition to see if we can delay collection or reduce the payments. You will be required to give us the basis of the agreement or fail to provide financial information requested. We do not make this decision and we may take enforced collection action pending an application. Final notice (Notice of Intent to Levy).

You have the right unless collection is postponed to a 30-day notification of the term retention, alteration or modification of an agreement based on an IRS determination of change in financial condition.

Delayed Collection. If we determine that you cannot make any payment towards your liability we may temporarily delay collection until your financial condition improves. This does not mean your debt is forgiven or that the penalty for late payment and interest stop accruing. We may file a Notice of Federal Tax Lien to protect the Government's interest during this period.

Refund Offset. If you become entitled to a refund during the time you owe unpaid taxes, we will apply the refund to the unpaid tax liability and refund the balance, if any, to you.

Bankruptcy Proceedings. If you are a debtor in an ongoing bankruptcy, do not pay the bill without immediately contacting your IRS office. While the bankruptcy proceeding will not necessarily relieve your obligation to pay, a temporary stay of collection may be in effect.

Enforced Collection Policy

Enforced collection action includes the filing of a Notice of Federal Tax Lien, the serving of a Notice of Levy and/or the seizure and sale of your property, real and/or business. We normally take these actions only after we try to contact you and give you the opportunity to pay voluntarily.

Notice of Federal Tax Lien. Once notice and demand for payment is sent and you neglect or refuse to pay the tax, a tax attaches to all your property or property rights. If we file a Notice of Federal Tax Lien, your credit rating may be affected and credit may be denied. The lien is also valid against some purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors. Even after the Notice of Federal Tax Lien is filed, you may still sell or transfer your property, but the lien will remain with the property until the liability is satisfied or unenforceable because the statute of limitations has run. The Notice of Federal Tax Lien will be released within 30 days after the liability is satisfied or unenforceable. To obtain a release of lien, you must pay in full the amount we assess, including interest and penalties, or enter into an agreement to satisfy the liability through installment payments. Even if we have not filed a Notice of Federal Tax Lien, you may request a certificate showing whether the tax is paid. You may also request information regarding the amount required to be paid to release the lien.

Seizure. If you neglect or refuse to pay your tax liability after demand for payment, we have the right to seize (take into our possession) property belonging to you that is not exempt from levy. Generally, we must notify you in writing at least 30 days before the seizure. Property we may seize includes, but is not limited to, your car, boat, business assets, bank account, and wages, commissions, or other income. Seizure of your principal residence requires written approval of a U.S. District Court Judge or Magistrate.

Notice of Levy. A Notice of Levy is a demand we make to a third party who has possession of property or rights to property that belong to you. Usually, we will attempt to contact you before we issue a Notice of Levy. However, we may issue a Notice of Levy without prior notice to you. Generally, we must issue a Notice of Levy before we may seize your property. Examples of third parties who may receive a Notice of Levy are your employer, bank, customers who owe you money, and insurance companies.

Final Notice (Notice of Intent to Levy). We must give you a Final Notice (Notice of Intent to Levy) at least 30 days before we can levy on certain federal payments, such as Social Security benefits, that you receive. We may issue a Final Notice (Notice of Intent to Levy) to you if you:

1) Defaulted by payment or adjustment, or
2) Within 30 days after acceptance of a bond guaranteeing payment of the liability.

All fees charged by the state or other jurisdiction for both filing and releasing the lien will be added to the balance you owe.

If the time during which the tax can be legally collected has expired, the notice of lien will not be an automatic Certificate of Release unless a lien auditing occurs.

You may sue the Federal government, but not IRS employees, for damages if the IRS knowingly or negligently fails to release a Notice of Federal Tax Lien when a release is requested. If civil action is successful, you may be compensated for direct losses incurred by the IRS's inaction and the cost of litigation. This award will be reduced by the amount IRS or you could have reasonably mitigated. All administrative appeals must be exhausted before a suit may be instituted. You have two years from the date of the action which gives rise to the claim to file a suit.

[illegible]

3) The IRS feels that the value of the Government's lien interest in the property and the taxpayer's giving up ownership (e.g., sale of a residence)

4) The property is being sold and there is a dispute as to what is entitled to the sale proceeds, and the sale proceeds are placed in escrow while the dispute is being resolved.

The IRS may also subordinate its lien to a junior lender if we receive the dollar value of the interest in the property being assigned by the junior lender (e.g., a second mortgage). We may also subordinate our lien if we believe that doing so would speed collection of the tax (e.g., a loan to harvest crops).

Subrogation. This is the substitution of one person in the place of another with respect to a lawful claim or right.

There are two kinds of subrogation, commercial and legal. Conventional subrogation arises by contract; and legal subrogation arises by operation of law.

An example of where a taxpayer's property is encumbered by a prior mortgage, a subordinate Federal Tax Lien, and another encumbrance in third position, and the person holding the third remaining claim pays off the prior mortgage on the property. That party would then be subrogated to rights of the prior mortgagee and be entitled to a superior right of priority (but only with respect to the claim they satisfied and their original third ranking claim).

For assistance in requesting a discharge or subordination of Federal Tax Lien, see Publication 783, Instructions on How to Apply for Certificate of Discharge of Property from Federal Tax Lien, or Publication 784, How to Properly Application for Certificate of Subordination of Federal Tax Lien. You should submit a written application in duplicate to the District Director in whose district the property is located.

You should contact the IRS Office where the property is located for information concerning a discharge, subordination, or subrogation of the Federal Tax Lien and instructions on how to post a bond.

Administrative Appeal of The Erroneous Filing of a Notice of Lien. You may appeal the filing of a notice of federal tax lien if you believe the filing was erroneous. A filing is erroneous when one of the following conditions applies:

1) the liability was satisfied before the notice of lien was filed

2) you were in bankruptcy and subject to the automatic stay when the lien was filed

3) an examination assessment was improperly made, or

4) the statute of limitations for collection expired prior to the filing of the notice of lien.

You may not use the administrative appeal procedure to challenge the underlying liability which caused the filing of the notice of lien. If we determine a notice of federal tax lien was erroneously filed, it will generally be released within 14 days after the determination that the lien was erroneously filed. A certificate of release of an erroneously filed notice of lien contains a statement that the notice of lien was in fact erroneously filed.

Levy. A levy is the taking of property to satisfy a tax liability. Levies can be made on property in the hands of third parties (generally banks, employers, or customers who owe you money) that is controlled by or owed to you (called "property").

Generally, a levy on wages, salary, and other income will continue in effect until released or you tax liability is satisfied or becomes unenforceable due to lapse of time.

Generally, court authorization is not required before levy action is taken unless Collection personnel must enter into private premises to accomplish their levy action (except seizure of property). Generally, there are three legal requirements before levy action can be taken:

1) the tax must be owed

2) a notice and demand for payment must have been sent to your last known address, and

3) if payment is not made, a Final Notice (Notice of Intent to Levy) must be given to you at least 30 days in advance. Such notice may be given to you in person, left at your dwelling or usual place of business, or sent by certified or registered mail to your last known address.

If collection is endangered, we may take immediate collection action.

Generally, levies may occur when we send the 10-day Notice and Demand period and/or Final Notice (Notice of Intent to Levy) 30-period because delay would endanger collection of the tax. You may seek administrative review, you may if the underlying liability is an issue in a Tax Court case, seizure of, review of the review of the United States District Court. All other cases will be heard in United States District Court.

If your bank account is levied, your bank is required to hold funds you have on deposit up to the amount you owe for 21 days. The bank is required to send the money, plus interest in certain cases, to the Service.

We must release a levy if:

1) you pay the tax, penalty, and interest for which the levy was made

2) the statute of limitations for collection has passed (generally 6 years) prior to service of the levy

3) the IRS determines the release will help collect the tax

4) you have an approved current installment agreement for the tax on the levy, unless you and the IRS have an agreement that a current levy should continue of future levies should be made

5) the IRS determines the levy is creating an economic hardship, or

6) the fair market value of the property exceeds the levy and its release would not hinder the collection of tax.

If your bank account is levied, you should contact the specific name and/or telephone number listed on the Notice of Levy to discuss your account. You may also refer to the information under Taxpayer Assistance and Problem Resolution Program (TAP). If necessary

Certain types of property are exempt from levy by Federal law. They are:

1) wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are taxable and are not exempt from levy.)

2) fuel, provisions, furniture, and personal effects, not to exceed $1,650 in value (for head of household) for 1999 and $1,650 for 1999 and later;

3) books and tools used in your trade, business, or profession, not to exceed $1,650 in value for 1999 and $1,100 for 1999 and later;

4) unemployment benefits;

5) undelivered mail

6) certain annuity and pension benefits;

7) certain service-connected disability payments

8) workmen's compensation

9) salary, wages or other income subject to a prior judgment for court-ordered child support payments

10) certain public assistance payments

11) assistance under the job training partnership act

12) principal residence, unless prior written approval of the district director or assistant district director is secured or property seized

13) deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees on permanent duty assigned outside the United States or its possessions, and

14) a minimum weekly exemption for wages, salary, and other income based on the standard deduction plus the number of allowable personal exemptions divided by 52. In the case of no response, the exempt amount will be computed as if you were married filing separately with one exemption.

If you receive a levy on salary or wages, contact the specific name and/or telephone number listed on the Notice of Levy for assistance.

If you disagree with the value placed on the property by the employee making the levy, you can request a valuation by three disinterested individuals.

Seizures and Sales. Any type of real or personal property you own or in which you have an interest (including residences and business property) may be seized and sold to satisfy your tax bill.

A seizure may not be made on any of your property if the estimated cost of the seizure and sale exceeds the fair market value of the property to be seized at the time of the seizure.

No seizure or levy may be made on the date you appear in response to an administrative summons, which is issued to collect unpaid tax, unless jeopardy exists.

You have the right to an administrative review of our seizure action when we have taken personal property that you own which is necessary to the maintenance of your business.

If your property is seized or levied, you should contact the IRS employee who made the seizure or levy for assistance.

After seizure we will give notice to you and the public about the proposed sale. We also the property to permissible and must be sold immediately, we will wait at least 10 days before conducting the sale. Prior to sale, we will complete a minimum price that we will accept for the property, and advise you of the amount. If you are in disagreement, you may request a Service valuation (one year of a private appraiser to assist the Internal Revenue Service employee in recomputing the minimum price.

Before the date of sale, we may release the property to you if you pay the amount owed to the amount of the Government's interest in the property, enter into an escrow arrangement, furnish acceptable bond or make an acceptable agreement for payment of the tax.

You also have the right to redeem your property at any time prior to the sale. Redemption consists of paying the tax due, including interest and penalties, together with the expenses of seizure.

You may request that the seized property be sold within 60 days. You should contact the IRS employee who made the property to assist you with this request. The request will be honored unless it is in the government's best interest to retain the property. You will be advised if your request is not honored.

After the sale, proceeds are applied first to the expenses of the levy and sale. The remaining amount is then applied against the tax bill. If the sale proceeds are less than the tax bill and the expenses of levy and sale, you will still be liable

[illegible]

Taxpayer Rights

[illegible]

Reimbursement of Bank Charges Due to Erroneous Levy. [illegible]

Offers in Compromise. [illegible]

[illegible]

Privacy Act and Paperwork Reduction Act Notice.

The Privacy Act of 1974 and Paperwork Reduction Act of 1980 say that when we ask you for information, we must tell you:

1) Our legal right to ask for the information.
2) What major purposes we have in asking for it, and how it will be used.
3) What could happen if we do not receive it.
4) Whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

For the Internal Revenue Service, the laws include:

- Tax returns and any papers filed with them.
- Any questions we need to ask you so we can:
  - Complete, correct, or process your return.
  - Figure your tax.
  - Collect tax, interest, or penalties.

[illegible]

Taxpayer Assistance.

[illegible]

APPENDIX V

PUBLICATION 594

THE COLLECTION PROCESS

(EMPLOYMENT TAX ACCOUNTS)

Department of the Treasury
Internal Revenue Service

Publication 594
(Rev. Nov. 89)

The Collection Process (Employment Tax Accounts)

Introduction

[illegible]

Liability for Unpaid Taxes

[illegible]

Payment Procedures

[illegible]

your name,
employer's identification number,
address,
kind of tax and
period involved.

[illegible]

Enforced Collection Policy

Enforced Collection Policy

Enforced Collection Policy

Taxpayer Assistance

GU.S.G.P.O. 1989 241-164/00464

APPENDIX VI

POLICY STATEMENT P-1-20

II. Policy Statement P-1-20

Forecasts of enforcement results may be made and communicated for planning purposes.

Forward planning and control are required to assist in the effective management of Service operations and to obtain maximum staffing utilization and enforcement results, and forecasts of enforcement results may be made and communicated for such purposes. However, forecasts and monitoring aspects of work planning and control programs shall not be used as quotas, allocations, or a specific amount of work that must be completed.

Tax enforcement results may be accumulated, tabulated, published and used for management and control of tax administration resources.

Enforcement results per case, per return, and per unit of enforcement effort may be accumulated, tabulated, published, and used at national, regional, and other levels when necessary to, and for purposes of, long-range planning, financial planning, allocation of resources, work planning and control, effective functional management, or other related staffing utilization systems and plans.

Tax enforcement results tabulations shall not used to evaluate an enforcement officer or impose or suggest production quotas or goals.

Records of tax enforcement results shall not be used to evaluate enforcement officers, appeals officers and reviewers, or impose or suggest production quotas or goals. This prohibition is necessary not only to protect employees from any adverse impact of quantitative goals, but also to protect taxpayers against possible inequities. In the discharge of his/her responsibilities, but subject to the above prohibition, a manager may raise questions with an individual about the number of cases he/she has processed, the amount of time he/she has been spending on individual cases, or the kind of results he/she has been obtaining.

Regional Commissioners and District and Service Center Directors share with National Office functional officials responsibility for adequacy and proper use of enforcement forecasts and result statistics.

Regional Commissioners and District and Service Center Directors share with National Office functional officials responsibility for adequacy of forecasts of enforcement results for long-range and financial planning purposes. Regional Commissioners and District and Service Center Directors are primarily responsible for proper use of enforcement result statistics for operations under their jurisdiction, and for assuring that no officer, supervisor or employee uses or applies such statistics in any prohibited way.

APPENDIX VII

SAMPLE PLS LETTER

Internal Revenue Service
Austin Service Center
3651 S. Interregional Highway
Austin, Texas 73301

Department of the Treasury

In Reply Refer to: 1858500693
5672AU: 720

March 8, 1990

John Doe
123 Main Street
Dallas, TX 70000

Taxpayer Identification Number: 000-00-1234
Tax Period: December 31, 1988
Form: 1040

Dear John Doe:

Thank you for the inquiry dated January 31, 1990.

We located your tax payment of $300.00, dated June 30, 1989. The payment has been applied to the account identified above.

We are returning the Form 2441 you sent. To change any information on your original tax return, you should file an amended return on Form 1040X. For your convenience, we are enclosing forms, instructions, and an envelope. The extra forms are for your records.

Also, we have corrected your address as requested.

If you have any questions about this letter, please write us at the address shown on this letter. You may call me between the hours of 8:00 a.m. and 2:30 p.m. at 512-462-8002 for assistance. If the number is outside your local calling area, there will be a long distance charge to you. If you prefer, you may call the IRS telephone number listed in your local directory. An employee there may be able to help you, but the office at the address shown on this letter is most familiar with your case.

When you write, please include your telephone number, the hours you can be reached, and a copy of this letter. You may also want to keep a copy of this letter for your records.
Telephone Number ( )_____ Hours_____

We apologize for any inconvenience we may have caused you, and thank you for your cooperation.

Sincerely yours,

James Q. Public
Customer Service Representative

Enclosures:
Copy of this letter
Envelope
Your Form 2441
Form 1040X (2), Form 2441

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C 20224

COMMISSIONER

JUN 18 1990

The Honorable David H. Pryor
Subcommittee on Private Retirement Plans and
Oversight of the Internal Revenue Service
205 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter of April 25, 1990, asking a number of questions to follow up on the April 6 Subcommittee's hearing on the Internal Revenue Service's implementation of the Taxpayers' Bill of Rights. Where appropriate, we have included attachments of sample notices and other information given to taxpayers to illustrate the many changes we have made to carry out this most important legislation.

1. Section 6238 of TBR requires the IRS to issue a certificate of error when the IRS erroneously files liens against a taxpayer. How many of these has the IRS issued?

A Certificate of Release is routinely prepared for all lien claims when the underlying liability is full paid, is no longer legally collectible or is released due to the posting of a bond. The Taxpayers' Bill of Rights required the IRS to annotate the release with a legend that the Notice of Federal Tax Lien had been erroneously filed.

We have not established a uniform, nationwide tracking system to count erroneous liens. We did, however, track release activity in 10 medium-sized districts throughout the country for the six-month period starting in August 1989 and ending in January 1990.

In this six-month period, 78,761 Notices of Federal Tax Lien were filed by the survey districts; 95 appeals were received; and 12 certificates of release issued, because the cases met the statutory definition of having been erroneously filed. In other words, in these districts, slightly more than one tenth of one percent of the liens filed were appealed and about two one hundredths of one percent of the liens filed were released because they were erroneously filed.

Information about this procedure is contained in Publication 1, Your Rights as a Taxpayer; Notice 586A, "The Collection Process (Income Tax Accounts)"; Notice 594, "The Collection Process (Employment Tax Accounts)"; and Form 668Y, "Notice of Federal Tax Lien" (Part 3, Taxpayer's copy). Taxpayers receive: a copy of Publication 1 at the beginning of the collection process; the Notice appropriate to the type of liability owed before the tax lien is recorded; and a copy of the lien is sent to the taxpayer after recordation.

2. Section 6233 requires the IRS to describe the basis for any tax notice and to identify and explain any interest and penalties. Is the IRS providing this information to taxpayers or are you requiring that the information be requested?

As required by Section 6233, we are providing the basis for tax due, interest, additions to tax and penalties on tax due and deficiency notices. We are not currently able to send multiple page notices so a stuffer is provided with an explanation of the interest and penalty charges. If taxpayers want a detailed explanation of penalty and interest computations, they must request it.

Notices issued by Examination are also consistent with the clarity requirements of new IRC 7521, added by Section 6233. This information is provided to taxpayers as part of the examination process and does not have to be requested by them. Three Examination notices are involved.

A. The 30-day letter, Proposed Income Adjustments, is conveyed to the taxpayer with an attached "Explanation of Adjustments" that gives the basis for proposed tax and penalty changes. The interest on the liability is not calculated because it is merely putative until the date of assessment. The legislative history of the Taxpayers' Bill of Rights explained, "it is sufficient if the notice states that interest at the legal rate is owing on the amount due." This statement is made on the 30-day letter.

B. Information Return Program (IRP) notices, matching income data received by the Service with that showing on the taxpayer's return, also comply with Section 6233. The notice to the taxpayer gives an exact interest due amount if paid within 15 days from the date of the notice.

C. Notices issued under IRC 6212, the statutory notice of deficiency (90-day letter) conform to the clarity requirements, since, in each case, the 30-day letter or its equivalent is attached in supporting explanation and clarification of the amount of the deficiency and penalties.

3. Section 6236 requires the IRS to give taxpayers 30 days after final notice before they seize property. Do IRS notices clearly state that the taxpayer has 30 days?

The notices do, in our opinion, clearly indicate that the IRS must wait 30 days before we levy. Attached are specimens of the two most commonly used notices, Form 504 (Attachment A) and Letter 1058(DO) (Attachment B). Form 504 is the computer generated Notice of Intent to Levy and is sent on the vast majority of collection cases. Letter 1058(DO) is issued by revenue officers on those cases where we cannot verify that a Notice 504 was issued.

4. With regard to Taxpayer Assistance Orders (TAOs):

o In the 15 months since enactment of the TBR, how many TAO applications have you received and how many have been issued?

o Have TAOs been issued in situations other than collection actions? If no, why not?

o If a taxpayer's request for a TAO is denied by the Problem Resolution Office, does he or she have any recourse? Is there any procedure for appealing denial of a request for an order?

o What happens if a TAO is issued and the IRS decides, after a review, not to alter its position? Can the taxpayer appeal? Is the taxpayer provided with an explanation of the denial of relief?

A. In the 15 months since enactment of the Taxpayer Bill of Rights (TBR), through March 1990, we have received 19,903 applications for Taxpayer Assistance Orders (ATAO), including 4,799 prepared on behalf of taxpayers by IRS employees. Significant hardship was found in 10,998 of the total applications, of which 7,183, or 65%, received relief without need of a TAO, while in 10 cases an "order" was issued. Of the remaining 8,738 applications that did not show significant hardship, 8,174 were nevertheless assisted under the regular Problem Resolution Program (PRP) or referred to the appropriate Service function for action.

B. There have been two TAOs issued for other than collection actions. Both involved emergency requests for audit reconsideration of additional tax assessments.

C. The ATAO itself is an appeal of normal operational procedures. Therefore, we have not created a formal system for "appealing the appeal", but it is our routine practice to have a higher level review of any allegation that our own procedures were not observed or that pertinent information was not considered.

D. Our procedures require that taxpayers who apply for a TAO receive both an oral and a written explanation of any denial. Before the taxpayer receives a final response to the ATAO, any necessary executive review is conducted if an IRS function objects to a TAO. The decision which follows this review is normally considered the final one. However, if there is new information that was not considered with the initial application, the taxpayer may reapply and will receive reconsideration based on the new facts.

5. The Administration's budget identifies the small pension plan audit as raising $602 million in FY 1991. Why is this an enhancement? Why isn't this included as part of your normal auditing and revenue collection baseline?

This audit program is a one-time program, targeted in scope, to extend over fiscal years 1991 through 1993. As such, the revenues generated are in addition to our ongoing auditing and revenue collection baseline. The additional revenue estimates are in fact calculated by taking into account the opportunity costs attributable to lost regulatory examinations.

6. Senator Kerry sent you a letter on March 19, 1990 regarding audits of small businesses. Please provide a copy of your response to the subcommittee for the hearing record.

Senator Kerry has agreed to allow us to provide you with a copy of the Commissioner's reply. (See Attachment C.)

7. Section 6227 requires the IRS to publish procedures for taxpayer complaints in Publication 1. Why does Publication 1 not include this important information?

Publication 1 does not provide a separate section to discuss the procedures for taxpayer complaints. However, it does discuss, under four topics, the steps to be taken when a taxpayer has a disagreement with the Service. These topics are:

Courtesy and Consideration,
If Your Return is Questioned,
Fair Collection of Tax, and
Protection of Your Rights.

In each situation, the taxpayer is directed to contact the IRS employee's supervisor, who should be able to resolve any problem. In a fifth topic, under "Special Help to Resolve Your Problem", the text describes a situation when a taxpayer is unable to resolve a problem through the supervisor. The taxpayer is told to contact the Problem Resolution Office.

For the next revision of Publication 1, we intend to be more specific about the subject of filing a complaint with the Service.

We have attached a copy of the publication and highlighted the language relevant to taxpayer complaints in each of the five discussions. (See Attachment D.)

In preparing for the hearing, we extensively reviewed actions taken throughout the agency to implement the Taxpayer Bill of Rights. I believe that these actions went a long way toward implementing the spirit as well as the statutory requirements of the Act. We will continue in these efforts. We also welcome your continuing interest in taxpayers' rights and look forward to working with your Subcommittee.

Best regards.

Sincerely,

for Fred T. Goldberg, Jr.

Enclosures

ATTACHMENT A

828 2301 P 703 631 733 CAF 60288 28141-136-03337-8 8927

Department of the Treasury
Internal Revenue Service
PHILADELPHIA, PA 19255

DATE OF NOTICE 07-17-89 8931 CP504
TAXPAYER IDENTIFYING NUMBER [redacted]
FORM 941 TAX PERIOD 09-30-87

FOR ASSISTANCE YOU MAY CALL US AT:

[redacted]
YORK, PA 17401

574-9900 LOCAL PHIL.
1-800-424-1040 OTHER PA

OR YOU MAY WRITE TO US AT THE ADDRESS SHOWN AT THE LEFT. IF YOU WRITE, BE SURE TO ATTACH THE BOTTOM PART OF THIS NOTICE.

NOTICE OF INTENT TO LEVY

THIS IS YOUR FINAL NOTICE. YOUR FULL PAYMENT OF THE FEDERAL TAX SHOWN BELOW HAS STILL NOT BEEN RECEIVED. IF FULL PAYMENT IS NOT RECEIVED WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, ADDITIONAL INTEREST AND PENALTIES WILL BE CHARGED.

A NOTICE OF FEDERAL TAX LIEN MAY BE FILED, WHICH IS A PUBLIC NOTICE THAT THERE IS A TAX LIEN AGAINST YOUR PROPERTY. AS PROVIDED BY SECTION 6331 OF THE INTERNAL REVENUE CODE, YOUR PROPERTY OR RIGHTS TO PROPERTY MAY BE SEIZED. THIS INCLUDES SALARY OR WAGES, BANK ACCOUNTS, COMMISSIONS, OR OTHER INCOME. REAL ESTATE AND PERSONAL PROPERTY SUCH AS AUTOMOBILES, MAY ALSO BE SEIZED AND SOLD TO PAY YOUR TAX.

TO PREVENT THIS ACTION, SEND FULL PAYMENT TODAY BY CHECK OR MONEY ORDER PAYABLE TO INTERNAL REVENUE SERVICE. WRITE YOUR TAXPAYER IDENTIFYING NUMBER ON YOUR PAYMENT. INCLUDE THE BOTTOM PART OF THIS NOTICE WITH YOUR PAYMENT SO WE CAN QUICKLY IDENTIFY AND CREDIT YOUR ACCOUNT.

WE HAVE CALCULATED PENALTY AND INTEREST AMOUNTS TO THE DATE OF THIS NOTICE. THE FAILURE TO PAY PENALTY INCREASES FROM ONE HALF PERCENT TO ONE PERCENT PER MONTH AFTER THIS NOTICE.

IF YOU RECENTLY PAID THE AMOUNT DUE, OR IF YOU CANNOT PAY THIS AMOUNT IN FULL, CONTACT THE OFFICE SHOWN ABOVE TODAY. AS EXPLAINED IN THE ENCLOSED PUBLICATION, ENFORCEMENT ACTION MAY BE TAKEN 30 DAYS AFTER THIS NOTICE.

REASON FOR AMOUNT DUE

WHEN YOU DID NOT RESPOND TO OUR REPEATED REQUESTS FOR YOU TO FILE YOUR TAX RETURN FOR THE TAX PERIOD SHOWN ABOVE, WE PREPARED THE RETURN FOR YOU. WE USED YOUR EMPLOYMENT TAX HISTORY AND OTHER INFORMATION IN OUR FILES TO DETERMINE YOUR TAX LIABILITY, AND WE ARE PURSUING COLLECTION OF THIS BALANCE. IF YOU BELIEVE OUR ASSESSMENT IS INCORRECT, PLEASE CONTACT US.

TAX FORM: 941
TAX PERIOD: 09-30-87

BALANCE OF PRIOR ASSESSMENTS	02,203.49
LATE PAYMENT PENALTY	0162.20
INTEREST	0104.34
TOTAL AMOUNT DUE	02,470.03

TO MAKE SURE IRS EMPLOYEES GIVE COURTEOUS RESPONSES AND CORRECT INFORMATION TO TAXPAYERS, A SECOND EMPLOYEE SOMETIMES LISTENS IN ON TELEPHONE CALLS.
KEEP THIS PART FOR YOUR RECORDS FORM 8126 (Rev. 8-88)

RETURN THIS PART WITH YOUR PAYMENT OR INQUIRY

ACR
CAF 60288 28141-136-03337-8 8927

COPY RPT
828 2301

DATE OF NOTICE 07-17-89 8931 CP504
TAXPAYER IDENTIFYING NUMBER [redacted]
FORM 941 01 TAX PERIOD 09-30-87

[redacted] SW [redacted] 01 2 8709 670 00000247003

INTERNAL REVENUE SERVICE
PHILADELPHIA, PA 19255

AMOUNT YOU OWE 02,470.03
SUBTRACT PAYMENTS WE HAVEN'T INCLUDED
PAY ADJUSTED AMOUNT

FORM 8126 (Rev. 8-88)

ATTACHMENT B

Internal Revenue Service
District Director

Department of the Treasury

Date:

Social Security or
Employer Identification Number

Contact Telephone Number

Person to Contact

FINAL NOTICE
(NOTICE OF INTENTION TO LEVY)
Reply Within 30 Days to Avoid Enforcement Action and Additional Penalties

CERTIFIED MAIL

Our records show that we have previously sent you notices, but we have not received full payment of the Federal tax liability shown below. This is your final notice.

A Notice of Federal Tax Lien, which is a public notice that there is a tax lien against your property, may be filed at any time to protect the interest of the government. If you do not take the requested action within 30 days from the date of this notice, we may, without further notice to you, levy upon and seize your property and rights to property. Section 6331 of the Internal Revenue Code allows us to seize wages, bank accounts, commissions, and other income. Real estate and personal property such as business assets and automobiles may also be seized. The enclosed publication contains an explanation of the actions we may take.

To prevent action from being taken, send full payment today by check or money order payable to the Internal Revenue Service. Write your social security number or employer identification number on your payment. Enclose this letter with your payment in the envelope provided, so we can quickly credit your account. Also, include your telephone number and the most convenient time for us to call if we need more information.

If you recently paid the amount due or if you cannot pay this amount in full, please call us at the telephone number shown above.

Form Number	Tax Period	Tax Balance	Accumulated Interest and Penalty	Amount You Owe

[illegible]	INITIALS	DATE
O. K. to print	[illegible]	[illegible]
O. K. to print after changes	[illegible]	[illegible]
Revised proofs requested		

Enclosures:
Envelope
Copy of this letter
Publication 586A or 594

Letter 1058(DO) (Rev. 1-90)

ATTACHMENT C

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D C 20224

DEPUTY COMMISSIONER

APR 30 1990

The Honorable John Kerry
United States Senate
Washington, DC 20510

Dear Senator Kerry:

This is in response to your letter dated March 19, 1990, to Commissioner Goldberg, regarding Internal Revenue Service procedures relating to taxpayer interviews as codified by the Taxpayer Bill of Rights. As the Commissioner noted at a recent hearing on the Taxpayer Bill of Rights, letters like yours help us make sure the system works like it should.

Collection and Examination procedures are written to implement both the spirit and the intent of the Taxpayer Bill of Rights. They are designed to protect the taxpayers' rights. As mandated by the Taxpayer Bill of Rights, the Internal Revenue Manual (IRM) requires Publication 1, Your Rights As A Taxpayer, to be provided to all taxpayers before an initial contact, interview or examination.

On February 9, 1989, the Assistant Commissioner (Collection) issued a memorandum to all Collection field offices emphasizing the requirement to provide Publication 1 immediately prior to, or at the initial in-person interview. As a result of your correspondence, we contacted the particular offices involved to reemphasize the importance of the proper implementation of the Taxpayer Bill of Rights and in particular proper distribution of Publication 1. We will also conduct reviews of appropriate offices beginning in April 1990, on this issue.

Both the Examination and Collection functions are working on revisions of their portions of the Internal Revenue Manual to correct the disparity you noted between IRM 4261 on income tax audits and IRMs 4600 and 5(10)00 on employment tax audits. It was intended that IRM 4261 provide general procedural guidelines when conducting an audit and not be limited to income tax audits. To clarify this, Examination is revising IRM 4600 to specifically refer employees to IRM 4261.

When Collection prepared IRM 5(10)00 they were guided by the text in IRM 4600. Collection's training materials for examination of employment tax returns contain detailed information for the examination process. We have recently reviewed our IRM guidelines in this area and are in the process of incorporating expanded procedures in IRM 5(10)00. They will also include instructions similar to those in IRM 4261.3.

We recognized that the difference between the initial interview and the beginning of an examination for employment tax is not always clear to the taxpayer. In December 1989, we developed a letter explaining the purpose of the Collection employment tax interview. The letter is being provided to taxpayers at the initial interview. However, in response to your concerns, I plan to review and report back to the Commissioner within sixty (60) days on our procedures that currently permit unscheduled visits in order to conduct an employment tax interview.

I have forwarded a copy of your letter to the District Directors at the addresses shown below, asking them to look into your other concerns. Let me assure you that the officials handling this matter will give every consideration to the issues you have raised.

Thank you for bringing this matter to our attention, and giving us an opportunity to comment.

Sincerely,

Charly Brennan

District Director
Internal Revenue Service
JFK Federal Building
Boston, MA 02203

District Director
Internal Revenue Service
80 Daniel Street
Portsmouth, NH 03801

CC: SENATOR PRYOR

ATTACHMENT D

Your Rights AS A TAXPAYER

As a taxpayer, you have the right to be treated fairly, professionally, promptly, and courteously by Internal Revenue Service employees. Our goal at the IRS is to protect your rights so that you will have the highest confidence in the integrity, efficiency, and fairness of our tax system. To ensure that you always receive such treatment, you should know about the many rights you have at each step of the tax process.

Department of the Treasury
Internal Revenue Service
Publication No. 1 (6-89)

Free Information and Help in Preparing Returns

You have the right to information and help in complying with the tax laws. In addition to the basic instructions we provide with the tax forms, we make available a great deal of other information.

Taxpayer publications. We publish over 100 free taxpayer information publications on various subjects. One of these, Publication 910, *Guide to Free Tax Services*, is a catalog of the free services and publications we offer. You can order all publications and any tax forms or instructions you need by calling us toll-free at 1-800-424-FORM (3676).

Other assistance. We provide walk-in tax help at many IRS offices and recorded telephone information on many topics through our *Tele-Tax* system. The telephone numbers for *Tele-Tax*, and the topics covered, are in certain tax forms' instructions and publications. Many of our materials are available in Braille (at regional libraries for the handicapped) and in Spanish. We provide help for the hearing impaired via special telephone equipment.

We have informational videotapes that you can borrow. In addition, you may want to attend our education programs for specific groups of taxpayers, such as farmers and those with small businesses.

In cooperation with local volunteers, we offer free help in preparing tax returns for low-income and elderly taxpayers through the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Programs. You can get information on these programs by calling the toll-free telephone number for your area.

Copies of tax returns. If you need a copy of your tax return for an earlier year, you can get one by filling out Form 4506, *Request for Copy of Tax Form*, and paying a small fee. However, you often only need certain information, such as the amount of your reported income, the number of your exemptions, and the tax shown on the return. You can get this information free if you write or visit an IRS office or call the toll-free number for your area.

If you have trouble clearing up any tax matter with the IRS through normal channels, you can get special help from our Problem Resolution Office, as explained later.

Privacy and Confidentiality

You have the right to have your personal and financial information kept confidential. People who prepare your return or represent you must keep your information confidential.

You also have the right to know why we are asking you for information, exactly how we will use any information you give, and what might happen if you do not give the information.

Information sharing. Under the law, we can share your tax information with State tax agencies and, under strict legal guidelines, the Department of Justice and other federal agencies. We can also share it with certain foreign governments under tax treaty provisions.

Courtesy and Consideration

You are always entitled to courteous and considerate treatment from IRS employees. [redacted]

Representation and Recordings

Throughout your dealings with us, you can represent yourself, or, generally with proper written authorization, have someone represent you in your absence. During an interview, you can have someone accompany you.

If you want to consult an attorney, a certified public accountant, an enrolled agent, or any other person permitted to represent a taxpayer during an interview for examining a tax return or collecting tax, we will stop and reschedule the interview. We cannot suspend the interview if you are there because of an administrative summons.

You can generally make an audio recording of an interview with an IRS Collection or Examination officer. You must notify us 10 days before the meeting and bring your own recording equipment. We also can record an interview. If we do so, we will notify

you 10 days before the meeting and you can get a copy of the recording at your expense.

Payment of Only the Required Tax

You have the right to plan your business and personal finances so that you will pay the least tax that is due under the law. You are liable only for the correct amount of tax. Our purpose is to apply the law consistently and fairly to all taxpayers.

If Your Return is Questioned

We accept most taxpayers' returns as filed. If we inquire about your return or select it for examination, it does not suggest that you are dishonest. The inquiry or examination may or may not result in more tax. We may close your case without change. Or, you may receive a refund.

Examination and inquiries by mail. We handle many examinations and inquiries entirely by mail. We will send you a letter with either a request for more information or a reason why we believe a change needs to be made to your return. If you give us the requested information or provide an explanation, we may or may not agree with you and we will explain the reasons for any changes. You should not hesitate to write to us about anything you do not understand. If you cannot resolve any questions through the mail, you can request a personal interview. You can appeal through the IRS and the courts. You will find instructions with each inquiry or in Publication 1383, *Correspondence Process.*

Examination by interview. If we notify you that we will conduct your examination through a personal interview, or you request such an interview, you have the right to ask that the examination take place at a reasonable time and place that is convenient for both you and the IRS. If the time or place we suggest is not convenient, the examiner will try to work out something more suitable. However, the IRS makes the final determination of how, when, and where the examination will take place. You will receive an explanation of your rights and of the examination process either before or at the interview.

[redacted]

Repeat examinations. We try to avoid repeat examinations of the same items, but this sometimes happens. If we examined your tax return for the same items in either of the 2 previous years and proposed no change to your tax liability, please contact us as soon as possible so we can see if we should discontinue the repeat examination.

Explanation of changes. If we propose any changes to your return, we will explain the reasons for the changes. It is important that you understand these reasons. You should not hesitate to ask about anything that is unclear to you.

Interest. You must pay interest on additional tax that you owe. The interest is figured from the due date of the return. But if our error caused a delay in your case, and this was grossly unfair, we may reduce the interest. Only delays caused by procedural or mechanical acts not involving the exercise of judgment or discretion qualify. If you think we caused such a delay, please discuss it with the examiner and file a claim for refund.

Business taxpayers. If you are in an individual business, the rights covered in this publication generally apply to you. If you are a member of a partnership or a shareholder in a small business corporation, special rules may apply to the examination of your partnership or corporation items. The examination of partnership items is discussed in Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund.* The rights covered in this publication generally apply to exempt organizations and sponsors of employee plans.

Appeal of the Examination Findings

If you don't agree with the examiner's findings, you have the right to appeal them. During the examination process, you will be given information about your appeal rights. Publication 5, *Appeal Rights and Preparation of Protests for Unagreed Cases,* explains your appeal rights in detail and tells you exactly what to do if you want to appeal.

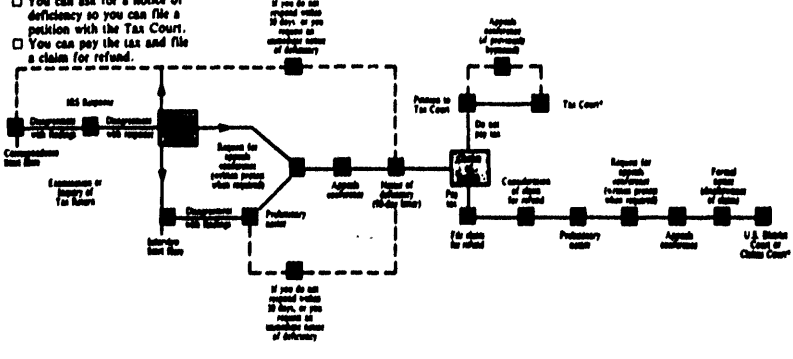
Appeals Office. You can appeal the findings of an examination within the IRS through our Appeals Office. Most differences can be settled through this appeals system without expensive and time-consuming court trials. If the matter cannot be settled to your satisfaction in Appeals, you can take your case to court.

Appeals to the courts. Depending on whether you first pay the disputed tax, you can take your case to the U.S. Tax Court, the U.S. Claims Court, or your U.S. District Court. These courts are entirely independent of the IRS. As always, you can represent yourself or have someone admitted to practice before the court represent you.

If you disagree about whether you owe additional tax, you generally have the right to take your case to

Income Tax Appeal Procedure

At this stage
- ☐ You can agree and arrange to pay.
- ☐ You can ask for a notice of deficiency so you can file a petition with the Tax Court.
- ☐ You can pay the tax and file a claim for refund.



*Further appeals to the courts may be possible, except there is no appeal under the Tax Court's small tax case procedure.

the U.S. Tax Court if you have not yet paid the tax. Ordinarily, you have 90 days from the time we mail you a formal notice (called a "notice of deficiency") telling you that you owe additional tax, to file a petition with the U.S. Tax Court. You can request simplified small tax case procedures if your case is $10,000 or less for any period or year. A case settled under these procedures cannot be appealed.

If you have already paid the disputed tax in full, you may file a claim for refund. If we disallow the claim or do not take action within 6 months, then you may take your case to the U.S. Claims Court or your U.S. District Court.

Recovering litigation expenses. If the court agrees with you on most issues in your case, and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. To do this, you must have used all the administrative remedies available to you within the IRS. This includes going through our Appeals system and giving us all the information necessary to resolve the case.

Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*, will help you more fully understand your appeal rights.

Fair Collection of Tax

Whenever you owe tax, we will send you a bill describing the tax and stating the amounts you owe in tax, interest, and penalties. Be sure to check any bill you receive to make sure it is correct. You have the right to have your bill adjusted if it is incorrect, so you should let us know about an incorrect bill right away.

If we tell you that you owe tax because of a math or clerical error on your return, you have the right to ask us to send you a formal notice (a "notice of deficiency") so that you can dispute the tax, as discussed earlier. You do not have to pay the additional tax at the same time that you ask us for the formal notice, if you ask for it within 60 days of the time we tell you of the error.

If the tax is correct, we will give you a specific period of time to pay the bill in full. If you pay the bill within the time allowed, we will not have to take any further action.

We may request that you attend an interview for the collection of tax. You will receive an explanation of your rights and of the collection process either before or at the interview.

Your rights are further protected because we are not allowed to use tax enforcement results to evaluate our employees.

Payment arrangements. You should make every effort to pay your bill in full. If you can't, you should pay as much as you can and contact us right away. We may ask you for a complete financial statement to determine how you can pay the amount due. Based on your financial condition, you may qualify for an installment agreement. We will give you copies of all agreements you make with us.

If we approve a payment agreement, the agreement will stay in effect only if:

- You give correct and complete financial information,
- You pay each installment on time,
- You satisfy other tax liabilities on time,
- You provide current financial information when asked, and
- We determine that collecting the tax is not at risk.

Following a review of your current finances, we may change your payment agreement. We will notify you 30 days before any change to your payment agreement and tell you why we are making the change.

We will not take any enforcement action (such as recording a tax lien, or levying on or seizing property), until after we have tried to contact you and given you the chance to voluntarily pay any tax due. Therefore, it is very important for you to respond right away to our attempts to contact you (by mail, telephone, or personal visit). If you do not respond, we may have no choice but to begin enforcement.

Release of liens. If we have to place a lien on your property (to secure the amount of tax due), we must release the lien no later than 30 days after finding that you have paid the entire tax and certain charges, the assessment has become legally unenforceable, or we have accepted a bond to cover the tax and certain charges.

Recovery of damages. If we knowingly or negligently fail to release a lien under the circumstances described above, and you suffer economic damages because of our failure, you can recover your actual economic damages and certain costs.

If we recklessly or intentionally fail to follow the laws and regulations for the collection of tax, you can recover actual economic damage and costs.

In each of the two situations above, damages and costs will be allowed within the following limits. You must exhaust all administrative remedies available to you. The damages will be reduced by the amount which you could have reasonably prevented. You must bring suit within 2 years of the action.

Incorrect liens. You have the right to appeal our filing of a Notice of Federal Tax Lien if you believe we filed the lien in error. If we agree, we will issue a certificate of release, including a statement that we filed the lien in error.

A lien is incorrect if:

- You paid the entire amount due before we filed the lien.
- We made a procedural error in a deficiency assessment, or
- We assessed a tax in violation of the automatic stay provisions in a bankruptcy case.

Levy. We will generally give you 30 days notice before we levy on any property. The levy may be given to you in person, mailed to you, or left at your home or workplace. We cannot place a levy on your property on a day on which you are required to attend a collection interview.

Property that is exempt from levy. If we must seize your property, you have the legal right to keep:

- Necessary clothing and schoolbooks,
- A limited amount of personal belongings, furniture, and business or professional books and tools,
- Unemployment aid job training benefits, workers' compensation, welfare, certain disability payments, and certain pension benefits,
- The income you need to pay court-ordered child support,
- Mail,
- An amount of weekly income equal to your standard deduction and allowable personal exemptions, divided by 52, and
- Your main home, except in certain situations.

If your bank account is levied after June 30, 1989, the bank will hold your account up to the amount of the levy for 21 days. This allows you to resolve your tax bill before the bank turns over the funds to the IRS.

We generally must release a levy issued after June 30, 1989, if:

- You pay the tax, penalty, and interest for which the levy was made,
- The IRS determines the release will help collect the tax,
- You have an approved installment agreement for the tax on the levy,
- The IRS determines the levy is creating an economic hardship, or

The fair market value of the property exceeds the amount of the levy and release would not hinder the collection of tax.

[redacted]

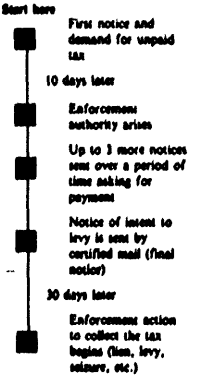
If we seize your property, you have the right to request that it be sold within 60 days after your request. You can request a time period greater than 60 days. We will comply with your request unless it is not in the best interest of the government.

Access to your private premises. A court order is not generally needed for a collection officer to seize your property. However, you don't have to allow the employee access to your private premises, such as your home or the non-public areas of your business, if the employee does not have court authorization to be there.

Withheld taxes. If we believe that you were responsible for seeing that a corporation paid us income and social security taxes withheld from its employees, and the taxes were not paid, we may look to you to pay an amount based on the unpaid taxes. If you feel that you don't owe this, you have the right to discuss the case with the collection officer's supervisor. Also, you generally have the same IRS appeal rights as other taxpayers. Because the U.S. Tax Court has no jurisdiction in this situation, you must pay at least part of the withheld taxes and file a claim for refund in order to take the matter to the U.S. District Court or U.S. Claims Court.

The Collection Process

To stop the process at any stage, you should pay the tax in full. If you cannot pay the tax in full, contact us right away to discuss possible ways to pay the tax.



Publications 586A, *The Collection Process (Income Tax Accounts)*, and 594, *The Collection Process (Employment Tax Accounts)*, will help you understand your rights during the collection process.

Refund of Overpaid Tax

Once you have paid all your tax, you have the right to file a claim for a refund if you think the tax is incorrect. Generally, you have 3 years from the date you filed the return or 2 years from the date you paid the tax (whichever is later) to file a claim. If we examine your claim for any reason, you have the same rights that you would have during an examination of your return.

Interest on refunds. You will receive interest on any income tax refund delayed more than 45 days after the later of either the date you filed your return or the date your return was due.

Checking on your refund. Normally, you will receive your refund about 6 weeks after you file your return. If you have not received your refund within 8 weeks after mailing your return, you may check on it by calling the toll-free *Tele-Tax* number in the tax forms' instructions.

If we reduce your refund because you owe a debt to another Federal agency or because you owe child support, we must notify you of this action. However, if you have a question about the debt that caused the reduction, you should contact the other agency.

Cancellation of Penalties

You have the right to ask that certain penalties (but not interest) be cancelled (abated) if you can show reasonable cause for the failure that led to the penalty (or can show that you exercised due diligence, if that is the applicable standard for that penalty).

If you relied on wrong advice you received from IRS employees on the toll-free telephone system, we will cancel certain penalties that may result. But you have to show that your reliance on the advice was reasonable.

If you relied on incorrect written advice from the IRS in response to a written request you made after January 1, 1989, we will cancel any penalties that may result. You must show that you gave sufficient and correct information and filed your return after you received the advice.

Special Help to Resolve Your Problems

We have a Problem Resolution Program for taxpayers who have been unable to resolve their problems with the IRS. [redacted] You may also reach the Problem Resolution Office by calling the IRS taxpayer assistance number for your area.

If you suffer or are about to suffer a significant hardship because of the administration of the tax laws, you may request assistance on Form 911, *Application For Assistance Order to Relieve Hardship*. The Taxpayer Ombudsman or a Problem Resolution Officer will review your application and may issue a Taxpayer Assistance Order (TAO). You can get copies of Form 911 in IRS offices or by calling toll-free 1-800-424-FORM (3676).

Protection of Your Rights

The employees of the Internal Revenue Service will explain and protect your rights as a taxpayer at all times. [redacted] Your local Problem Resolution Officer will assist you if you are unable to resolve the problem with the supervisor.

Taxpayer Assistance Numbers

You should use the telephone number shown in the white pages of your local telephone directory under U.S. Government, Internal Revenue Service, Federal Tax Assistance. If there is not a specific number listed, call toll-free 1-800-424-1040. You can also find these phone numbers in the instructions for Form 1040.

You may also use these numbers to reach the Problem Resolution Office. Ask for the Problem Resolution Office when you call.

U.S. taxpayers abroad may write for information to:

Internal Revenue Service
Attn: IN:C:TPS
950 L'Enfant Plaza South, S.W.
Washington, D.C. 20024

You can also contact your nearest U.S. Embassy for information about what services and forms are available in your location.

PREPARED STATEMENT OF DAVID KEATING

Mr. Chairman and members of the Subcommittee, thank you for the invitation to testify on the Taxpayers' Bill of Rights and whether additional follow-up legislation is necessary. I represent the 200,000 members of the National Taxpayers Union who strongly support providing taxpayers with additional rights and protections during the audit and collection process.

Senator Pryor, you and the members of the Finance Committee who backed the Taxpayers' Bill of Rights legislation should be proud of your legislative accomplishment. It's the first time Congress has ever provided a substantial expansion of rights for taxpayers. It was long overdue and much needed.

While many provisions in the bill did not go into effect until last July, I've noticed a slight reduction in complaints. Production pressure seems to have gone down while quality seems to be going up.

The House Ways & Means Committee put the IRS Commissioner on the hot seat in February about the alleged $87 billion of uncollected taxes on the books. The IRS Collection Division has historically tended to overreact in the face of congressional criticism, and this situation is not likely to be any different, particularly because of the large budget deficit.

As marching orders filter through the bureaucracy, each management layer tends to rewrite the orders stronger, to ensure that the field troops fully understand the new mission. The result may well be that IRS employees could take a much tougher stand with taxpayers, causing more violations of the Taxpayers' Bill of Rights. We appreciate your continuing oversight of the IRS and this important new law.

Unless the IRS continues to reinforce the importance of following the Taxpayers' Bill of Rights, it might well become ignored on the front line of taxpayer contacts. IRS has apparently only provided one day of training on the Taxpayers' Bill of Rights, and we have received reports that many Revenue Officers still do not have Internal Revenue Manuals.

Taxpayers' Bill of Rights May Not Have Prevented the Council Family Tragedy.

Although the Taxpayers' Bill of Rights offers important new protections for taxpayers, the job of protecting innocent taxpayers from ruin is far from complete. I have serious doubts that it would have prevented the Council family tragedy.

Unfortunately, had the Taxpayers' Bill of Rights been in effect, it appears to me that Ray would have had a small chance of successfully suing the IRS for damages. Senator Pryor, your original Taxpayers' Bill of Rights would have allowed taxpayers to sue for damages if "any officer or employee of the Internal Revenue Service carelessly, recklessly or intentionally disregards any provision" of the tax laws. As the bill progressed through the Congress, the word "carelessly" was dropped from what became Section 7433 of the tax code.

Was the IRS treatment of the Council family careless and negligent? Absolutely. Was it reckless or intentional? It might have been, but that is a very difficult standard to prove.

In the 1986 Tax Reform Act, Congress substantially liberalized the definition of negligent actions by individual taxpayers. During the 1980s, tax preparers have also been subject to increasing penalties for not exercising due diligence. Yet incredibly, Congress refuses to require the IRS to exercise reasonable caution in using its vast array of enforcement powers.

Taxpayers who have been financially harmed or devastated by IRS carelessness also should have the right to sue and recover damages. We suggest language for Section 7433 that would allow taxpayers to sue for damages when any officer or employee of the Internal Revenue Service fails to make a reasonable attempt to comply with the tax laws or carelessly, recklessly or intentionally disregards any provision of the tax laws or regulations.

If a U.S. corporation makes a product that injures a consumer, consumers don't have to prove that the corporation recklessly or intentionally harmed the consumer in order for the consumer to win an award. Neither should a taxpayer who falls victim to the incompetence, carelessness or negligence of the all-powerful Internal Revenue Service.

While Section 7432 of the tax law appears to allow a lawsuit for damages for failure to release a lien, it only applies for a failure to release a lien under Section 6325, not the imposition of the lien under Section 6321 in the first place. So, I doubt Kay could have successfully sued under Section 7432.

We also strongly recommend that the cap for damages be raised from the current $100,000 to at least $250,000.

As Kay Council's case showed, taxpayers can suffer enormous financial damages even when they win. Kay was fortunate to receive an award of attorneys' fees for her case. But the fee award didn't come close to paying her total costs. She still owes tens of thousands of dollars.

While her attorneys billed her at $135 per hour and $90 per hour, depending on the respective seniority of the attorney, the judge was restricted by the outdated $75 per hour cap in the current law. He therefore only allowed reimbursement at a rate of $75 per hour and $49 per hour, leaving Kay to pay the difference. Does Congress want to say to future Kay Councils that they'll have to pay through the nose for legal help to fight a careless, incompetent or abusive IRS?

It's very difficult to win attorneys' fees. Also, the courts are extraordinarily reluctant to award attorneys' fees in excess of the $75 per hour cap in the current law. Proving special factors is almost impossible.

Unlike the standard for award of attorneys' fees in the Equal Access to Justice Act, plaintiffs in tax cases must prove that the IRS "was not substantially justified," in pursuing the case. It would be fairer to require that the government prove it was acting reasonably in order to prevent an award of attorneys' fees.

To protect taxpayers from enormous financial losses incurred while fighting the IRS, we strongly urge that the outdated $75 per hour cap be raised substantially or eliminated. The court would still be limited to awarding only "reasonable fees," preventing excessive awards.

The Berlin Wall of Taxpayers' Rights.

When the IRS goes out of control, federal law largely prevents the courts from allowing taxpayers to enforce their rights. The Federal Tort Claims Act allows the government to be sued in certain instances but specifically excludes "any claim arising in respect of the assessment or collection of any tax or custom duty." Of course, the new Taxpayers' Bill of Rights granted two limited exceptions to that rule.

Another unnecessarily restrictive law is the Anti-Injunction Act, the law that we call the Berlin Wall against taxpayers' rights.

Under Section 7421 of the Internal Revenue Code, no lawsuit can be brought by any person in any court for the purpose of restraining the assessment or collection of any tax, except in limited circumstances. If you can call Kay Council fortunate in any way, this

was the one area where she had any rights. You are allowed to sue under Section 6212(a) and (c) and 6213(a), relating to the 90-day letter (notice of deficiency). That's how she was able to eventually get the court to remove the lien and the threat of other collection actions.

There are only a few other areas where taxpayers can sue to enforce their rights — Sections 6672(b), relating to suits for determining liability of the 100% penalty; 6694(c), relating to liability of preparer penalties; 7426(a), relating to wrongful levies; 7426(b)(1), relating to irreparable injuries to superior rights of the U.S.; and 7429(b), relating to appeal of jeopardy assessment procedures.

The case law around the Anti-injunction Act indicates many problems in obtaining injunctions to restrain the collection of the tax. It is clear that injunctions will be granted where the failure to grant relief would result in irreparable damage to the taxpayer. But an injunction will only be allowed where it is clear that under no circumstances would the government prevail. Otherwise only two remedies are available to the taxpayer: 1) pay the tax, file a claim for refund, and sue for recovery if the claim is rejected; 2) file a petition in Tax Court before assessment and within the short period of time allowed for filing such a petition.

We think that the Anti-Injunction Act should be amended to give taxpayers the ability to enforce their rights if necessary. Taxpayers should be allowed to file suit in a federal district court to enjoin the IRS from enforcement action because: the deficiency assessment was made without knowledge of the taxpayer and without benefit of the appeal procedures provided by law; there has been an improper or illegal assessment; there has been an action in violation of the law or tax laws or regulations providing for procedural safeguards for taxpayers; the IRS has made an unlawful determination that collection of the tax was in jeopardy; the value of seized property is out of proportion to the amount of the liability if other collection remedies are available; or the IRS will not release the seized property upon an offer of payment of the U.S. interest in the property.

Then, there's also the Declaratory Relief Act. This law says that citizens can file suit to get a court to declare their rights "except with respect to federal taxes."

In author David Burnham's excellent new book, A Law Unto Itself, he quotes California tax attorney Montie Day and his views on these laws that prevent taxpayers from enforcing their rights. He says that allowing such limited lawsuits would make "the IRS more accountable... and make the agency more likely to operate in a lawful fashion."

To illustrate this point, he said "assume you are under audit and somehow you learn that the revenue agent has decided the best way to investigate you is to break a window of your office, climb through it and examine your correspondence.

"You come into my office for advice, wanting the court to rule that the IRS agent can't conduct his audit in this way. We consider filing a suit for declaratory relief, but then we remember that the court does not have the authority to issue such a declaration of rights in tax matters because of that exception in the declaratory relief act.

"Then we think about requesting a court order to enjoin the agent from conducting his tax investigation by breaking into your office. This approach, of course, cannot be followed because the court is forbidden to even consider such requests under the anti-injunction act."

As long as taxpayers are largely banned from suing to enforce their rights, taxpayers will continue to be at risk of financial ruin and emotional devastation from the IRS. It is completely unfair for the IRS to have all the powers and for taxpayers to have few rights

that can only be enforced with great legal difficulty. We must ensure fair treatment of innocent taxpayers to continue respect for our Constitutional system of government.

Congress Should Require Equitable Use of the Levy Power.

Burnham's book presents an impressive array of statistics that the levy power is not applied equally across the United States. Burnham reports that in 1988 "for every 1,000 tax delinquent accounts, 892 levies [occurred] in the Western Region; 860 in the Mid-Atlantic; 735 in the Southwest; 714 in the North Atlantic and the Central; 708 in the Mid-West; and 532 for the Southeast.

There's even more variation in the seizure rate. Burnham reports that in 1988 "the seizure rates in the most active districts were 30 to 40 times higher than the rates in the districts with the least. The IRS has no explanation for the variations."

This is nothing new. As far back as 1976, the Administrative Conference of the United States issued a report titled "Collection of Delinquent Taxes" that said the IRS had no clear guidelines specifying when levy action was to be taken. The report said "lacking guidance, revenue officers vary in their criteria for seizure of assets of individual taxpayers... So long as the Internal Revenue Service fails to delineate clear purposes for the use of summary powers, we believe that these divergent criteria will continue to exist. The variations in practice may lead to the appearance of arbitrariness and caprice in some actions, thus undermining the taxpaying public's confidence in (and compliance with) the taxing system."

These random variations have continued for year after year. The guidelines that exist only in Internal Revenue Manuals are not enforceable. Therefore, Congress should require that the IRS issue regulations specifying the circumstances, conditions and situations under which a levy will be made.

Safeguard the Right to be Self-Supporting.

The Taxpayers' Bill of Rights made the very necessary improvement of exempting a larger amount of a taxpayer's weekly salary from levy. But it made little change in the amount of property exempt from seizure.

The law lifted the amounts from a paltry $1,500 for personal property to $1,650 and from $1,000 for equipment and property for a trade, business or profession to $1,100. That's hardly any change, and it is far from sufficient to allow a taxpayer to be self-supporting.

What self-employed plumber could maintain his self-employment with just $1,100 in tools, equipment and a truck? What computer programmer or author could do so? Very few, if any.

Who can provide the basic essentials of clothing and furnishings for a family with only a $1,600 exemption?

The bankruptcy laws provide far more protection than this.

The original version of Senator Pryor's bill would have raised each exemption to $10,000. We would like to see the exemption amounts lifted to at least $5,000. The current levels are ridiculously low.

Employees Who Abuse the Law Usually Go Unpunished.

Mr. Chairman, there are many fine employees in the IRS who care about helping taxpayers comply with the law and who care about respecting taxpayers' rights. But given the sheer number of employees and the billions of tax returns and documents that are received by the IRS each year, it is inevitable that mistakes will be made and that some employees will act out of line.

The IRS has issued rules requiring tax preparers to exercise "due diligence" in the preparation of tax returns. In certain situations, preparers must cite "substantial authority" for the positions they take on tax returns. Failure to do so may result in monetary fines, being disbarred from practicing before the IRS, and a full scale audit of all the preparers' clients.

Yet, IRS employees are often allowed to violate IRS rules, regulations, policies, procedures, and guidelines at will and without fear of recourse. The law is so overwhelming and sweeping in its power conferred upon the tax collecting authority that there are almost no checks and balances on the exercise of that authority.

Taxpayers need more protections from the arbitrary and capricious abuses of the IRS, and IRS employees should be held accountable for their violations.

One theme that comes across again and again in Burnham's book is that the IRS almost always will not punish employees who make big mistakes in handling taxpayer disputes.

It seems clear that the IRS is more interested in controlling, regulating, and punishing taxpayers and practitioners for their violations than they are in controlling, regulating, and punishing their own employees for comparable infractions. If this double standard continues to exist, the compliance system as we now know it could be in serious trouble.

Burnham reports "a disturbing footnote" about the occasions "when the IRS has crossed the line in its zealous enforcement of the tax laws: Agency officials involved in questionable activities are seldom punished." He also notes that many lawyers are worried "that the zealous, anything-to-win tactics are more and more becoming the accepted practice of the government." One of the fundamental principles of the U.S. Constitution is that people's rights shall be respected, even if it means that some people will escape being penalized for laws they break.

Five years ago, Congressman Andy Jacobs introduced an amendment to a tax bill that would have permitted federal judges to make IRS employees personally liable for attorneys' fees paid by taxpayers who proved IRS agents acted arbitrarily and capriciously in pursuing the taxpayers. While this proposal may have gone too far and could have affected the ability of the IRS to recruit employees, the concept is a good one — it would serve notice to IRS employees that they should be careful to protect taxpayers' rights.

We expect that tax return preparers will be careful in preparing tax returns. Is it too much to ask that IRS employees be subject to some limited financial sanctions if they act to intentionally harm the taxpayer? We think not.

Installment Agreements.

An early version of Senator Pryor's Taxpayers' Bill of Rights contained an important provision for individual taxpayers — the right to an installment agreement if the taxpayer had not been delinquent in the previous three years and the liability was under $20,000. The provision was dropped because of concern about the $20,000 liability.

We think the concept was a good one, especially if it is limited to individual Form 1040 taxes. A liability cap of a smaller amount, say $2,500, might make the concept more agreeable. Of course, any interest in penalties that would normally be owed would still continue to accrue.

Taxpayer Assistance Orders and the Problem Resolution Program.

While the Problem Resolution Program has undoubtedly achieved a great deal of success in helping taxpayers, we think there is still room for substantial improvement. Recently, reports have surfaced

about problem resolution officers (PROs) who have not been helping taxpayers even though the circumstances appear to warrant intervention. In one instance, a PRO told a taxpayer he would not intervene because the taxpayer owed money to the IRS. In another recent report, an attorney from California was told by an IRS branch chief that she was going to disregard his request for intervention and proceed with enforced collection in violation of established IRS policies. After pleading for help from the district chain of command and the PRO, the attorney was granted none. Surprisingly, the attorney contacted the Office of Inspector General in Washington and got results.

I have also heard reports that Problem Resolution Officers simply pass the request from the taxpayer or the taxpayer's representative to the person who is causing the problem in the first place. Bob Kamman, an attorney in Phoenix, recently wrote in the Wall Street Journal that after a form 911 is filed with a PRO, "that person refers it to the branch of the agency where the difficulty originated. The response quite often is made by the person who caused the problem in the first place. It's not easy to tell co-workers down the hall, who may eat at the same cafeteria table, ride in the same carpool and bowl in the same league, that they screwed up. Sometimes the PRO does it, but often he won't. That's what happened to my client ..."

Finally, I have heard complaints that some PROs feel that they are not technically qualified to pass judgment on a particular taxpayer's complaint and temporarily overrule the IRS action. If this is indeed a problem, it would account for the dearth of Taxpayer Assistance Orders (TAOs) that have been granted.

The IRS will undoubtedly say that the reason for the dearth of TAOs is that the mere threat of a TAO often will accomplish the task. Mr. Kamman makes the excellent point that "we don't evaluate the effectiveness of police carrying guns, by the number of times they shoot them." But the TAO is hardly the equivalent of a bullet, and I'm concerned about why so few have been issued.

One other potential explanation is that the IRS is using a standard of hardship that is too high. Serious consideration should be given to liberalising the definition of hardship, and providing the Ombudsman more flexibility to issue a TAO.

We also believe that more can and should be done to advertise the availability of the Problem Resolution Office. Many taxpayers are still completely unaware that the program even exists. I hope the next tax form cover letter from the Commissioner will draw special attention to the Problem Resolution Office.

Tax Complexity Invites Abuse.

A few years ago, an IRS instructor claimed that he could find mistakes in 99.9 percent of tax returns. While he may have been exaggerating, he made a valid point.

The tax laws are so incredibly complicated that many taxpayers can't say with absolute confidence that they know the law or have filed their tax returns with 100 percent accuracy. Indeed, the March issue of Money magazine reported that 48 out of 50 tax professionals who took its annual test for professional tax preparers made at least one mistake (an error rate of 96 percent!). Money reported that "for the third year in a row, no two preparers came up with the same tax due for our hypothetical family of four ... Answers ranged from $9,806 to $21,216; the average was $13,915." Money said the correct tax was $12,038.

This incredible complexity opens up the potential for abuse. Vague laws allow enforcement abuses. If someone in the IRS wants to "get" you, the complex laws allow the agency to make a plausible cause against virtually anyone.

IRS Errors.

The April issue of Money magazine reports that "a telephone poll of 300 Money subscribers by the Gallup Organization in late February revealed that half of that generally higher income group received such notices — one in four in the past two years (the poll's margin of error is plus or minus six percentage points). A stunning 45% of those who contested their notices report that the IRS claims were totally incorrect, and an additional 24% said they were at least partially wrong. What's more, of those who challenged the IRS on their own, 53% wound up paying nothing and another 17% succeeded in getting the bill reduced." Incredibly, Money says that "a convincing case can be made that at least $7 billion [per year] should never have been collected at all because around half of those imposing official notices were inaccurate."

Everyone can certainly understand that Congress wants to collect every dime owed by taxpayers. But it's simply not right that the IRS collects billions of dollars in taxes that are not owed.

Another program that is generating billions of dollars in assessments that are incorrect is the "substitute for returns" program. This program is used if a taxpayer hasn't filed a tax return, but the IRS computer has a record of income earned through W-2's and 1099's. Under the program, the IRS will send the taxpayer a bill for tax owed, whether or not the information documents are correct, and whether or not the taxpayer knows of this action.

This program needs additional flexibility. Obviously, the IRS is completely following the law in attempting to ensure that people who should file tax returns do file tax returns. Under this program, the IRS typically assumes that the taxpayer is single and has absolutely no deductions. There are indications that some of those notices may be going out without giving taxpayers credit for their withholdings.

Of course, the proposed assessments go to the taxpayer's last known address, and often these addresses are incorrect. Not surprisingly though, once the assessment becomes final (after the taxpayer has not responded to the notice of deficiency), the IRS is able to track the taxpayer down. At that point, the agency attitude is pay the tax and file a claim for a refund.

If the tax bill was calculated in such an exaggerated fashion, it may well be impossible for the taxpayer to afford to pay the tax that is claimed in order to file for the refund. While the program has the potential to be effective in collecting taxes, it is important that it be administered fairly and with some flexibility.

It's also doubtful that the IRS has sent out any refund checks under this program, although it is technically feasible to do so.

Conclusion.

Mr. Chairman, the job of protecting taxpayer rights will never end. Much progress has been made, but more legal protections are necessary. Equally important, continuing aggressive oversight by this Subcommittee and other committees of Congress is absolutely essential to ensure that IRS properly implements the Taxpayers' Bill of Rights. The Finance Committee has made a great start in this important area of tax fairness and we urge you to continue this important work.

DK22:52

PREPARED STATEMENT OF JOHN J. MOTLEY, III

Mr. Chairman, my name is John Motley, and I am the Vice President for Federal Governmental Relations for the National Federation of Independent Business (NFIB). NFIB is the nation's largest small business advocacy organization, representing the interests of more than 570,000 small and independent business owners throughout the country.

I want to thank you for giving NFIB this opportunity to testify on the impact the Taxpayer Bill of Rights has had on small businesses owners. I also want to commend Senator Pryor for his leadership in sponsoring the original legislation to correct many of the problems taxpayers were having with the Internal Revenue Service (IRS) examiners and collectors.

IMMEDIATE BENEFITS OF THE TAXPAYER BILL OF RIGHTS

The Taxpayer Bill of Rights has been very helpful to many small business owners simply because it lets them know that they do have some rights before the IRS. IRS agents are giving taxpayers a summary of their rights before they begin talking to the taxpayer, and this appears to be a relatively positive way to begin the contact.

The part of the Taxpayer Bill of Rights that receives the most positive comments from our members, however, appears to be the provision that allows the taxpayer to have a representative deal with the IRS. Taxpayers and their accountants find it much easier to deal with the IRS when the taxpayer does not have to be physically present.

PROBLEMS WITH THE IMPLEMENTATION OF THE TAXPAYER BILL OF RIGHTS

IRS Employees

An NFIB member from Florida, who is a Certified Public Accountant and works solely with small business owners, probably best summed up the primary problem with the Taxpayer Bill of Rights when he said, "the spirit of the Taxpayer Bill of Rights has not trickled down to those that have daily contact with the taxpayers."

The biggest problem NFIB members have with the IRS is that they are treated like criminals. IRS examiners still assume that the taxpayer is guilty until proved innocent. They seem to believe that if they do not use forceful tactics with the taxpayer, the government will be cheated out of revenue. Unfortunately, this type of approach breeds suspicion and animosity, and encourages taxpayers to avoid contact with the IRS at all costs. This type of relationship between the IRS and small business owners makes life much more difficult for both.

Comments on the quality of IRS employees are always mixed. No one disputes the fact that there are a great many IRS employees that are professional, courteous and helpful. Unfortunately, it is the rude, abrasive and arrogant employee that grabs the attention and the headline. In discussing the quality of IRS personnel with NFIB members, every one of them at some point had serious difficulties. Getting IRS employees to believe in the importance of the Taxpayer Bill of Rights would greatly improve our Federal tax collection system. If the law is to have its desired effect, the IRS will have to adopt and practice its spirit and not allow its personnel to mistreat taxpayers.

Chief among the list of abusive IRS tactics is agents telling small business owners that they should not involve a CPA or tax attorney in the audit. On several occasions, NFIB members have been told that if they hire professional help, the IRS will be much harder on them. Small business owners rarely have the technical tax experience to deal one on one with an IRS agent, and it is grossly unjust for an agent to insinuate that a taxpayer will face a much tougher battle if that taxpayer hires professional assistance. This Committee needs to put the IRS on notice that this practice will not be allowed to continue.

The IRS is also reluctant to communicate with professionals retained by taxpayers. Problems with this type of behavior appear to be spotty. Yet, several accountants that have small business clients have complained that the IRS is hesitant or outright refuses to answer questions about a taxpayer's case even though the accountant has a power of attorney from the taxpayer. As mentioned above, one of the most helpful aspects of the Taxpayer Bill of Rights is that it allows small business owners to limit the amount of time they have to spend communicating directly with the IRS. Any hesitancy on the part of the IRS to deal with accountants or lawyers retained by small business owners obviously undercuts the value of this benefit.

INSTALLMENT PAYMENTS OF TAX LIABILITY

Small businesses, almost by definition, have very limited cash flow, and a large tax penalty due immediately can put them out of business. The Taxpayer Bill of

Rights gives the Secretary of the Treasury the authority to have taxpayers pay their tax liability in installments. Allowing taxpayers to pay in installments does not appear to be used consistently, however.

Example

An NFIB member in Florida incorrectly filled out her payroll tax deposit returns, was told that she was behind in payroll tax deposits, and went to the IRS to ask for help. The IRS said that she owed six months in back taxes and penalties and gave her only days to pay it or they would close down her business. The IRS agent also told her that he did not want to talk to her accountant.

The IRS should make reasonable requests for payment. It benefits neither the Federal coffers nor the national economy for the IRS to be closing down small businesses to collect back taxes.

LEVY NOTIFICATION

The Taxpayer Bill of Rights also requires the IRS to give taxpayers 30 days written notice before they can collect tax by levy unless the IRS finds that the collection of tax is in jeopardy. NFIB strongly supports the notice requirement because it prevents small business owners from bouncing checks all over town after an unexpected levy. NFIB members are finding, however, that by allowing the IRS to forego notice if they believe collection of the tax is in jeopardy, the exception has swallowed the rule.

Example

One NFIB member bounced several checks and spent hours on the phone with the IRS trying to get her money back after the IRS incorrectly levied her business' account. Her account was levied because the IRS had stopped payment on a tax refund check that was deposited in the account. This check was cashed by the business owner for her sister, who received it from her incarcerated husband as child support. The husband later decided that he did not want his wife to have the check, and he told the IRS that he lost the first one and asked for another. Surprisingly, his request was approved. The IRS issued him another check and stopped payment on the first one.

Although this is not your average levy problem, it is a good example of the IRS levying the account of an innocent party and causing a great deal of difficulty that could have been avoided with a minimum amount of notice.

The Taxpayer Bill of Rights has significantly improved many areas of contact between the IRS and the small business taxpayer. However, Congress and the IRS need to continue to work to ensure that the spirit of the Taxpayer Bill of Rights carries through to all levels of IRS tax enforcement and collection. This oversight hearing on the progress of the Taxpayer Bill of Rights is the perfect first step toward making sure this landmark legislation has real world effect. The half million NFIB members across the country appreciate the efforts of this Committee in following through on the Taxpayer Bill of Rights to make sure it is working.

TAXPAYER PROBLEMS BEYOND THE TAXPAYER BILL OF RIGHTS

I would like to take this opportunity to mention a few problems NFIB members have with IRS enforcement of the tax code that lay on the fringes of the Taxpayer Bill of Rights.

Complexity

Most conflicts between the IRS and small business owners are the result of complexity in the tax code. Needless to say, it is excruciatingly difficult to comply with or to enforce a tax code few can understand. Many NFIB members do not understand the tax code, and they are alarmed to discover that some IRS employees do not either. This leaves small business owners with inestimable tax liability and IRS employees with a great deal of frustration. The Committee can improve the relations between the IRS and small business owners by continuing to simplify the tax code at every opportunity.

Payroll tax deposit rules have to be at the top of the list of the most confusing sections of the tax code. According to the General Accounting Office, one out of every three employers is assessed at least one failure to deposit penalty a year. In 1988, the IRS assessed 3,545,691 deposit penalties. Almost half of the amount collected from these penalties was later abated because of IRS error.

Payroll tax rules change depending on how much the business must deposit. Businesses that deposit less than $500 a quarter pay once a quarter. Those that deposit more than $500 a quarter but less than $3,000 a month pay once a month. Those over $3,000 a month but less than $100,000 a month pay on eight monthly trigger

dates. Finally, businesses that deposit more than $100,000 a month have to deposit the day after they make payroll.

The four different deposit levels are not unduly complicated, but they may change from month to month. In other words, a growing business that crosses the $3,000 threshold would have to deposit on the eight monthly triggers instead of depositing once a month. This business owner would not know that deposit dates have been missed until notice from the IRS arrives announcing the penalties due for missing the deposit dates.

Business owners are not alone in being baffled by the current system. The current Federal Tax Deposit Coupon that accompanies an employer's tax deposits does not contain a space for the employer to indicate what deposit period the tax deposit should cover. As a result IRS computers kick out incorrect assessments when employers are subject to more than one deposit rule during a quarter.

The Omnibus Budget Reconciliation Act of 1989 contained a section that reformed the way IRS would penalize taxpayers. This section included a provision on payroll tax deposits. The lower penalties contained in the Act will be of great assistance to small business owners who inadvertently miss a payroll tax deposit. It will not, however, be of any assistance in helping employers understand the current tax deposit rules.

This Committee could simplify the tax code for employers by: (1) increasing the $3,000 monthly trigger to $5,000 in order to restrict the number of employers that may cross back and forth over that amount; and by (2) giving taxpayers notice of what deposit rules they will be subject to by using one quarter's deposit to determine the next quarter's due dates. Simplifying the deposit rules would greatly restrict one area of tension between the IRS and employers.

Another source of friction between the IRS and small business owners is the current set of rules for determining who is an independent contractor. This has been a nagging problem that surfaces when the IRS in one region of the country begins to reclassify independent contractors as employees. When this happens, employers are suddenly hit with huge tax bills covering back taxes they did not have to withhold on independent contractors. Of particular concern is the fact that the IRS enforces these rules by targeting small businesses.

In classifying a worker as either an employee or an independent contractor, the IRS uses 20 common law rules. These rules look at the nature of the relationship between the employer and the worker. The problem with these rules is that they are ambiguous and can be interpreted differently from case to case. As a result, IRS classifications of workers tend to vary from region to region.

The vagueness of the independent contractor rules affects both those who are independent contractors and those who hire them. Several self-employed NFIB members have complained that employers are no longer willing to hire them as independent contractors because they do not want to take the chance that the IRS may later reclassify them as employees.

The Committee should consider taking a look at the current rules distinguishing independent contractors from employees. Employers should be prevented from misclassifying workers; at the same time, true entrepreneurs, who do not want a nine to five job working for someone else, should be given every incentive to start their own businesses.

Simplifying the tax code would accomplish many of the goals embodied in the Taxpayer Bill of Rights, and the best places to start simplifying the rules are in the areas of payroll tax deposit rules and the definition of an independent contractor. NFIB has studied these problems extensively, and we are always available if we can be of any assistance.

Quality of IRS Personnel

NFIB members have repeatedly complained about the quality of IRS personnel. Stories about unnecessarily rude IRS employees abound.

Example

An NFIB member in Ohio had an employee who was embezzling funds by writing checks to himself and marking the pay stubs as if the checks covered the business's payroll tax deposits. By the time this was discovered many of the business's tax records had been destroyed. The employer filed for an extension and attached a letter explaining what had happened.

The employer ended up owing the IRS approximately $15,000. The IRS agent was very helpful and assisted him in arranging an installment payment plan of $2 ,000 a month. Alter $13,000 was paid off, another IRS agent informed him that all previous deals were off and that if he did not pay the remaining $2,000 in full immediately, the IRS would levy his checking account. The employer paid the $2,000, but the

IRS needlessly alienated a taxpayer. The $2,000 would have been paid at the end of the month under the original agreement. Changing the agreement before the last payment made no sense.

Employers are also frustrated about the difficulty of getting an answer from the IRS and the likelihood that it is incorrect once they receive it. How to get the IRS to answer taxpayers' inquiries quickly and correctly probably goes beyond the scope of this hearing, but it is something that the IRS and this Committee, in its oversight capacity, should continue to explore.

Finally, I would like to comment on the IRS's adversarial stance toward taxpayer assistance. Without a doubt, there are many who are willing to break the law and deny the Federal Government its rightful taxes. Not every business owner who comes into contact with the IRS, however, is trying to put one over on the Service. NFIB has received dozens of reports from members that have gone to the IRS for assistance because they think they made a mistake, and the IRS treated them like criminals, penalized them, and wanted them to pay immediately. Taxpayers and the IRS would both benefit if taxpayers are encouraged to correct their mistakes and go to the IRS for assistance.

Automatic Notices

IRS computers are both a blessing and a burden. They assist the IRS in locating taxpayer errors, but they also create a number of mistakes. One NFIB member, who is a practicing accountant, told me that a majority of the notices his clients receive are incorrect. This problem is further complicated by the fact that it is very difficult for taxpayers to correct notices once they are in the computer. It is ridiculous for taxpayers to have to pay hundreds of dollars in response to an errant notice because it is cheaper than trying to correct the mistake.

Conclusion

As we discovered during the debate on the 1986 Tax Reform Act, taxpayers are less likely to try to understate their tax liability if they think the tax system is unfair. The IRS is a key element of this country's system of Federal taxation. IRS agents represent the point at which the tax laws and compliance meet the taxpayer, and it is impossible for taxpayers to conceive of the tax code as being fair until they believe that they are being treated fairly by the IRS.

PREPARED STATEMENT OF GERALD G. PORTNEY

Mr. Chairman and Members of the Subcommittee: I am Gerald G. Portney, a Principal in the firm of KPMG Peat Marwick, in Washington, D.C. Prior to that, my 26 year career in the Internal Revenue Service included the position of District Director for Maryland and the District of Columbia (1974-79); Assistant Commissioner (Technical) (1979-82); and Associate Chief Counsel (Technical) (1982-83).

I appreciate the opportunity to be here today as this Subcommittee holds its first hearing on the Taxpayer Bill of Rights since its enactment as part of the Technical and Miscellaneous Revenue Act of 1988.

It is a mere 18 months since enactment and even less in terms of effective dates of various provisions. All necessary guidance to translate both the spirit and the letter of the legislation has not been issued and overall, it is somewhat premature to fully evaluate both the legislation and the Internal Revenue Service' administration of the taxpayer Bill of Rights.

A comprehensive analysis of the legislation was prepared by a group of seven (including myself) in connection with the Ali-Aba video law review entitled "What You Need to know about the New Taxpayer Bill of Rights." The program was beamed via satellite on February 2, 1989, to audiences in some 60 cities. I have in recent days provided a copy of these materials to your staff for any value it may have in considering follow up legislation.

The principal source of impetus for the Taxpayer Bill of Rights was the collection function of the Service and the use of it's substantial enforcement powers. The legislation adopted was intended to preserve necessary powers consistent with the Service's mission to collect the proper amount of tax due and owing to the United States Treasury while providing safeguards against misuse or abuse of those powers.

While there were differences in effective dates, I believe all provisions have been in effect since July, 1989.

In the absence of the IRS collecting, evaluating and releasing data with regard to these provisions, it is difficult to make informed judgments as to the extent, if any, that life has changed out there. For example, how many appeals were filed in connection with already erroneously filed liens? How many principal residences were

seized? What has been the experience with the 21 day delay for bank account levies? How is the Service responding to requests for taxpayer assistance orders?

The Oversight Subcommittee recently held a hearing on the Service's management of the Accounts Receivable problem. While no one seems to know how much is owed to the Government, and how much of that is collectible, it is clear that the magnitude of the delinquency problem—the number of accounts, the amount of dollars—has overwhelmed the capacity of the Internal Revenue Service to deal with it. The pressure placed on the IRS to improve its collection results will inescapably result in a surge of complaints about collection abuses.

Compounding both the problem and the potential for abuse is the unaddressed problem of the indicated increase in numbers of non-filers and stop-filers, and increasing IRS caseload backlogs resulting therefrom. As more light is focused on this problem area, more heat will be generated.

The need for more information as to the Service's use of its necessary powers, its concern for assuring respect for taxpayer rights and administrative due process and its overall effectiveness in doing its job, becomes increasingly important.

The information needs to be gathered at the field level and monitored by IRS Headquarters. While there are a number of options which may be considered in sharing this information, an obvious one is the Internal Revenue Service Annual Report. Since the Report has not been issued at this date, I cannot be certain that it does not include information material relevant to the Bill of Rights activity. My assumption is that it does not.

Additional opportunities to share information affecting taxpayers at the local level already exist. Many District Directors issue newsletters to tax preparers and others on their mailing lists. These Directors, and members of their staffs, also have occasions to speak to civic, business and other groups. Better informing the public and at local level throughout the country is desirable not only for purposes of the Bill of Rights but to improve understanding of and cooperation with our tax system.

As the pressures and demands increase to produce and collect more revenue, more emphasis must be placed on preventing abuses and finding ways to help both the Service and the taxpayers do a better job.

A system that depends so heavily, and increasingly, on the good will and good faith of those upon whom requirements are imposed, requires more than complying with the spirit as well as letter of law.

Allocating one day to train employees on the Taxpayer's Bill of Rights is likely to meet minimum requirements. Statements by senior management of its support for the spirit, as well as the letter, while helpful rather than harmful, must also be viewed in relationship to the opposition by the Service to this legislation which was varyingly criticized as Congressional effort to micromanage the Service while further characterizing the legislation as largely the enactment of established administrative procedures. Reluctance to accept the idea of a Bill of Rights for taxpayers is in no way limited to the IRS.

I read with more than passing interest, being a Maryland taxpayer, a story which appeared in the Washington Post on Saturday, March 31, 1990, about the resignation of the Director of the Maryland Department of Assessment and Taxation the day before. The resignation occurred on the same day that the Governor signed into law a bill limiting annual real estate assessment increases to 10 percent and which institutes a Taxpayer Bill of Rights which requires that more detailed information be given to property owners about their taxes and assessments.

The former Director was quoted in a memorandum as saying that the proposed Taxpayer Bill of Rights "really stinks" adding, "just try to kill a bill like that in an election year."

In testifying before the Oversight Subcommittee on March 22, 1990, on the IRS' FY 1991 budget request, Commissioner Goldberg addressed efforts to ease the burden on taxpayers throughout the country. Those efforts specifically include, using his words, "aggressive implementation of the Taxpayer Bill of Rights . . . improved correspondence and expanded one-stop service."

These are specific commitments and worthwhile objectives which warrant Congressional support and at the same time, Congressional oversight.

The provisions of the Taxpayer Bill of Rights dealing with disclosure of rights of taxpayers, includes a requirement for procedures for filing of taxpayer complaints. It is not clear that there is in place a fairly simple, sufficiently publicized complaint system which places the primary burden on the Service, rather than the taxpayer, to screen and select the proper point of resolution of a taxpayer's complaint. Hopefully, the improved correspondence and one-stop service efforts can contribute significantly to both the prevention and the resolution of some taxpayer problems.

There is little disagreement that the front-end investment in quality, doing it right the first time, is cheaper, better and more sensible than devoting the additional resources to repairing the damage. The negative impact of the first action is not necessarily cured by the corrective action.

In the meantime, I urge the Service to review its materials to determine the sufficiency of public guidance on how taxpayers may communicate complaints, irrespective of their nature, and the adequacy of training and other instructional material in aiding Service employees to facilitate bringing the problem and the solution together more quickly.

TAXPAYER ASSISTANCE ORDERS

The purpose of the provision granting the Taxpayer Ombudsman authority to intervene on behalf of the taxpayer was to enhance the role of the only part of the IRS whose job is to be the taxpayer's advocate. That authority was limited in two ways:

(1) There had to be a finding of *significant hardship* and
(2) The Ombudsman's order was reversible by a higher level official.

The Service's implementation of this statute is such as to effectively preclude the issuance of TAO's except in the rarest of cases. Instead, it prefers to have the Problem Resolution Officer in the local office deal with the affected IRS management in a collegial manner, obtaining that party's agreement to consider the taxpayers requests. Perhaps, if the taxpayer complaints are being fairly addressed, there should be no need to make an issue of the lack of use of TAO's.

I am, however, concerned about the wisdom of the statute requiring a showing of *significant hardship*. The terms *significant hardship* and *undue hardship* seem to be entrenched in the statutory and administrative culture of our tax system.

The message seems all too clear—all taxpayers are expected to bear due hardship under our tax system. In raising this, I suggest that *significant hardship* is an unduly harsh standard for the purpose of the Service staying an action temporarily while pending review. Modification of this standard is warranted. (Emphasis supplied)

NEWLY ISSUED REGULATIONS—ARE THEY "REASONABLE?"

On April 2, 1990, temporary regulations were filed with the Office of the Federal Register on the subject of "Time and Place of Examination." These regulations were required by statute to be issued within one year of enactment. There is a permissible period for comment of 45-days and I have no doubt that comments will be forthcoming from a variety of sources. In the meantime, I respectfully offer these observations:

(a) The summary contains the following statement—"it is the goal of these regulations to balance the convenience of the taxpayer with the requirements of sound and efficient tax administration." This statement is repeated.

I would suggest that the convenience of the taxpayer is not necessarily in conflict with sound and effective tax administration (at least not always) and, perhaps, the Service might wish to rethink this assumed conflict.

(b) From the "Explanation of Provisions" section is the following quote, ". . . to permit the administration of the tax code in an orderly manner, the regulations provide that the Service may schedule examinations throughout the year, without making special accommodations to seasonal fluctuations in the taxpayer's or the taxpayer's representative's business. The Service will work with taxpayers or their representatives to attempt to minimize any adverse affects from scheduling the date and time of an examination."

Once again, we note the dichotomy; i.e. the orderly administration of the tax code is inconsistent with accommodating the obligations placed on taxpayers to file tax returns, and the reliance of many taxpayers upon the return preparer to do so, preferably between February and April 15th.

The reference to the Service's *attempt to minimize* adverse effects is of little consolation and particularly troublesome when considered in light of the right of representation which taxpayers have been granted. (Emphasis supplied)

The Service should be forthright in acknowledging the special burdens imposed on the filing period not just on themselves but on the return preparers.

(c) The regulations refer to examinations which, if conducted at the taxpayer's place of business, would essentially require closing the business. After requiring a *written* request by the taxpayer and *verification* by the Service, the examination is required to be done at an IRS office, thereby excluding the taxpayer's

representative's office, the taxpayer's residence or any other acceptable place. The Service is not unreasonable in requiring a written request but is sending the wrong message on verification. It is a "we don't trust you" position that could better be made discretionary.

There are additional examples further illustrating problems. Again quoting from the regulations: ". . . The Service may not accommodate a taxpayer's request for transfer when the applicable statute of limitations is less than thirteen months from the date of the taxpayer's written transfer request, unless the taxpayer has agreed to an extension of the limitation period."

The 13 months period is not only arbitrary but it considers only the Service's convenience and not the taxpayer's. In this respect, it no longer pretends to balance the convenience of the taxpayer with the requirements of sound and efficient tax administration.

And further, the Service has established another hurdle for the taxpayer to overcome by establishing "inadequate resources" as a basis for denial of a request to transfer an examination. I cannot imagine how that determination would be made, by whom, and how, on earth, any taxpayer could possibly appeal such a determination.

There is another aspect to the scheduling of audits during particularly busy periods of taxpayers or their representatives.

It is not unusual for an IRS examiner to be taken off a tax examination, be it to attend training or to train other personnel, or for other reasons at the Service's discretion. These diversions are also inconvenient for taxpayers, may result in additional costs and, in some cases, a demand for an extension of the statute of limitations. A refusal to extend the statute is often responded to with a threat to issue a statutory notice of deficiency which would, if issued, force the taxpayer to file a Tax Court petition to prevent the tax from being assessed and collection action taken.

This is costly, burdensome and unnecessary particularly where the delay is caused by the Service. Sound and effective tax administration should not only not foster this practice, it ought to act to minimize it, if not prevent it.

I know of no initiative within the Service to address this long standing practice which, if it is not faced up to and dealt with, should be the subject of legislation.

I could go on but, hopefully, I have made my point. If this regulation is representative of the spirit of the Bill of Rights, there is a serious misunderstanding of that spirit. It is discouraging, to say the least, that it has taken some 18 months to issue regulations that miss the mark as much as these do.

At this point, we can only speculate as to future pronouncements from the Service including those that are to provide reasonable procedures for a taxpayer to notify the IRS of the failure to release a lien.

CONCLUSION

In their report to Chairmen Bentsen and Rostenkowski in February of this year, the Taxpayer Ombudsman and Assistant Commissioner (Taxpayer Services) noted initiative taken last year to determine customer service needs including town meetings in several locations. The Service should not only be commended for their participation, even though all that is said is not heartwarming and reassuring, but also should be encouraged to do more of it.

The willingness of the tax collector to listen to his customers and be interested in what they have to say, could become a foundation for restructuring the relationship and we can only imagine the possibilities.

I thank the Chairman and the Subcommittee for this opportunity today and commend Mr. Chairman for his untiring efforts in making the tax system a better one.

PREPARED STATEMENT OF SENATOR HARRY REID

Senator Pryor, thank you for holding this oversight hearing today on the Taxpayers' Bill of Rights.

As the annual tax filing day approaches, it is important for Congress to learn the progress made so far in implementing this important Act and see if any changes are warranted. And Mr. Chairman, although I am concerned with reports I have heard about IRS reluctance to enforce some of the provisions of the Taxpayers' Bill of Rights, I am elated this hearing is being held at all.

A little over three years ago, on January 14, 1987, when I rose to deliver my maiden floor speech, the topic was the need for taxpayer's rights legislation. At that

time, I had little idea of the personalities and events that would turn my dream of enactment of a Taxpayers' Bill of Rights into reality.

For example, Mr. Chairman, it was quite fortuitous that you, Chairman of the IRS Oversight Subcommittee, were presiding when I delivered my speech. Because without your active support, the Taxpayers' Bill of Rights would have languished in the hopper forever. This hearing, therefore, is a tangible reminder of the tremendous victory of millions of American taxpayers who are now protected by our legislation.

The Taxpayers' Bill of Rights has largely been a success. Publication 1, informing taxpayers of their rights, is a very good document. It sets forth in plain and simple English—and some useful diagrams—the rights and obligations of taxpayers and the IRS. Taxpayers assistance orders have been extremely helpful as well. The Ombudsman has been very responsive to form 911; I know my state office staff relies on it quite regularly. By last August, the Ombudsman had handled over 9,000 cases and took positive action on 6,700, or nearly 75 percent of all requests.

This hearing is also a reminder—if any is needed—of how carefully Congress must scrutinize this powerful agency that plays such an active role in the lives of every single American.

I have heard that some provisions of the Taxpayers' Bill of Rights have been ignored. A year-and-a-half after its enactment, some provisions still lack regulations. The longest period allowed for issuing regulations under the enabling legislation was one year, or November 10, 1989. It is hardly nit-picking to demand regulations on time. The IRS is not at all accommodating if a taxpayer is 17 months late in paying taxes. Unless we in Congress monitor this arcania, our constituents will find their rights unprotected.

Mr. Chairman, I urge you to carefully and vigorously question Commissioner Goldberg today on the progress the IRS has made in fully implementing the Taxpayers' Bill of Rights. By holding this hearing and keeping the pressure on, the IRS will take both the' spirit and the letter of the Taxpayers' Bill of Rights seriously and incorporate its philosophy into all its activities. Cooperating with Congress as it investigates Project Layoff is just one example of how this philosophy could stand to spread throughout the agency.

The previous Commissioner, Lawrence Gibbs, was the first Commissioner to understand that the S in IRS stands for Service. Commissioner Goldberg seems to understand this definition even better. However, as was discovered in the hearings we held on the Taxpayers' Bill of Rights, the permanent IRS bureaucracy everyone but the Commissioner—has a mind of its own. They circled the wagons when it looked like the Taxpayers' Bill of Rights was to become law. They didn't like it then, and they don't like it now. Only through the efforts of Congress can Service become a priority of not only the Commissioner but of the entire IRS.

Chairman Pryor, thank you again for holding this hearing. I appreciate the opportunity to testify and will answer any questions you may have.

Prepared Statement of Harvey J. Shulman

My name is Harvey Shulman. I am the General Counsel of the National Association of Computer Consultant Businesses ("NACCB") and a partner at the law firm of Ginsburg, Feldman & Bress in Washington, D.C. I am accompanied by Mr. Bjorn Nordemo of Massachusetts, President of NACCB. NACCB represents technical service firms that specialize in providing highly skilled professionals like systems analysts, software engineers and computer programmers to clients in need of temporary technical support. Every NACCB member is a small or mid-sized business with gross revenues between one million dollars and twenty-five million dollars. Our members use both their own employees as well as independent contractors to meet the needs of their clients, and we believe that our rights to do so should be no less than any other type of industry

I. OVERVIEW OF TESTIMONY: "THE TAXPAYER BILL OF WRONGS," THE IRS "SNITCH SHEET" AND SUGGESTIONS FOR FURTHER LEGISLATION

Unfortunately, the Taxpayer Bill of Rights has become, in too many cases, a Taxpayer Bill of Wrongs for small and mid-sized businesses in the technical services industry. Too many legally required procedures are *not* being followed; other unfair practices not specifically prohibited by law are still being carried out; IRS personnel have even distributed a "snitch sheet" to various technical services firms asking them to turn in their competitors for employment tax audits; and, in too many instances, the IRS has allowed the tax laws to be used for anticompetitive business

purposes because of the way that it follows up so-called "leads" on employment tax matters from anonymous informers. These and other unfair practices seem to be the antithesis of a Taxpayer Bill of Rights, and, as a result, I have some suggestions about improving enforcement of the existing law and adopting stronger taxpayer rights provisions.

II. BACKGROUND INFORMATION ON EMPLOYMENT TAX AUDITS

Many firms in the technical services industry have been targeted by IRS personnel in connection with employment tax matters. In particular, the IRS has primarily been interested in determining whether it should reclassify these firms as employers of the independent contractors who provide services to the firms' clients. In other words, are these technical service workers bona fide independent contractors *or* are they employees of the firms which market their services?

The Taxpayer Bill of Rights is critically important as IRS personnel make these employment tax judgments. *First,* the proper procedures should especially be followed during employment tax investigations and audits because *the mere existence* of IRS scrutiny of a firm often deters the firm's contractors, employees, clients and customers from continuing to do business with it for fear of being "tainted" themselves. *Second,* because the 20-question common law employment test used by IRS personnel is so vague and has led to many confusing and apparently contradictory classifications of workers—as Congress has long recognized, and even the IRS has conceded—only strict compliance with the proper procedures can best assure that all relevant facts will be collected in an orderly, timely and fair manner and that the correct legal principles will be applied. *Third,* because the amount of potential back employment tax liabilities is so large as to constitute an effective "death penalty" for many small businesses, there must be strict enforcement of business taxpayers rights.[1]

III. IRS FAILURES TO FOLLOW TAXPAYER BILL OF RIGHTS DURING EMPLOYMENT TAX AUDITS

We have characterized the present situation as "The Taxpayer Bill of Wrongs" because of the recurrent reports we have received of the following actions by IRS personnel who have visited technical service firms around the country:

(1) *Failure to Provide Publication No. 1.*—IRS officials are visiting firms and requesting to Interview the firms' owners or inspect various documents, and yet Publication No. 1—Your Rights As A Taxpayer—is *not* being furnished to these firms upon this initial contact as required by law.

(2) *Late Delivery of Publication No. 1.*—Even when Publication No. 1 has been given to a firm, it is frequently given just as the IRS official has begun the initial interview or after the IRS official has actually completed the interview. Yet, how is a taxpayer to know that he or she is permitted by law to suspend an interview in order to get advice from a CPA or attorney, or that he or she may tape record the interview, if the document setting forth these rights is not provided sufficiently in advance for the taxpayer to read and understand it? In fact, in none of the many cases we know about was there any compliance with the IRS statement in Publica-

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[1] Let me explain for a moment how the reclassification of a worker from independent contractor to employee status can literally have the effect of putting technical service firms out of business. Compensation levels are quite high in our industry, and so a reclassification of a worker will result in substantial back employment tax liabilities. As an example, for every $50,000-per-year independent contractor who is reclassified as an employee, a technical service firm will owe a minimum of about $6,000 in back employment taxes, plus interest and penalties—*even if the independent contractor paid all of his or her social security and income taxes in full!* For the smallest of our members with perhaps only 20 independent contractors each year, this amounts to $100,000 per year in back employment taxes—or $200,000, since the IRS typically goes back at least two years. For a mid-sized company, the back employment taxes can easily reach $1,000,000—*again, even if the contractor has paid all of these taxes in full.* The back tax liabilities are especially great in the technical services industry because of Section 1706 of the 1986 Tax Reform Act, which subjects this industry to uniquely unfavorable employment tax treatment. As the result of Section 1706, the technical services industry is foreclosed from reducing its back employment tax liability to "zero" under Section 530 of the 1978 Revenue Act and is foreclosed from seeking complete set-offs for taxes already paid in full by independent contractors; instead, our industry is left with the liabilities imposed by Section 3509 of the Internal Revenue Code. Even the sponsor of Section 1706, Senator Moynihan, has since called for replacement of this provision by a simple, fair and predictable employment test because of IRS failure to give adequate guidance.

tion #1 itself that a taxpayer "will receive an explanation of [his or her] rights and of the examination process either before or at the interview."

(3) *Unreasonable Times and Places of Interviews.* Although the Taxpayer Bill of Rights requires the IRS to adopt rules which define what will be a "reasonable time and place" for an IRS examination, in almost every employment tax matter of which we are aware the IRS employee has simply visited the technical service firm's offices without any prior appointment. Instead, the official has advised a receptionist or other employee that he or she is from the IRS and wants to see the firm's owners. The official has then demanded to see various documents right then and there, including 1099's, W-2's, and sometimes even corporate documents, in many cases from as much as three or four years back. In some cases, where a firm's owner is the primary office staff person, business has been effectively halted while the owner attempted to handle this unexpected situation. Such unannounced visits have also caused office employees and even customers to speculate on whether the technical service firm is in trouble with the IRS.

(4) *Coercive Conduct During Investigations of "Leads."*—Too many IRS employees apparently believe that when they follow up employment tax "leads" or "tips," the more formal procedures in the Taxpayer Bill of Rights do not apply. For example, in many cases IRS officials have claimed that their visits were not formal "audits" or formal "examinations," but instead that they were "compliance checks" or "compliance reviews" or some similar investigation of a "lead" or "tip." As part of this "non-audit" interview, firms have been asked to produce copies of their tax filings, to answers questions about how they operate their businesses and how they distinguish independent contractors from employees under the vague 20-question common law employment test, and even to allow inspection of sample independent contractor agreements or client contracts. Taxpayers have been told that if they cooperated in providing this information then the IRS official could close the matter and drop the "lead." When the taxpayers have asked that the IRS officials put these requests for information in writing, the officials have often responded that the taxpayer's refusal to cooperate *then and there* with an *oral request* is "suspicious" or otherwise unwarranted and that *such refusal itself* will require the IRS to open a formal audit. And yet in every instance we know of when the taxpayers *have* cooperated by providing documents and answering the 20 common law employment test questions during this oral, informal "compliance check," the IRS officials have subsequently decided that so much information has been provided that the investigation has automatically proceeded into a formal audit. In other words, "if you don't cooperate voluntarily then we will have to open a formal audit on you and "if you do cooperate voluntarily, we will have so much information that we will have to open a formal audit on you." There is something very unfair about this procedure of investigating "leads" and it seems inconsistent with the IRS pledge in Publication No. 1 to "protect your rights as a taxpayer at all times.".

(5) *Undue Burdensomeness of Employment Tax Audits.*—Unfortunately, the Taxpayer Bill of Rights does not say much of anything about the details of the audit process itself. It is important for you to know, however, that employment tax audits of small and mid-sized businesses are devastating emotionally, time-wise, and financially even if the audit ends with no reclassification of independent contractors into employees and no change at all in employment tax liability. IRS officials have typically requested volumes of information, including thousands of payroll checks, general ledger entries, journal entries and the like. Typically there have also been requests for every single agreement entered into between a technical service firm and its independent contractors, and between a technical service firm and its clients or customers for whom the independent contractors are providing their services. Beyond this paperwork, IRS officials have requested to interview a firm's owners or management about the details of each and every one of literally dozens or hundreds of the independent contractors. We estimate that just to comply with these preliminary information requests, each small business firm will spend well over 200 person-hours; we even have one specific case where the IRS requests have been so overwhelming that *about 1,600 person-hours have been spent by the firm in tabulating the information requested—and the audit is not even halfway through.* Even after the investigation phase has been completed, the IRS employee has often placed the small business in a further untenable position: the assumption is made that all or most of the independent contractors should be reclassified as employees, unless the taxpayer can prove otherwise. The taxpayer is then sometimes offered a deal: pay taxes on a substantial number of these workers, and the IRS will close the audit, but if the firm refuses to pay a high enough amount then the IRS will reclassify everyone and the firm can take the case to appeal. In short, small and mid-sized businesses can never win an employment tax audit; they always lose, and the only

question is how big their loss will be. Surely these onerous burdens and questionable procedures are inconsistent with the concept of a Taxpayer's Bill of Rights.

(6) *Coercive Extensions of Statute of Limitations.*—Likewise, there is nothing explicit in the Taxpayer Bill of Rights regarding IRS extension of the statute of limitations for assessing back taxes. Unfortunately, we know of many instances where IRS personnel have undertaken employment tax audits in "drips and drabs," sometimes allowing months to lapse between appointments or document inspections. As the statute of limitations was about the expire, however, the IRS then informed the firms that if they did not agree to an extension of time—often two years or even more—then the IRS would have to make an immediate assessment even though its examination is not completed. The firm, of course, is in a "lose-lose" situation. It can refuse to extend the statute and then bear the cost and burden of an appeal and proving its case in court, or it can extend the statute and prolong the uncertainty and agony of the employment tax audit. Is this situation consistent with the IRS representation in Publication No. 1 that its employees will "protect your rights as a taxpayer at all times?"

IV. USE OF IRS LAWS FOR ANTICOMPETITIVE PURPOSES—THE "SNITCH SHEET"

The Taxpayer Bill of Rights is especially important to technical service firms which are small and mid-sized businesses. It is no secret in our industry that some large, national companies which object to the use of independent contractors by their small business competitors proposed a joint effort to encourage the IRS to audit certain of their small business competitors. According to published reports, these large companies include a firm owned in part by NYNEX, the New York-based telephone company, and a firm owned in part by IBM—though I do not know if NYNEX or IBM officials are aware of this conduct. The agony that is faced by a small business being audited by the IRS certainly harms its ability to compete. Moreover, I must emphasize that there is nothing illegal about the use of legitimate independent contractors—and yet doing so practically invites an audit triggered by so-called "tips" from competitors.

And what has the IRS role been in all of this? Unfortunately, in addition to following up unsolicited leads that may be intended to harass competitors, the IRS has actually actively encouraged firms to turn in their competitors. Attached to my testimony is a copy of what was called a "snitch sheet" by one of the IRS officials who distributed it at a local association meeting in California. The official asked technical service firms to serve as "snitches" by filling out the sheet and returning it anonymously in a plain envelope. The official promised that all such leads would be followed up. Can you imagine any better way to harass competitors than by turning them in to the IRS because—based on rumor, or hearsay, or even anticompetitive intent—you imply that there is something wrong *per se* with the use of independent contractors?

Not only does the Taxpayer Bill of Rights say nothing about this type of IRS activity that encourages harassment by competitors, but it is clear that the failure of many IRS officials to follow the proper procedures in pursuing "leads" only adds salt to the wounds already inflicted on these small businesses.

V. REASONS FOR FAILURE TO FOLLOW TAXPAYER BILL OF RIGHTS

I do not know for sure why so many IRS officials are not following the letter and spirit of the Taxpayer Bill of Rights. Undoubtedly the training of these IRS employees has not been successful in all cases, or the employees are merely negligent, or in some cases they prefer to view themselves as some sort of sleuths. I can identify, however, three possible reasons why the Taxpayer Bill of Rights is being ignored in so many instances of employment tax investigations and audits.

First, the 20-question common law employment test itself is so vague, unpredictable, and difficult to apply that many IRS employees seem inclined to skip the procedural preliminaries. After all, if the substance of the law is so problematic, how important can the procedures be? Perhaps IRS employees have been particularly emboldened to ignore the procedural rights of technical services firms because Section 1706 of the 1986 Tax Reform Act left technical services firms uniquely vulnerable to the common employment law test by removing only from our industry an employment tax safe harbor enjoyed by every other industry in the U.S. When Congress repeals Section 1706 and puts us back on par with other industries, perhaps the IRS might be less inclined to ignore our procedural rights.

Second, many problems related to non-implementation of the Taxpayer Bill of Rights can be attributed to the IRS establishment of Employment Tax Task Forces around the country that are composed primarily of employees of the Collections Di-

vision. Historically, Collections Divisions officials have been concerned with collecting taxes *after* an assessment has been made. I have personally experienced situations when these officials, in the course of an employment tax audit, appear to have come in with the attitude that they will definitely not close an audit without collecting some back taxes. I have had some of these Collections Division employees say to me that it can't be possible that all of a firm's independent contractors are legitimate. They point to three, four or five of the 20-common law questions and then attempt to justify their attitudes. A number of these Collections Division employees begin with the presumption that most or all of a firm's independent contractors must be employees, and the burden is on the taxpayer to prove otherwise. Trained primarily as collectors who come in after an assessment has been made, rather than as auditors who must be concerned with the step-by-step audit procedures, their approach is not surprising. Far more training of these Collections Division personnel—in behavior and attitude—is required.

Third, and perhaps most fundamentally, the IRS Manual itself sets out far fewer procedural safeguards in employment tax audits than in income tax audits, and even fewer safeguards when employment tax audits are handled by Collections Division personnel than by Examination Division personnel. For example, income tax auditors are told that "At the beginning of an examination, the examiner will ask taxpayers whether they have any questions regarding the audit process, regular selection procedures and appeal rights" and that examiners "should at all times endeavor to make appointments at a time and place that will meet the convenience of the taxpayer." But similar provisions are missing in connection with employment tax audits. In short, because scant attention is given to the letter and spirit of the Taxpayer Bill of Rights in IRS Manual provisions dealing with employment tax audits, it is little wonder that the law is not followed in so many cases.

VI. SUGGESTIONS FOR IMPROVEMENTS

NACCB believes that it is time for Congress to take further and more detailed steps in assuring that the rights of small and mid-sized businesses are fully protected in employment tax investigations or audits. Most fundamentally, Congress must meet its 1978 commitment to adopt a simple, predictable and fair *substantive* definition of "employee" to complement the *procedural* requirements that will apply during employment tax reviews. As to procedural requirements, Congress should consider the following clarifications and additions to the Taxpayer Bill of Rights:

(1) Taxpayers who are subject to employment tax investigations and audits should have no fewer rights than taxpayers subject to income tax and other audits.

(2) Taxpayers contacted by Collections Division personnel should have no fewer rights than taxpayers contacted by other IRS personnel.

(3) Any IRS visits to a business should be preceded by a letter or phone call requesting a visit. Only if a taxpayer fails to respond to both a letter and a call should an IRS official visit unannounced.

(4) IRS visits should be at reasonable times and be intended to minimize the impact on a business's employees, contractors, customers and clients.

(5) Every IRS official who visits a business, whether announced or unannounced, should carry a formal letter on IRS stationery which requests the taxpayer to produce the requested tax forms or other documents. When subsequent requests are made for more documents or meetings, they should be put in writing if the taxpayer requests. Only a reasonable amount of information should be requested and taxpayers should be allowed to provide illustrative cases of independent contractor relationships, rather than details about every single contractor.

(6) Every IRS official visiting a business should be required to orally explain the taxpayer's rights, the reason for the visit, the substantive rules under which an employment tax classification determination will be made, and the possible financial consequences. Taxpayers should be specifically advised of their rights to consult with counsel or a CPA, and to audiotape any interviews.

(7) Clear standards should be adopted to determine what is a "compliance check," "compliance review" or "investigation," versus what is a formal employment tax "audit" or "examination." But taxpayers should have no less rights during a "compliance check" or similar investigation than they would have during a formal "audit" or "examination."

(8) Taxpayers should be advised orally and in writing by the IRS employee whether the request for information is part of an "audit" or is part of some lesser investigation. The IRS should not open a formal audit or examination simply because a taxpayer refused to produce documents or answer questions that the taxpayer was

legally entitled to refuse to produce or answer, and taxpayers should not be admonished that their refusal will justify opening an audit.

(9) Before contacting any employees, independent contractors or customers and clients of a business, the IRS should notify the taxpayer of its intent to do so and should specify who will be contacted.

(10) The IRS should not be permitted to drag its feet in completing an audit, and then force a taxpayer to choose between an agreement to extend the statute of limitations or an immediate assessment of a substantial back tax liability. If the IRS has unreasonably delayed the progress of an audit, it should be foreclosed from imposing liability for that tax year.

(11) Information obtained by the IRS in violation of required procedures should be excluded from consideration in any decision to impose a tax liability.

(12) IRS employees who violate legally required procedures should be held personally accountable for disciplinary action by the IRS and, in flagrant or repeated cases, modest civil damages.

(13) A task force from government and industry should be appointed to recommend changes to the IRS Manual so that all employment tax investigations and audits will be conducted under procedures that strictly comply with the letter and spirit of the law.

Attachment.

EXCERPTS FROM MEETING BETWEEN IRS OFFICIAL IN CALIFORNIA AND MEMBERS OF A TRADE ASSOCIATION IN COMPUTER INDUSTRY (1989)

Industry trade member:

"What causes an audit to be initiated?" (What are your sources?)

IRS agent:

Referrals. The IRS agent then requested that we be "SNITCHES," (his exact words) and turn in our competitors. He provided us with a form (see exhibit B). A Lead Coordinator for "SNITCH LEADS" has been established to coordinate inflex of information. He also stated every new lead would be contacted. The IRS agent mentioned of your lead is placed in a company envelope, the company reporting would in all likelihood also be audited.

Note: This meeting took place to discuss IRS enforcement of Section 530 of the 1978 Revenue Act and Section 1706 of the 1986 Tax Reform Act.

ATTACHMENT A
"SNITCH SHEET"

REFERRAL TO EMPLOYMENT TAX EXAMINATION PROGRAM

PLEASE COMPLETE THE FOLLOWING ITEMS (IF KNOWN)

NAME OF FIRM: _____

FIRM'S ADDRESS: _____

_____

TELEPHONE: _____

TAXPAYER FEDERAL
IDENTIFICATION NUMBER: _____

ISSUES INVOLVED: (CIRCLE ONE)

A. NO REPORTING OF WAGES.

B. UNDERREPORTING ON EMPLOYMENT TAX RETURNS (FORM 940, 941).

C. EMPLOYEES PAID AS INDEPENDENT CONTRACTOR.

D. OTHER:

JOB DESCRIPTION(S)
OF WORKER(S) : _____

_____

NUMBER OF WORKERS
INVOLVED : _____

PLEASE SEND THIS FORM TO:

INTERNAL REVENUE SERVICE
EMPLOYMENT TAX EXAMINATION GROUP 56
3660 WILSHIRE BLVD. SUITE 400
LOS ANGELES, CA 90010

ATTN: LEAD COORDINATOR

PLEASE INCLUDE ALL PERTINENT DOCUMENTATION, W2'S , 1099'S, 941'S , NAMES OF WORKERS WITH ADDITIONAL INFORMATION.

Attachment B

BACKGROUND DOCUMENT

Difficulty in Administrability of Present-Law Standards for Determination of Employment Status

The current standard for determining employment status -- absent the relief provided by the safe harbor in Section 530 of the 1978 Revenue Act -- is the 20-question common law employment test.[1/] This test has been criticized repeatedly over the years as difficult to administer and too unpredictable. Yet enormous back tax liabilities, and the continued existence of thousands of small businesses in the high tech industry, depend upon the application of this antiquated test.

A. Longstanding Criticism of the Common Law Test. In a report to the Joint Tax Committee done by the Comptroller General in November 1977, GGD-77-88, it was concluded that "the application of the common law rules to specific employee/self-employed situations is open to broad and inconsistent interpretation.... As a result, many employers cannot, with any degree of certainty, determine who will be considered an employee until after IRS has audited the situation." Id. at p. 9. The Comptroller General reported on the comments of a former director of the IRS Legislative Analysis Division:

> [I]t is not uncommon for two knowledgeable individuals to disagree on an employee's status determination given the same set of circumstances. He said that the employment tax law should have more certainty for the benefit of both the employer and employee and that guidelines should be provided to the taxpaying public which permit it to make its own determinations with certainty.
>
> The IRS has not provided such guidelines. The results are misclassifications of employees by employers and inconsistent and conflicting interpretations of the common law rules by IRS personnel in different geographic areas.

1/ Due to the passage of Section 1706 of the 1986 Tax Reform Act, which removed the Section 530 employment tax safe harbor from only the technical services industry, this industry has been subjected to uniquely unfavorable employment tax treatment. As a result, technical service firms -- unlike all other businesses in the U.S. -- must rely solely upon the 20-question common law employment test during employment tax investigations and audits. If Section 1706 can be viewed as an experiment to determine if the IRS is capable of providing adequate common law employment tax guidelines to but a single industry, the experiment has clearly failed.

*** *** ***

> The difficulty of conflicting interpretations of the common law rules is further highlighted by IRS audit contradictions. IRS individual tax audits sometimes treated individuals as self-employed while agents auditing the business the individuals worked for classified them as employees.
> Id. at p. 9.

The Treasury Department itself has also criticized the common law employment test as a test "developed centuries before the income tax to determine the rules of the doctrine that the master is liable for the torts of his servant. . . . Those are the tests that we are using to determine the incidents of taxation. There are 20 factors in the regulations that are in many cases extremely difficult to apply because various of these factors go in different directions." See Testimony of Donald Lubick, Assistant Secretary of Treasury, before Hearings on H.R. 3245, Subcommittee on Select Revenue Measures of House Ways & Means Committee, 96th Cong., 1st Sess., at p. 9.

B. Post-Section 1706 Criticism of the Common Law Test.

The inconsistencies, contradictions and vagueness associated with the common law employment test have not disappeared since the 1970's. Shortly after the passage of Section 1706 a top IRS official publicly stated that there is a "confusing bunch of cases and it's very, very difficult to give someone clear, concise and accurate guidance." In response to industry requests that the IRS provide further guidance, the IRS issued Rev. Rul. 87-41. But, as NACCB has advised the IRS, the three examples used in this ruling are so unrealistic and unlike almost any method of operation by third-party broker firms, Rev. Rul. 87-41 is very unhelpful in clearing up the confusion over the proper application of the common law employment test.

The inadequacy of Rev. Rul. 87-41 was also emphasized by the Small Business Administration, Office of Chief Counsel for Advocacy, who wrote to the IRS on August 5, 1987, at pages 6-7:

> Revenue Ruling 87-41 does not provide clear guidance on the treatment of technical workers under the jurisdiction of Section 1706 for four principal reasons: (1) it does not take into consideration the unique and essential role of brokers in the technical service industry; (2) it cites factors which do not fairly represent common business practice and to which the industry cannot conform; (3) it does not accord relative weight to relevant factors; and (4) it provides examples of unusual relationships in which the proper characterization of workers is already clear.
>
> *** *** ***
>
> .... The absence of succinct guidance alone argues most effectively for the repeal of Section 1706.

COMMUNICATIONS

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, April 26, 1990.

Hon. DAVID PRYOR, *Chairman,*
Subcommittee on Private Retirement Plans and Oversight of the IRS,
Committee on Finance,
205 Dirksen Senate Office Building,
Washington, DC

Dear Mr. Chairman: We write in regard to your April 6, 1990 hearings on the Omnibus Taxpayer Bill of Rights Act. While we were unable to appear as a witness, we would like to address for the record one particular issue of concern: 26 U.S.C. §6103(b)(2), known as the Haskell Amendment.

In 1976, Congress amended the tax code to ensure that tax return information on American taxpayers remain confidential and that dissemination for non tax purposes either within or outside the executive branch be carefully circumscribed. The ACLU strongly believes that the IRS should withhold from release any information that would identify a taxpayer, directly or indirectly.

The purpose of the Haskell Amendment, however, was to allow for the continued release of non-identifying return information. Public access to agency records is an essential check on government abuse and is often the stepping stone to congressional oversight. Yet the IRS has failed to provide the required public access.

In 1987, the Supreme Court ruled that section 6103(b)(2) does not require the IRS to release non-identifying return information under the Freedom of Information Act. *Church of Scientology of California* v. *IRS,* 484 U.S. 9 (1987). We believe that the Supreme Court reached the wrong result in this case, and that Congress should amend the statute to make clear that non-identifying tax return information is not exempt from disclosure.

Accordingly, we suggest that section (b)(2, of the statute be amended by substituting the following language immediately after subparagraph (B):

> but such term does not include information contained in a return or any other IRS record, including any record that contains return information, that cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

We appreciate this opportunity to present our views and are available to work with you to on this matter.

Sincerely,

MORTON H. HALPERIN, *Director.*
GARY M. STERN, *Legislative Counsel.*

STATEMENT OF THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

INTRODUCTION

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to offer its comments on the IRS' Implementation of the Taxpayers' Bill of Rights. The AICPA is the national, professional organization of certified public accountants (CPA), with over 296,000 members. Many of our members are tax practitioners who work with millions of American businesses and individual taxpayers. We are deeply interested in the IRS' ability to effectively and efficiently administer the tax system as well as taxpayers' rights under that system.

We applaud the subcommittee and Chairman Pryor for holding hearings to review the Taxpayers' Bill of Rights implementation process. Feedback the IRS receives from thoughtful Congressional oversight will prove to be beneficial to the overall process of insuring taxpayer rights.

Although the Taxpayers' Bill of Rights was enacted over one-and-a-half years ago, the AICPA believes it is still too early to draw any conclusions about the implementation process taken as a whole. We do, however, have a number of thoughts concerning specific implementation actions taken by the IRS that we will present.

SPECIFIC COMMENTS

Procedures Involving Taxpayer Interviews (TAMRA Section 6228)

One area of the implementation process that we have been particularly interested in and which be believe has been handled very well by the Service relates to the interviewing of represented taxpayers. Even before the 1988 Act, the Service was receptive to the concerns being expressed by the AICPA and others over the policy being adopted in many parts of the country of mandating an iinitial interview of represented taxpayers. Numerous meetings to discuss the issue resulted in an October 1987 letter to the AICPA which clarified national policy not to mandate an initial interview. This letter was distributed to all IRS districts a year before the enactment of the Taxpayers' Bill of Rights.

When the IRS coursebook on *Interviewing Represented Taxpayers* was being rewritten in order to communicate the new policy to IRS examiners the AICPA was given every opportunity to review and comment on the various drafts. We are also extremely pleased to say that virtually every one of our comments was adopted into the final draft. When the Technical and Miscellaneous Revenue Act of 1988 was finally enacted, the coursebook was immediately changed to incorporate the appropriate Taxpayers' Bill of Rights language and references.

While we still hear of individual agents who violate the statutory intent in this area, the situation is far better than it was two or three years ago. We commend the Service for dealing with a very sensitive issue in a way that recognizes taxpayer rights.

In early 1989, the IRS released Advance Notice 89-51 which provides guidance to taxpayers and practitioners on procedures involving taxpayers interviews. We applaud the IRS' use of notices in lieu of regulations. The notices are issued promptly, and are written in language that is direct and easy to understand. Nevertheless, we are concerned that Advance Notice 89-51 violates the spirit of the Taxpayers' Bill of Rights by placing on the audio recording of examination or collection proceedings, restrictions which are not supported in the statutory language. In addition, the procedures established in the notice provide inconsistent treatment between taxpayers and IRS employees.

To guarantee taxpayers their proper protection under Code section 7520(1)(a)(1), the Service has to inform taxpayers of their right to record in the first contact, whether it be by mail or on the telephone. Mail contacts should include a copy of Publication No. 1, "Your Rights as a Taxpayer" which does contain the necessary information. However, agents do contact taxpayers on the telephone and, it is at this point that taxpayers should be told about audio recordings. This is necessary because under Code section 7520(1)(b)(1) the "explanations of processes" can take place at an initial interview. Taxpayers might otherwise miss the opportunity to record that initial interview.

The last paragraph of the preamble of the notice states, "For purposes of section 7520 of the Code, the term "taxpayer interview" means a meeting . . ." Sections 7520(a) and (b)(1) use the terms "in-person interview." Section 7520(b)(2) uses the term "any interview." Accordingly, the statute seems to recognize that for right of consultation purposes, the interview referred to need not be an "in-person interview" which is implied by the term "meeting" (i.e., it could be a telephone interview) The notice, by defining a "taxpayer interview" as a "meeting" for the entire section 7520, seems to preclude the statutory distinction between an "in-person interview" under sections 7520 (a) and (b)(1) and "any interview" under section 7520(b)(2). The notice should, therefore, be revised to provide both definitions and description of the circumstances in which they apply. That is, a revised Advance Notice 89-51 should explain that the recording provisions apply to in-person interviews and that the right of consultation provisions apply to any interview, whether in-person or by telephone.

TAMRA section 6228 also required the IRS to issue regulations that prescribe the time and place of examination that "are reasonable under the circumstances." These regulations were finally issued on April 2, 1990 and are presently being re-

viewed by the AICPA Tax Division. We will submit comments by the May 18, 1990 deadline.

Taxpayer Assistance Orders (TAMRA Section 6230)

The IRS has issued temporary regulations which are intended to provide guidance concerning the issuance of taxpayer assistance orders and to ensure uniform access to these administrative procedures.

The Internal Revenue Service has placed a very narrow interpretation on section 6230 of TAMRA and has imputed meaning and intent to the law which is not reflected in the statute itself or the legislative history. For example, there is nothing in the statute nor in the committee reports which justifies the exclusion of actions being taken by the Internal Revenue Service in connection with a criminal investigation or the carving out of actions by the Office of Chief Counsel separate from those of Appeals. The statute at section 7811(b), is clear in its specification that a "taxpayer assistance order may require the *Secretary*" (emphasis provided) to refrain from certain actions and the statute goes on to specifically enumerate some of those things that the taxpayer assistance order may require of the Secretary. In section 7811(b)(2)(D), however, it is clear that a taxpayer assistance order may cover "any other provision of law which is specifically described by the ombudsman in such order."

It would seem reasonable for the regulations to prescribe and require that certain types of information be provided to a taxpayer who has requested a taxpayer assistance order. Specifically, when a taxpayer assistance order has been modified or rescinded by one of the officials specified in the statute, the reasons for that modification or rescission should be documented and communicated to the taxpayer. This communication should be in sufficient detail that the General Accounting Office or others reviewing the manner in which this discretion is exercised will be able to evaluate the actions of the official modifying or rescinding a taxpayer assistance order.

Inasmuch as the period of limitations is suspended under section 7811(d) and the taxpayer or his representatives will have no way of independently determining the period of suspension, the regulations should define how the Service will interpret the statute and the terminology "date of the taxpayer's application" and "date of the ombudsman's decision" and provide that these specific dates be provided in writing to the taxpayer.

Further, once a taxpayer files an application for a taxpayer assistance order, there should be a presumption of hardship for some period of time until the ombudsman acts on the application. Unless the ombudsman determines that some Internal Revenue Service action must be taken to protect the IRS' interest (for example, if a taxpayer were about to leave the country with funds, etc.) the action to be taken by the Internal Revenue Service should be automatically suspended for some period of time. The regulations should provide that the filing of Form 911, or a written statement, with the Internal Revenue Service should automatically suspend action by the IRS.

The regulations should also address the situation where no overpayment exists but the failure to release funds creates a significant hardship. The classic situation is where there is no overpayment because of "erroneous" offsets between different modules in the master file or the wrong module being credited with a payment with the inability to net that payment with a liability. Some examples include the following:

- An overpayment of prior year tax which has been applied to estimated tax is offset against an "erroneous" liability. The taxpayer may now also be subject to a penalty for underpayment of estimated tax; and
- A C corporation makes an S corporation election and has an overpayment of tax (estimated tax) tied up in the C corporation module. The S corporation must make a "required payment" under IRC section 444 and is seeking a release of those funds.

The AICPA has been informed that, although the various IRS districts review the issues raised in taxpayer assistance order applications, no "national post review" is attempted. We suggest that the Service review the applications on a national basis to determine, for example, if there are certain systemic problems occurring around the country that should be corrected.

Basis For Evaluating IRS Employees (TAMRA Section 6231)

Section 6231 prohibits the IRS from using the records of tax enforcement results in the evaluation of collection employees or to impose a quota system on them. However, since the pressure on collection employees results from the size of their inven-

tories and management's emphasis on closing accounts this provision addresses only part of the problem. Given recent Congressional concern over the IRS' accounts receivable problems, this pressure may become even more pronounced.

Installment Payments of Tax Liability (TAMRA Section 6234)

The Collection Division seems to have changed its position on delinquent accounts since the Collection Division training on the Taxpayers' Bill of Rights was conducted. For example, it now seems harder to receive installment agreements in deserving situations and seizure actions are more aggressive in no-equity cases based on disposing of accounts (non-pyramiding cases) The emphasis in Collection Division training should be placed on the positive aspects of the legislation such as to encourage broader use of installment agreements and to use greater restraint in no-equity situations.

Congress passed various provisions of the Taxpayers' Bill of Rights because they did not agree with the way IRS conducted some of its business. However, the collection training material states: very few actual changes in the way the Collection Division does business . . . " and ". . . implementation will not cause any major changes in your current method of operations. . ." Although we are aware of the collection difficulties facing the IRS, especially in the payroll tax area, we still believe IRS training should emphasize the positive aspects of the legislation.

Administrative Appeal of Liens (TAMRA Section 6238)

The temporary regulations regarding the administrative appeal of the erroneous filing of notice of Federal tax lien are clear, complete, and consistent with other regulations covering administrative appeals. Nevertheless, the temporary regulations are excessively restrictive and limit the intent of the statute. The regulations address issues which do not require a great deal of judgment (tax liability satisfied, deficiency procedures of section 6213 violated, Title II, and statute of limitations expirations) and have not been a problem for taxpayers.

An administrative appeal is needed to cover gray areas which require a great amount of judgment. Section 6326(a) provides ample authority by providing: "In such form and at such time as the Secretary shall prescribe by regulations, any person shall be allowed to appeal to the Secretary after the filing of a notice of a lien under this subchapter on the property or the rights to property of such person for a release of such lien alleging an error in the filing of the notice of such lien."

Taken as a whole, therefore, the previous statutory language seems to indicate that the broadest level of appeal should be allowed and that the Secretary's regulatory authority goes to form and time rather than allowable circumstances.

We are not unmindful, however, of the Internal Revenue Service's concern that the administrative appeal not be used to forestall the collection process for a legitimate deficiency. The approach which the Service has taken in its temporary regulations is to enumerate the specific circumstances under which a taxpayer may file an administrative appeal. A better approach, based on the spirit of the Taxpayers' Bill of Rights and the difficulty to foresee every circumstance in which a legitimate administrative appeal might arise, would be to allow an administrative appeal to be filed in each case where the purpose of the appeal is ". . . not to challenge the underlying deficiency that led to the imposition of a lien."

The four "allegations" listed in regulation sections 301.6326-1T(B)(1)-(4) could then be used as examples of the types of situations available for administrative appeal but in no way should they be restrictive.

As a further reminder that the filing of appeals are limited to those situations where the taxpayer is "alleging an error in the filing of Notice of Lien," we suggest an addition to regulation section 301.6326-1T(d)(2). This section describes the "form" of the appeal and should include the following: "(iv) A statement that the appeal is being filed for the purpose of correcting the erroneous filing of a notice of lien and not to challenge the underlying deficiency that led to the imposition of the lien."

BUDGETARY CONCERNS

The AICPA recently released the results of a survey which measured the practical experience of AICPA members with the IRS as well as general attitudes toward the Service. The Institute conducted the survey to gain information on practitioner attitudes towards the IRS in order to help develop administrative and legislative recommendations to improve the Federal tax process. Two general patterns seemed to emerge from the survey results:

(1) There is a lack of technical knowledge at certain personnel levels of the Service. This pattern confirms what many in the tax administration area acknowledge

as budgetary and salary constraints which severely inhibit the IRS' ability to hire the top candidates for technical positions and to keep them properly trained; and

(2) Strong marks were given for courtesy and a willingness to resolve problems which highlights the IRS' emphasis on providing service to its customers. Q04

When the Taxpayers' Bill of Rights legislation was passed, no additional budgetary allocations were given to the IRS to assist in the implementation. We believe that insufficient appropriations affect the allocations of resources to various functional areas and might have had a stunting affect on the implementation process.

CONCLUSION

The AICPA has followed closely the implementation of the Taxpayers' Bill of Rights legislation. Our efforts are based not only on our desire to ensure the protection of taxpayer rights but also to guarantee the IRS' ability to effectively administer the tax system. Where we have disagreed with previously issued regulatory language or other actions or inactions, we have communicated our concerns to the IRS. It is in this spirit of cooperation that the AICPA hopes to continue an active and useful role in the implementation process.

STATEMENT OF JAMES D. CALDER, PH.D

AL CAPONE'S ADMINISTRATIVE REMAINS:
CALDER v. I.R.S. AND PROPOSALS TO CHANGE I. R. CODE SECTION 6103

My name is James D. Calder, and I am an Associate Professor of Criminal Justice at The University of Texas at San Antonio. As a criminal justice academician and historian, I am interested in the history of criminal justice policy matters. Specifically, I have actively sought government and private records on the policy of the Herbert Hoover administration to secure a conviction of Alphonse Capone, the notorious Chicago gangster.

My purpose in offering the testimony to follow is to urge the Congress to pass legislative reforms governing access to historical records, particularly Internal Revenue Service records pertaining to convicted, deceased felons. In my testimony, I offer the special reasons why IRS records are valuable to historians, and why the current law protecting such records should be changed.

In 1931, Al Capone was prosecuted and convicted for tax evasion, serving eight years of an eleven-year sentence until released from prison in 1939. Capone died in Florida in 1947 without a will, leaving no assets for the Internal Revenue Service to seize.[1] His only legacy was a vast collection of "administrative remains"-- reports and memos reflecting investigative and prosecutorial matters scattered throughout the federal bureaucracy.

Historians, journalists and film producers have, on numerous occasions, relied on these "remains" for books, newspaper articles, scholarly publications and film scripts. Despite previous public access, and no declared relationship to current organized crime investigations, these records are now inaccessible to historians and the public. Records retained by agencies other than the Internal Revenue Service have already been released under the Freedom of Information Act (FOIA), but, pursuant to Calder v. Internal Revenue Service,[2] IRS records remain closed. Capone's records contain numerous documents only tangentially related to tax liability computation. The Justice Department's Tax Division files on Capone have been selectively released, but their relationship to the IRS files is uncertain. I wish to assist the Congress in finding ways to unlock the full corpus of "remains" for historical research purposes.

BACKGROUND INFORMATION

Since 1932, Capone's IRS records have been used for research and commercial publications. On occasion, federal officials solicited journalists and professional writers to glorify IRS' investigative competence in the search for Capone's alleged assets. Selected academicians were also permitted to use records for more serious treatments, including broader studies of organized crime. Published manuscripts concerning these records contributed to public understanding of the government's investigative efforts. There is, however, no definitive scholarship reflecting the entire corpus of government records on Capone.

As a researcher and historian of the Capone case, I used administrative and judicial channels to acquire the IRS records. Having acquired Capone files from the FBI, the Tax Division, the Bureau of Alcohol, Tobacco and Firearms, the DOJ-Bureau of Prisons and the National Archives, I then sought Internal Revenue Service records. The FOIA was not a useful access tool because the Fifth United States Court of Appeals in Calder v. Internal Revenue Service determined that the Tax Reform Act of 1976 sealed Capone's records from public access on January

[1] Justice Department-Tax Division records contain several memos directing agents to seize any residual assets in Capone's name found in the years immediately after Capone's death. As late as 1986, Geraldo Rivera, the television talk-show celebrity, set up a live television search for Capone memorabilia and assets, including an appearance and recognition by an IRS official.

[2] CA-5, 89-5508 (Appendix 1).

1, 1977, despite the fact that numerous people had access to them prior to this legislation. In Calder, I requested the Court to examine the authority of the IRS to withhold Capone's records as "return information" under Section 6103. I believe the means can be found to segregate and disclose IRS records associated with convicted, deceased tax evaders in a manner similar to segregating and disclosing records on individuals from other agencies under the Freedom of Information Act. Capone has no privacy interest at stake. The public interest in learning about these historical matters should outweigh any interest in further protecting the records.

I went after Capone's IRS records with no intention of acquiring any information about taxpayer history or tax returns. Capone never filed a tax return, nor did he have a tax history. I fully expected the IRS to carefully review materials containing information concerning my request. Specifically, I requested the following Capone records:

1. Records of agency investigations of Capone's activities from 1920 to 1932;

2. Records of agency liaison with any other agency during the course of the Capone tax investigation from 1928 to 1932;

3. Orders, directives or instructions to agency personnel to or from Presidents Coolidge or Hoover, or to or from any White House staff or cabinet personnel concerning Capone;

4. Orders, directives or instructions to or from the Director of the IRS from 1928 to 1932 concerning Capone;

5. Records of any investigative operations directed at Capone.

I wished to write a history of the Capone investigation by using all available government records. Access to IRS records was critical to the credibility of my intended book. It was impossible to guarantee thoroughness of historical investigation without access to these records. A review of IRS records was also needed as a reliability check on published accounts of the Capone investigations. Such checks are professional expectations among historians. Furthermore, substantial evidence suggested that prior reviews of the records had resulted in publications that failed to fully reflect government actions in the Capone case.

Calder v. IRS raised constitutional claims under the First and Fifth Amendments to the U. S. Constitution concerning access to these records based on their prior release before January 1, 1977. Public access to the Capone files prior to 1977 yields a conclusion that the files are no longer of tactical importance to the IRS. This substantive concern aside, the Court of Appeals held that the records will be kept secret because eight prior revelations were insufficient to show a history of access. In vigorous objection to the Court's ruling, I contend that Capone's IRS files are in the public domain. No reasonable justification exists for continued protection.

GANGSTER RECORDS HAVE HISTORICAL VALUE

Despite Capone's death over forty years ago, his life in crime remains worthy of revisitation. Oddly, though, relatively few researchers have viewed the government records, and no one has used all the government records. No historical work has addressed the question of whether or not government actions taken against Capone were effectively administered or worthy of the favorable acclaim they have received through the years. In 1935, Thurman Arnold pointed out that Capone's conviction ". . . was as important as a spectacular victory in a war, in which someone who wore epaulettes and bore the title of general had been captured".[3] Under current circumstances, however, verification of the government's work against the Capone organization is barred by law.

Space does not permit a complete discussion of the historical value of the Capone records, but it is useful to briefly list some of the reasons why I pursued the matter:

First, it should be a matter of government policy to permit historical access to all records which can aid in correcting myths, particularly myths enhanced by selective government revelation of records.

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[3]Symbols of Government. New Haven: Yale University Press, 1935.

Second, Capone's criminal actions and the government's case to secure his conviction require proper context in American social history. High school and college texts continue to portray Capone as a larger-than-life character, and federal actions are treated as efficient and ingenious. If primary, rather than secondary, sources were available to social historians we can learn the complete circumstances surrounding the government's lengthy investigation which never reclaimed a dime from Capone.

Third, the credibility of the published Capone-IRS accounts is problematic. In the past forty-five years, source documentation has been limited to the IRS' selective releases. The releases were made mainly to popular writers in order to disclose information which favored IRS publicity interests. Thus, selective file releases prior to 1977 resulted in publications aimed mainly at popular audiences. With few exceptions, the published authorities on Capone have not been interested in scholarship, and in particular, the use of accepted historical research methods.

There is no historical doubt that the Capone records, and many records of other notorious gangsters, should be opened for public use. The Capone investigation should be studied in terms of its organizational, political and resource dimensions. Moreover, questions should be addressed concerning the mix of law, technology, social and political commitment, and investigative creativity that preceded the outcome.

Authoritativeness of prior publications, following on earlier selective releases, hinges on association between the authors and the government insiders who granted access. Acquisition of records prior to 1977 often depended on cozy relationships compounded by the lack of historically systematic examination of the full range of records. Failure to use the corpus of records prohibits reliability on issues requiring contextual or substantive accuracy. Mass market/popular writers have little interest in documentation, and publishers assert the accuracy of accounts on an author's credentials. By any reasonable evaluation, therefore, the Capone matter is not settled history.

Finally, Capone's investigation was part of a larger political context of expanding federal police power and responsibility. Capone, for example, came along at a time when the federal government was undergoing substantial change and adaptation. As with other situations facing government under change, experimentation, such as that found in the Capone case, introduced strategies which may only have been marginally effective. In matters of justice administration, experimentation may also have encouraged violations of law and privacy, and it may have imbalanced the proportionality of operational costs to the net social gains. Social historians concern themselves with such questions, but only when they have access to the appropriate records.

In general, then, the Capone records have more to say about government methods, organization and direction, exercises of law and prevailing criminal procedure and the politics of federal law enforcement. The Capone investigation secured the credibility of a federal government seeking maturity as a supplier of tangible controls on tax evasion.

FOIA and SECTION 6103, INTERNAL REVENUE CODE

The central focus of the FOIA is openness in government and the duty of government to justify withholding information from the public. In recent years, openness in government, a major public policy issue, has become less than important to agency administrators. In the 1980's, increasing agency recalcitrance has reinforced the opinion of historians that openness in government is an ideal to which agencies pay only lip service.

The Internal Revenue Service is insulated from persons seeking information under the FOIA. It has often served as an investigative agency of last resort. The Kennedy administration, for example, tasked IRS to acquire records on ultra right wing groups, resulting in sixteen actual exemption audits and an unexecuted plan to audit thousands of organizations. The Ervin and Church committees established that the IRS collected information unrelated to its principal mission of tax collection. Church Committee hearings addressed the distinguishability of tax and non-tax related information. The IRS is vast storehouse of tax and non-tax related information, yet there are few checks to insure its integrity and public accountability.

Diverse groups of plaintiffs have challenged the relative immunity of IRS, among them some university professors. Political targeting of certain individuals and groups resulted in legislative changes closing off access to Internal Revenue documents. Ironically, however, an IRS which bragged for years about its successes in Capone-type cases was the same agency which abused its authority prior to 1977, then acquired new law to protect it from discovery of potential or actual abuses, and which benefitted from new secrecy protections. In short, IRS excesses, which infringed on political rights in earlier times, extended the power of an already powerful agency.

CAPONE RECORDS ARE IN THE PUBLIC DOMAIN

The Tax Reform Act of 1976 precludes access to the Capone files. In Calder v. Internal Revenue Service, I intended to establish that the Capone records were in the public domain, and that due process had not been afforded by an administrative system that precluded access to the records. Through investigations of the public literature on Capone, and through depositions taken in connection with the case, the Capone records had been read and used for commercial or other purposes in at least eight cases. The Fifth United Stated Circuit Court of Appeals in Calder v. Internal Revenue Service did not agree that I should have access to these records under the First and Fifth Amendments. The Court determined that eight cases of prior publication were insufficient to show that the Capone records are in the public domain.

THE PROBLEM FACING IRS WITH RESPECT TO CERTAIN RECORDS

Calder v. IRS demonstrates that the IRS may withhold access to documents of historical and public interest, such as the Capone records, or any other files associated with a third party taxpayer. The records of the Capone investigation are not regarded as segregable from "tax return" information as defined in the statute, even though Capone never filed tax returns. Administrative or investigative records in the Capone files need not be segregated from tax computation records for release purposes, despite the fact that all other agencies which turned over Capone records under FOIA authority could distinguish legally withheld information from non-disclosable information. 'Capone' as a name triggers non-disclosure, not IRS' ability to distinguish substantive matters relating to currency of investigative implications or even the relevancy of privacy.

The IRS has long claimed that it has no responsibility to search its files to advise of the existence of, or contents of, any so-called Capone files. Therefore, in addition to the segregability problem, IRS must defend its legitimate role as protector of taxpayer information as well as its mandated role to guard obsolete "return information." The dilemma points out a lack of legislative sophistication and an agency's fulfillment of a public expectation of openness in government.

Setting aside the legal/definitional problem, IRS is forced to defend the "return information" section as if it had never engaged in concerted effort to reveal files prior to 1977. On January 1, 1977, the Capone records were transformed on January 1, 1977 from information freely released to authors and historians to information which no one can see. There is no statutory mechanism for "grandfathering" prior circumstances of access.

Furthermore, the IRS stands behind a law which it believes to contain a presumption of a right to protect Capone's post-mortem privacy. The IRS is convinced of its privacy. In fact, the IRS serves as the final judge on the question of file access for deceased persons. Calder v. IRS asserted that Capone has no privacy right. Apart from the rigid standard of access to IRS "return information," as bolstered by the unclear "heirs at law" procedure, deceased persons simply do not have privacy claims. Surely, the public interest is best served by allowing access to IRS records of Capone under these circumstances.

SUGGESTED LEGISLATIVE CHANGES TO ACCOMMODATE HISTORICAL RESEARCH NEEDS

My academic and historical interests in the Capone case led to my attempt to obtain access to the IRS Capone records. Responsible scholarship cannot proceed without access to IRS documents. Congress needs to adopt methods to permit historical access to the records of

convicted, deceased tax evaders according to a declassification schedule.

The IRS has virtually total unchecked control over "tax return" information. Section 6103 of the Internal Revenue Code, aided by court decisions sustaining IRS control, unilaterally prohibits revelation of any tangential administrative or investigative records for historical research or other purposes within the public interest. My argument is that the IRS files on Capone - a convicted, deceased and notorious tax evader - have long been made public to many writers. They contain valuable historical information on the methods for securing Capone's conviction.

Constructive changes should be made to FOIA and to the Internal Revenue Code to permit greater openness of IRS records for historical purposes:

A theory of IRS records openness should be offered. While all citizens have a third party interest in assuring the integrity in, and protection of, vital government records (including the privacy of tax computations and current investigative matters), all citizens have an interest in learning whether or not the tax collection system is operating effectively, fairly, and legally. When persons with tax liability have been found guilty of violating the tax laws, they have also waived a right to privacy over the investigative records beyond the needs of IRS to protect current sources and methods. Efforts by historians, journalists, academics and other members of the public to record IRS actions for historical purposes, and to monitor IRS policy formulation and decisionmaking, should be a basic component of democratic government. Access to information such as the Capone records is essential to inform the public of the workings of the IRS, an agency that all citizens interact with. A Taxpayer Bill of Rights should provide for access under certain conditions to matters of public concern and public interest. An agency shrouded in secrecy, closed to historians and the press, is antithetical to our system of government. Records, such as the Capone records, should be available to historians for the public interest.

And, an appropriate appellate mechanism should be established to permit records claimants a right to challenge agency judgment and discretion.

APPENDIX 1

CLIENT COPY

James CALDER, Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, and Lawrence B. Gibbs, Commissioner of Internal Revenue, Defendants-Appellees.

No. 89-5508.

United States Court of Appeals, Fifth Circuit.

Dec. 21, 1989.

University professor researching development of federal crime control policies filed suit under First and Fifth Amendments to compel the Internal Revenue Service to disclose documents pertaining to tax investigations of famous crime figure. The United States District Court for the Western District of Texas, Emilio Miller Garza, J., granted summary judgment for the IRS, and professor appealed. The Court of Appeals, Johnson, Circuit Judge, held that professor had not established existence of a constitutional right of access to the IRS records of criminal figure.

Affirmed.

1. Constitutional Law ⇐90.1(1)
Internal Revenue ⇐4482

Researcher did not have a First Amendment right of access to Internal Revenue Service (IRS) records of famous crime figure (Al Capone), notwithstanding pre-1977 access to the records granted several individuals; there was no indication that these records were available for casual scrutiny, or that the access allowed these individuals was unlimited. 26 U.S.C.A. § 6103; U.S.C.A. Const.Amends. 1, 5.

2. Constitutional Law ⇐90.1(8)

The right to speak and publish information does not carry with it an unrestricted license to gather information. U.S.C.A. Const.Amend. 1.

Appeal from the United States District Court for the Western District of Texas.

Before WISDOM, JOHNSON and HIGGINBOTHAM, Circuit Judges.

JOHNSON, Circuit Judge:

While researching the development of federal crime control policies, University of Texas at San Antonio Professor James Calder requested certain documents from the Internal Revenue Service (hereinafter IRS) pertaining to tax investigations of Al Capone. The IRS, determining that the request sought nondisclosable "return information," denied Calder's request. 26 U.S.C. § 6103.[1]

1. This section, effective January 1, 1977, provides that the term "return information" includes

> a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with repect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest,

Calder, after exhausting his administrative remedies, brought suit under the Freedom of Information Act (FOIA) and the first and fifth amendments to the Constitution. Calder later dropped the FOIA claim and proceeded solely on the constitutional issues. Specifically, Calder argued that the IRS's denial of access to the materials violated his asserted constitutional right of access to government information as well as his fifth amendment right to equal protection under the laws. The equal protection claim was based on the pre-1977 access to the files granted several individuals.

The district court granted the IRS's motion for summary judgment on the ground that Calder has no constitutional or statutory right of access to Capone's IRS records. Calder has timely appealed the judgment to this Court. We affirm.

DISCUSSION

In his brief to this Court, Calder argues that the first amendment creates a right of access to records in the hands of an administrative agency which have historically been available for public perusal.[2] Calder argues that section 6103 is unconstitutional as applied to him because it limits this alleged right of access to information held by an administrative agency, specifically, the records of Al Capone. Calder bases this argument on *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980), and its progeny.[3]

[1] Calder acknowledges that the cases in the *Richmond* line establish and define the scope of the first amendment right of access to criminal trials and certain criminal proceedings. *See, e.g., Gannett Co., Inc. v. De Pasquale*, 443 U.S. 368, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979) (pretrial suppression hearing); *Richmond, supra* (criminal trial); *Globe, supra* (criminal trial involving sex offenses and minors); *Press-Enterprise I* and *Press Enterprise II, supra* (transcripts of preliminary hearings). Calder acknowledges that the Supreme Court has not specifically addressed the question of a right of access to records which are in the hands of an administrative agency. Calder urges this Court to conclude that the reasoning behind the *Richmond* line mandates the conclusion that the right of access is not limited to criminal proceedings, but extends to other governmentally held information. We decline to do so, and hold that Calder has not established the existence of a constitutional right of access to the IRS records of Al Capone. The district court did not err in granting summary judgment in favor of the IRS.

fine, forfeiture, or other imposition, or offense....

Section 6103(b)(2)(A).

Prior to the 1977 effective date of this section, the information on Capone was made available on several occasions. Several researchers took advantage of this availability and gained access to the records; these researchers then incorporated the information in books and other documents. Interestingly, the IRS promoted access to these records during the fiftieth anniversary of its Intelligence Division.

2. Calder has not briefed his fifth amendment argument, and we do not address that issue. *See Morrison v. City of Baton Rouge*, 761 F.2d 242, 244 (5th Cir.1985).

3. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982); *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (*Press-Enterprise I*); *Press Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (*Press-Enterprise II*).

In *Richmond*, the Supreme Court held that in the context of criminal trials, the first amendment prohibits the government from summarily closing the courthouse doors which stood open to the public prior to the adoption of the amendment. Chief Justice Burger traced the public character of criminal trials back to the time of the Norman conquest. He pointed out that "a presumption of openness inheres in the very nature of a criminal trial under our system of justice." *Richmond* at 573, 100 S.Ct. at 2825. In *Globe*, the Supreme Court articulated the features of criminal proceedings which implicate the first amendment right of access. Specifically, the Court pointed to the history of openness in criminal proceedings as well as to the significant role that access plays in the functioning of the judicial process. The Court also noted that openness in the context of criminal proceedings acts as a check on the judicial process while providing an appearance of fairness and providing therapeutic value to the community. It is questionable whether these reasons apply in other contexts.

Although the dicta in *Richmond* does indicate that the first amendment "prohibit[s] government from limiting the stock of information from which members of the public may draw.", *id.* at 576, 100 S.Ct. at 2827, Justice O'Connor has indicated that she "interpret[s] neither *Richmond Newspapers* nor the Court's decision [in *Globe*] to carry any implications outside the context of criminal trials." *Globe* at 611, 102 S.Ct. at 2622 (O'Connor, J., concurring). In fact, no Supreme Court case has applied the two-tier analysis which looks for an history of openness and examines the significant role access plays in the judicial process to areas other than criminal proceedings.

[2] In *Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164 (3d Cir.1986), a newspaper challenged, on first amendment grounds, its denial of access to records of a state agency. The Third Circuit, citing *Houchins v. KQED, Inc.*, 438 U.S. 1, 98 S.Ct. 2588, 57 L.Ed.2d 553 (1978), stated that such access was a matter for legislative determination and noted the complete absence of guidelines for the judiciary. Justice Stewart, quoted by the Court in *Houchins*, has noted that

> There is no constitutional right to have access to particular government information, or to require openness from the bureaucracy ... The public's interest in knowing about its government is protected by the guarantee of a Free Press, but the protection is indirect. The Constitution itself is neither a Freedom of Information Act nor an Official Secrets Act.

Id. at 14, 98 S.Ct. at 2596 (quoting Justice Stewart, "Or of the Press," 26 Hastings L.J. 631, 636 (1975)). Quite simply, the right to speak and publish does not carry with it an unrestricted license to gather information. *See Zemel v. Rusk*, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed.2d 179 (1965).

Section 6103 creates the type of comprehensive legislative scheme discussed by the courts in *Houchins* and *Capital Media*. The determination of who should have access to particular government held information and what constitutes a legitimate use of such information is "clearly a legislative task which the Constitution has left to the political processes." *Houchins* at 12, 98 S.Ct. at 2595. The pre-1977 access to the files does not change this determination.

Even assuming that the two-tier analysis applies to the information and agency in-

volved in the instant case, Calder has failed to demonstrate the requisite history of access. Calder points to persons who were allowed access to the specific file of Al Capone. This focus is much too narrow. The historic practice referred to in *Richmond* and its progeny "looked not to the practice of the specific public institution involved, but rather to whether the particular type of government proceeding had historically been open in our free society." *Capital Media* at 1175.

Calder cites to eight individuals who were allowed access to Capone's records prior to 1977. The record does not indicate, however, that these records were available for casual scrutiny, or that the access allowed those eight individuals was unlimited. In fact, the type of IRS records at issue was not routinely available even prior to 1977. The legislative history of section 6103 indicates that Congress was concerned about interagency availability of such records; there is little mention of availability to individuals, presumably because such a practice was rare and sporadic. Such inconsistent government practice does not satisfy the "historical openness" prong of the *Richmond* analysis. The district court correctly concluded that Calder failed to demonstrate that there was a history of access to the files.

CONCLUSION

Calder has failed to demonstrate that he has been denied a constitutional right of access to the IRS records of Al Capone. The district court did not err in granting summary judgment in favor of the IRS. Consequently, we affirm.

AFFIRMED.

Adm. Office, U.S. Courts—West Publishing Company, Saint Paul, Minn.

STATEMENT OF THE CENTER FOR CITIZEN ACCESS TO GOVERNMENT INFORMATION

Mr. Chairman and Members of the Subcommittee: My name is Quinlan J. Shea, Jr., and I am the Director of the Center for Citizen Access to Government Information. I very much appreciate the opportunity to present my views on implementation of the Taxpayers' Bill of Rights.

There is some basis for believing that this legislation has made some difference in the treatment of some taxpayers by the Internal Revenue Service (IRS). It is unfortunate that we really cannot say more than that in April 1990 with respect to a law that became effective in November 1988. The basic problem is that it is extremely difficult for those of us who wish to monitor the behavior of the IRS to do so. The cause of that problem is an earlier law passed to protect taxpayers, Section 6103 of the Internal Revenue Code. Over the years, that law has become, in operation, much less a shield for taxpayers from abuse by the IRS than a shield behind which the IRS is able to protect itself from effective citizen scrutiny, and even effective Congressional oversight. This same opinion was expressed by Richard M. Stana, Subcommittee Investigator, when he testified in July 1989 before the Commerce, Consumer, and Monetary Affairs Subcommittee of the House Committee on Government Operations, chaired by Rep. Barnard of Georgia. It has also been expressed by David Burnham in his recent book, *The IRS: A Law Unto Itself*, by David R. Burton, testifying before this Subcommittee on behalf of the U.S. Chamber of Commerce, and many other persons.

When Section 6103 was enacted, as part of the Tax Reform Act of 1976, I was a member of the staff of then Deputy Attorney General Harold R. Tyler, Jr., serving as Director of the Office of Privacy and Information Appeals, U.S. Department of Justice. I was a charter member of the Senior Executive Service, and retired from the Federal government on July 1, 1986.

On March 1 of this year, I testified before the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary, chaired by Rep. Edwards of California. The specific subject of that hearing was the FBI's compliance with the Freedom of Information Act. The Chairman noted that I had testified before the Subcommittee more than thirteen years earlier, on the same subject, as the official representative of the Justice Department. In his own remarks at the March 1 hearing, Rep. Edwards noted that effective Congressional oversight is often the result of the use of the FOIA by individuals and organizations. They request, obtain, and analyze information from Federal agencies, and bring the results of their work to the attention of oversight subcommittees which, for all practical purposes, usually lack the resources to do this kind of time-consuming, labor-intensive work. I share that perspective, and am very troubled by the fact that Section 6103 has become a serious impediment to effective citizen scrutiny and Congressional oversight of the most powerful domestic agency of our government.

Think back for a minute to the circumstances surrounding the passage of Section 6103, which was hailed by most persons in and out of government. All of us had watched in disbelief as the litany of abuses of American taxpayers unfolded. The infamous list of "Enemies" is but the best known of these abuses. When Congress acted in 1976, it did so against a backdrop of widespread misuse of tax returns and return information by many government entities and officials. Quite literally outraged by what it saw, Congress enacted severe restrictions on the dissemination and use of tax return information, with stringent sanctions for violations including criminal sanctions. It is now clear that consequences wholly unintended by Congress have resulted from the passage of Section 6103.

Some of us have accused the IRS of stretching the language of Section 6103 almost beyond recognition, in order to conceal evidence of embarrassing and unlawful conduct. We made that charge at least in part because we knew why Congress had passed the law and we tended to read its provisions in light of that knowledge. It now appears, however, in light of the Supreme Court's holding in the case of *Church of Scientology of California* v. *Internal Revenue Service*, that no stretching of language by the IRS was involved. Although evidence of internal wrongdoing has been concealed behind the shield of Section 6103, and the agency has largely been protected against effective citizen scrutiny and Congressional oversight, the Court found that the Service has been acting within the letter of the law. As is all too often the case these days, the clearly manifested intent of Congress in passing legislation is of little interest or importance to the Supreme Court as presently constituted.

Perhaps the decision of the Court should not have come as such a complete surprise. For whatever assistance they may be to the Subcommittee, I have attached copies of two memoranda pertaining to Section 6103 that were written in 1978. The

first, from an attorney in the Legislation and Special Projects Section of the Criminal Division, reached the conclusion that persons in the Department of Justice who were charged with enforcing the Freedom of Information Act could not look at information received from the IRS for the purpose of determining whether it was tax return information within the meaning of Section 6103, and thereby exempt from release under the FOIA. The second memorandum is my comment on the first one, reaching the opposite conclusion. Because it was a very serious and close question, however, I sent copies of both memoranda to the Office of Information Law and Policy for further consideration. These documents show quite clearly that Section 6103 was causing problems even for persons within the government who were acting with the best of motives, as they tried conscientiously to comply with another important law.

Given the decision of the Supreme Court in the *Scientology* case, I believe that there is no alternative to revisiting Section 6103 if we hope to have truly effective oversight of the IRS. Neither this Subcommittee nor any other is going to get the kind of outside assistance I described above until this is done, because, in the present circumstances, FOIA requests to the IRS are effectively DOA—dead on arrival. This should not be allowed to continue, because the American people are entitled to know to the fullest possible extent what this very powerful agency is doing, and what it is not doing, and why. It is true that anecdotal evidence will always be available, but they are not really a substitute for knowing on a systematic basis what an agency is doing. The law enforcement and intelligence agencies in particular are expert at convincing Congress that individual "horror stories" are aberrations and do not reflect agency policy, and that they never should have happened. Such statements are customarily followed by assurances that new internal controls have been instituted to ensure that such things will never happen again. The true intent of most agencies in such a situation is rarely to ensure that such things never happen again. The intent of the agency is almost always just to get Congress off its back, and the agencies will make almost any representations in order to accomplish that end. Even when an agency is sincere, the constantly recurring pattern of abuses by the law enforcement and intelligence agencies suggests that ingrained bad habits will outlast sincerity almost every time.

It is highly likely that a truly comprehensive solution to the problems created by Section 6103 will require time—time for detailed examination of the current situation and for careful consideration of possible alternatives. Should such a process be initiated, I would urge Congress to remove the criminal sanctions from Section 6103 and, to be consistent, from the Privacy Act of 1974. If they are not removed, they should be limited to the most carefully described, deliberate, egregious misconduct, preferably involving specific intent on the part of the wrongdoer. The existence of possible criminal sanctions in these two statutes creates a situation in which all doubts in the information area are resolved against disclosure, and where doubts are even "created" where none ought to be perceived. For the most part, agencies will seize on any rationale to defeat an FOIA request where the information is potentially damaging to the agency. The existence of criminal sanctions for wrongful disclosure is the best excuse of all. In most cases, the penalties for wrongful disclosure or use should be civil in nature or, preferable, administrative. Fines, suspensions, and dismissals from Federal service are sufficient sanctions in most cases. Similar sanctions should then be put into the Freedom of Information Act. No one should be disciplined for violating any one of the three statutes who was acting in honest good faith and was trying to obey the law, not break it. Right now there are no meaningful sanctions in the Freedom of Information Act, and there should be. There are many other specific suggestions that will surface in any comprehensive re-examination of Section 6103, but this is not the time to attempt to list them. There are, however, two changes that could easily be made in Section 6103, more or less in the nature of a "quick fix," that would make a significant improvement in the current situation.

Those two changes would be to amend Section 6103 to make it completely compatible with the FOIA and the Privacy Act, and to ensure that Congress can get access to information that would otherwise be protected by Section 6103. The Privacy Act does not prohibit the disclosure of any information about a person that is "required" by the FOIA. That statute, in turn, requires the release of any requested record, with or without redactions, where that would not produce a "clearly unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(6), pertaining to non-law enforcement records) or an "unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(7)(C), pertaining to law enforcement records). This suggestion reflects a judgment on my part that tax returns and related records should have no more and no less protection than, for example, medical records. If enacted into law, these

changes in Section 6103 would not solve all of the problems now caused by the provision, but they would greatly improve our ability to know what the IRS is doing. Possible language to effect these changes would be: "Nothing in this Section shall authorize the denial of access to any record, portion of record, or compilation of data, otherwise required to be released under 5 U.S.C. 552; nothing in this Section shall authorize the denial of access to any record to Congress."

Mr. Chairman, whether the area of interest is the efficacy of the Taxpayers' Bill of Rights, or any other aspect of the operations of the IRS, we will never know as much about the topic as we should know until the barriers imposed by Section 6103 are removed or, at least, considerably lowered. This should be a matter on which concerned citizens and the Congress can readily agree, and can work together to accomplish. If there is any way that I can be of assistance to the Subcommittee or its staff, I would be extremely pleased to do so.

Attachment.

TO: Frederick D. Hess
Deputy Chief
Legislation & Special Projects Section

FROM: Richard M. Evans, Attorney
Legislation & Special Projects Section

Subject: Privacy Act Requests for Material Obtained From the IRS Pursuant to the Provisions of the Tax Disclosure Act of 1976.

A question has been raised as to whether personnel in the FOI/Privacy Act Unit can review the system of records which contains tax material obtained from the IRS pursuant to the Tax Disclosure Provisions of the Tax Reform Act of 1976 in order to process requests under the Privacy Act.

Under 26 U.S.C. 6103(i) tax material obtained by the Criminal Division from the IRS pursuant to this provision can be disclosed only to those personnel which are: "directly engaged in and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party."

Since personnel in the FOI/Privacy Act Unit would not be engaged in preparation for any administrative or judicial proceeding pertaining to the enforcement of a specifically designated Federal criminal statute it would seem that they would be precluded from reviewing tax material obtained under this provision.

The only argument which I can come up with which would justify personnel in the FOI/Privacy Act Unit to inspect tax material would be to say that since the Privacy Act does contain criminal penalties that these people would be engaged in preparation for an administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute, i.e.

The Privacy Act. The problem with this argument is that the statute is clear that disclosure can be made only to those personnel involved in the investigation of the criminal acts which were specifically designated when the court order was obtained under 6103(i)(1) or when the request was made by the AAG under 6103(i)(2). Personnel in the FOI/Privacy Act Unit would not come within that category.

The FOI/Privacy Act Unit in the Tax Division does review tax material obtained from the IRS under 26 U.S.C. 6103(h), on the theory that every attorney in the Tax Division is engaged in tax administration. However, 6103(h) provides that tax material obtained from the IRS pursuant to that provision may be disclosed only to attorneys "personally and directly engaged in, and solely for their use in preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court in a matter involving tax administration: . .". It would seem that this provision would not allow Tax Division attorneys who are handling FOI/Privacy Act requests to inspect tax material since they are not preparing for a proceeding before a Federal grand jury or any Federal or State court proceeding. The fact that all Tax Division attorneys may be said to be involved in "tax administration" is irrelevant. The key is not whether an attorney is involved in "tax administration" but whether he is involved in a proceeding before a Federal grand jury or in any Federal or State court involving tax administration.

It would seem to me then that the Criminal Division has as much justification as the Tax Division to review records from the IRS for Privacy Act purposes. The problem

is that I do not think that either the Tax Division or Criminal Division has a persuasive argument to review tax records obtained from the IRS for Privacy Act purposes.

As I reported to you earlier, some time ago I contacted a Ms. Gloria Gross over in IRS and posed the problem to her. After checking with her superiors she informed me that the procedure we should use when we get a Privacy Act request concerning tax material obtained from the IRS is that we should send a cover letter to IRS along with: (1) a copy of the court order or our request to IRS pursuant to which we obtained the documents; (2) copies of the material IRS sent to us; and (3) a copy of the taxpayer's Privacy Act request. The cover letter should be sent to: Howard T. Martin

Director, Disclosure Operations Division,

Internal Revenue Service

Attn: Freedom of Information Branch.

UNITED STATES GOVERNMENT

DATE: OCT 12 1978

memorandum

REPLY TO ATTN OF: Quinlan J. Shea, Jr., Director
Office of Privacy and Information Appeals

SUBJECT: Tax Materials

TO: Frederick D. Hess, Deputy Chief
Legislation & Special Projects Section
Criminal Division

You have asked us to comment on the memorandum of your attorney Richard M. Evans, which reaches the alarming conclusion that Criminal Division (and, for that matter, Tax Division) personnel have no authority to review certain records when administering the Freedom of Information and Privacy Acts.

As you know, this Office always begins with the premise that one should not lightly conclude that Congress has prohibited that which it has otherwise commanded be done. The Freedom of Information and Privacy Acts require processing -- initially and upon administrative appeal -- of Department of Justice "agency records," presumably including those obtained from I.R.S. records. The Tax Reform Act, then, must be read if possible not to prohibit -- and, preferably, affirmatively to authorize -- our review of tax returns and tax return information for the narrow purpose of carrying out our statutory responsibilities. To avoid, therefore, what we would view as an absurd and unnecessary result, we focus not on 26 U.S.C. 6103(h)(2), relied on by Mr. Evans, but on 26 U.S.C. 6103(h)(4), which reads:

> (4) Disclosure in judicial and administrative tax proceedings. A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only --
>
> * * *
>
> (B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;
>
> * * * * * *

We believe that Department of Justice FOIA/PA personnel -- yours, the Tax Division's and ours included -- are persons who require access to tax returns and tax return information in the course of administrative proceedings within the meaning of Section 6103. Because we are to determine whether this information shall or shall not be disclosed, we are necessarily entitled to access to it. If a mandate not to disclose information is other than self-administering, it follows that someone must make the review necessary to ensure compliance with that mandate. Accordingly, I view processing for F.O.I.A. and Privacy Act purposes as itself the "administrative proceeding pertaining to tax administration" which Mr. Evans seems unable to find. Our reading of the Tax Reform Act has this further advantage -- while section (h)(2) is limited to "attorneys," (h)(4) is not so limited and encompasses, therefore, the analysts, paralegals, clerks and secretaries in our respective offices.

I have sent a copy of your note, Mr. Evans' memorandum and this response to Mr. Saloschin, Office of Information Law and Policy.

cc: Mr. Robert Saloschin
Office of Information Law and Policy

STATEMENT OF THE CHURCH OF SCIENTOLOGY INTERNATIONAL

Thank you, Mr. Chairman, we appreciate the opportunity to provide our view on the effect the omnibus Taxpayer Bill of Rights is having to ensure the protection of basic taxpayer rights and the need for measures to ensure public accountability and oversight of the Internal Revenue Service (IRS).

The Omnibus Taxpayer Bill of Rights represents landmark legislation that provided the American taxpayer with fundamental procedural rights and other vital tools to protect taxpayers from potential IRS abuse. Thanks to your efforts, Mr. Chairman, the Taxpayer Bill of Rights enactment in 1988 marked the first time in the history of the United States that a piece of legislation has been passed which is aimed solely at *helping* the taxpayer.

As David Burnham notes in his book *A Law Unto Itself: Power, Politics and the IRS*, the IRS is the largest law enforcement agency in the United States and the single most powerful bureaucracy in the world. Yet, the IRS is shrouded in secrecy and less accountable to the press and the public than any other Federal agency.

The Church of Scientology is committed to measures that protect the taxpayer from IRS abuse and provide redress when abuse does occur. Through public information campaigns and cooperative efforts with other concerned organizations, we have worked to ensure public scrutiny and accountability of the IRS.

Recently, as part of a broad campaign to educate the public concerning the important taxpayer rights contained in this legislation and ways to use those rights, we published a guidebook on taxpayer rights entitled *How To Protect Your Rights As A Taxpayer*. Over 40,000 copies of this guidebook has been distributed free of charge to state and Federal legislators, public interest groups, libraries and concerned taxpayers.

While the Taxpayer Bill of Rights has gone far to protect taxpayers' rights in dealing with the IRS, abuses continue and additional IRS reforms are needed. Congress must continue to investigate and monitor IRS actions to ensure compliance with the law. Other steps to improve taxpayer rights are still needed. One area of great concern is that there is virtually no IRS accountability to the press and general public to ensure that it is functioning properly. This is not to say that Congress is abdicating its responsibility in this important oversight area. This Subcommittee has conducted responsible and effective oversight of the IRS. However, IRS practices and procedures have grown too complex for any one entity, including the U.S. Congress, to sufficiently monitor.

From the founding of our nation, we have understood that an informed citizenry and a free flow of information and ideas is essential to a democracy. The curtain of secrecy that has fallen over the IRS must be lifted. Section 6103 of the Internal Revenue Code must be amended to ensure that the IRS is held accountable to the public. Access to information regarding the Service's practices and procedures by the press, the media, the academic community and interested private citizens all contribute to the effective oversight of the agency.

Yet, contrary to the intent of Congress, §6103 of the Internal Revenue Code, as currently interpreted and applied by the IRS, provides a shield for the IRS to cover up its own questionable activities and to avoid public scrutiny of its operations.

This is ironic, as Congress passed §6103 to stem the countless instances of IRS abuse, not to cover up such abuses at the expense of taxpayer rights. This legislation resulted from Congressional concern over evidence that was uncovered demonstrating governmental abuse of tax information for political purposes. The IRS had engaged in the wholesale disclosure of confidential information to *other government agencies*—not the public or Congress—for improper and politically partisan purposes. The legislative history underlying the Tax Reform Act of 1976 makes it clear that the overriding purpose of revising §6103 was to protect citizen tax information from misuse by the White House, the IRS and other Executive Branch agencies. Congress was particularly concerned over the misuse of return information for politically partisan purposes as the IRS had become a virtual "lending library of confidential tax information" to various agencies. *See* S. Rep. No. 94-938 (1976); 122 Cong. Rec. 24012-24013 (1976) (Remarks of Senators Pole and Weicker).

IRS disclosures of taxpayer information to other government agencies—the concern that led to the passage of §6103—have continued and are massive, even if they are for apparently legitimate purposes. During 1984 for example, the IRS made 7,441 disclosures to the Department of Justice and other Federal agencies, 157 million disclosures to Federal agencies for "statistical" purposes, and 89 million disclosures to state tax agencies. In addition to these disclosures, the IRS on 1.2 million occasions provided information to Federal, state and local agencies for the purpose of alleged child-support enforcement. See Commissioner's/Chief Counsel's Annual

Report, 1985. It is again ironic that while disclosure of taxpayer information continues at such a rate, the IRS is using §6103 to prevent taxpayers from examining the inner workings of the agency.

Ever since the Tax Reform Act's passage, the IRS has attempted to alter the purpose of §6103 from a protection of the citizenry from public abuse to a shield for the IRS to resist public exposure and oversight of its activities to the detriment of basic taxpayer rights. People should have a right to obtain information regarding IRS actions that have a direct effect on the public, while the confidentiality of third party tax information is preserved.

Section 6103 serves an important purpose by protecting a taxpayer's right to privacy. However, there is simply no reason to prohibit disclosure of return information that does not directly or indirectly identify a taxpayer. In fact, the ten year history of the IRS's application of 6103, before the Service began to misuse it to impede public oversight, clearly bears this out. During extensive disclosure litigation involving the application of §6103 in this ten year period, the IRS was unable to produce ONE case where a taxpayer's privacy had been violated by the IRS's release of documents after removing all identifying taxpayer information. The inability of the Service to produce just one example from a period spanning ten years while arguing that such might hypothetically occur, indicate that the argument was a hollow one with no practical or factual basis. The record shows the removal of identifying taxpayer information clearly protects the inviolate privacy rights of taxpayers.

The current interpretation and application of §6103 by the IRS undermines the broad disclosure policy articulated in the Freedom of Information Act (FOIA) to open an agency's administrative processes to the scrutiny of the press and the general public. As David Burnham notes in his book, this statute hinders Congress, the press and public to examine the performance of the IRS and to expose and root out abuse. This statute should be revised to require the release of anonymous tax information while continuing to preserve the privacy of information that can be directly or indirectly associated with a particular taxpayer.

Section 6103 should be able to coexist harmoniously with the Freedom of Information Act, balancing the right to privacy with the public's right to understand the workings of the IRS. The IRS should not be provided a virtual blanket exemption from the Freedom of Information Act, as allowing it to shroud itself in secrecy is antithetical to a democracy, creates an environment for potential abuse, and fosters the perception that the IRS is above the law. Effective public and Congressional oversight of the IRS through amendment of §6103 will greatly enhance taxpayers' rights by holding the IRS accountable for programs and procedures that do not comply with the law.

We appreciate the opportunity to provide our views to the subcommittee. Thank you.

NAEA
National Association of Enrolled Agents
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STATEMENT
ON
SENATE FINANCE SUBCOMMITTEE'S
REVIEW OF TAXPAYERS' BILL OF RIGHTS

The National Association of Enrolled Agents has received reports from practitioners of two areas where the Taxpayer Bill of Rights is not fulfilling its original intent. One of the areas involves the insistence of the auditor/agent to audit the taxpayer without the taxpayers representative present, or insist a taxpayer be present even though a representative has a valid POA.

In addition, the Taxpayer Bill of Rights does not address the abusive use of administrative procedures, which may be "legal" and "proper", but certainly not in the spirit of the legislation.

The Manhattan (NYC) District Office of the Internal Revenue Service requested in January 1990 numerous extensions of the statutory period for assessment of tax on 1986 returns that were still in their inventory of unclosed cases. In all the cases that we are familiar with, each open case is now being handled by the 3rd or 4th auditor/agent since the Spring of '88 (mostly trainees).

These "routine" audits have now placed considerable and unnecessary stress on the taxpayer by the repetitive nature of the process. After working on a case for almost 1 1/2 - 2 years, the current auditor/agent either tries to bypass a valid POA, and/or requests an extension for an additional 15 months (June 30, 1991) on the threat of disallowing all (or most) of the deductions in question, and closing the case as "unagreed". This puts the taxpayer in an unnecessarily stressful and costly position.

Since these problems apparently stem from a breakdown in the administration of the Audit Division, not only in the Manhattan District but also in other areas of the United States, the concomitant result has been to use administrative abuse in its immediate resolution. This must be addressed by Congress and changed, either through corrective legislation, or additional funding for the administrative functions of the Internal Revenue Service.

STATEMENT OF THE NATIONAL TREASURY EMPLOYEES UNION

Nearly three years ago, revenue officers of the Internal Revenue Service sat before a Senate subcommittee and recounted sometimes shocking stories of seizures, levies and liens they were being forced to perform, all to meet IRS production quotas.

They spoke of management's workplace signs reading, "Seizure Fever—Catch It." They said that to get a good job evaluation IRS managers directed them to close so many cases, bring in so many revenue dollars, and the taxpayers be damned. The IRS employees told these tales of horror and said they wanted it to stop.

Congress listened to the employees and to the outraged and abused taxpayers who testified, and Congress acted. The enacted Taxpayers' Bill of Rights mandated IRS to halt the use of enforcement statistics in job performance evaluations. IRS then complied, writing regulations and developing a certification and review procedure to ensure enforcement goals for workers were not set.

The National Treasury Employees Union is convinced that IRS Commissioner Fred Goldberg, and his predecessor Lawrence Gibbs, operated with complete sincerity in creating what they believed to be satisfactory checks against production quota misuse.

But with a government agency struggling under a $820 million, two-year budget shortfall, Congress would be naive to believe the quota problems are solved.

An almost year-long hiring freeze and five month promotion restriction have tied a tourniquet around the IRS workforce, generating a revenue collection system about to burst under pressure.

While the tax collection workforce shrinks, the number of tax returns filed increases. When a senior revenue officer leaves with no replacement, junior staff with inadequate training must fill the gap. Under these pressure cooker conditions, how can IRS, Congress and the taxpaying public truly accept that production stresses have been lifted from employee shoulders?

The Taxpayers' Bill of Rights in many ways creates only the illusion of comfort. Lots more head and leg room for taxpayers. A smoother ride for Congress. But the engine running the tax system is faulty and threatens to stall at any moment.

Only a greater long-term investment in the IRS by Congress and the administration will enable the Taxpayer Bill of Rights to achieve its desired effect. Until that happens, all the spit and polish rubbed on by Congress will not help restore our corroding revenue collection system.

The National Treasury Employees Union represents approximately 105,000 Internal Revenue Service employees nationwide, plus 35,000 Federal workers in the U.S. Customs Service, Department of Health and Human Services and other Federal government agencies.

BRYANT H. PRENTICE, JR.
468 CROCKER SPERRY DRIVE
SANTA BARBARA, CALIFORNIA 93108

May 20, 1990

Laura Wilcox
Hearing Administrator
Senate Finance Committee
SD-205
Washington, DC 20510

Ed Mihalski
Minority Chief of Staff
SH-203
Washington, DC 20510

Re: Taxpayer's Bill of Rights

Dear Ms. Wilcox and Mr. Mihalski:

May I have your attention for five minutes please.

There are two procedures used by the I.R.S. which are undoubtedly unconstitutional, but also would be labeled fraudulent, if engaged in by private businesses.

One is the I.R.S. remedy for its own inefficiency: the request to the taxpayer for an extension of the statute of limitations. If the taxpayer refuses, the Service bills him arbitrarily with its assessment of the tax owed. The taxpayer's only recourse is to sue the U.S. Government for a refund!

Second is the reliance by the Service on a computer program to communicate with the taxpayer when an error in his return is perceived. Apparently this system includes placing liens indiscriminately on the taxpayers assets!

In my case the I.R.S. claimed erroneously a little less than $500.00 for the tax years 1974-76; the claim being made in 1988. I had signed a waiver of the statute of limitations.

In April of 1989 the I.R.S. froze all my assets which amounted to approximately 3 million dollars.

Herewith are further details.

"ANYTHING I CAN DO, I USED TO DO BETTER." B.H.P. JR. 1988

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I was a party to a Tax Court Case which finally was settled in early 1988. However, prior to the time of settlement, I paid in full the estimated amount due, including interest, in December, 1986. Nevertheless, the Internal Revenue Service in late 1988 sent notices out computing the tax and interest to the day of the notice even though payments were made. In addition, one of the payments was missing from my account. My attorneys' letters on this matter were routinely ignored by the Service. Finally, on April 30, 1989, after ignoring my attorney's letter of April 17, 1989, the Internal Revenue Service froze my entire account at Tucker Anthony & R.L. Day for a disputed amount of less than $500.

My portfolio of assets in excess of $3,000,000 was frozen because of a mere $500 dispute. My dividend and/or interest checks were impounded because of this minor dispute.

Finally, after contacting the National Problem Resolution Office in Washington, D.C., the levy was released on May 27, 1989, approximately one month later.

The Internal Revenue Service at times could not locate my files nor could anyone answer my requests or my attorney's request for answers.

The above problem is not unique. Other taxpayers have experienced the same problems. Protection should be given to taxpayers from the abusive tactics of the Internal Revenue Service. One area that needs to be addressed is the freezing of a taxpayers entire account for an amount less than the balance in the account. Another is the catch 22 effect of the I.R.S. policy on the statute of limitations.

If any additional information is requested, feel free to contact me.

Please advise me what action your office is taking to correct these patently abusive practices by the I.R.S.

Very truly yours,

Bryant H. Prentice, Jr.

Mr. Bryant H. Prentice, Jr.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 30, 1990

The Honorable Lloyd Bentsen
Chairman
Senate Committee on Finance
205 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman:

The State of Alaska appreciates the opportunity to comment on the Administration's revenue-raising proposal which would mandate social security payments by students employed part-time or temporarily by state colleges and universities. I urge Congress to reject this proposal. It sends the wrong message at a time when the U.S. is seeking ways to the decline in our educational system and, in turn, our international competitiveness.

The proposal would directly affect many students from lower and middle income backgrounds who depend upon these work programs to pay for a major portion of their higher education expenses. The 7.65 percent of the student's salary that would be deducted from each paycheck for Social Security would cause real hardship for many of these students, without generating substantial revenue for the federal government. State universities and colleges would also be obligated to pay part of the social security tax, which would make the work programs more expensive and probably reduce the number of students that could be served by them.

Many of Alaska college students rely on part-time or temporary work to supplement their college expenses. The University of Alaska's branch in Fairbanks, the state's largest school, hires about 900 students annually for part-time or temporary positions. Starting salaries range from $4.65 to $8.37 per hour and can eventually be raised to $5.65 to $10.17. Students earn on the average $5,500 per year, working from 10-to-15 hours a week, with 20 hours being the maximum work limit except during holidays and summer. The University has not reserved contingency funds to meet the increased costs that would be associated with this proposal, which would cost the Fairbanks campus roughly $400,000 annually. As a result, the University might have to reduce its student work force by approximately 73 student positions, and the other campuses in Alaska would also be forced to follow suit.

Finally, I would like to point out that the Administration has not shown any health or welfare necessity for extending Social Security coverage to these students. The Social Security Trust Fund is running a current surplus and that excess is not being put at risk by the exclusion of this small class of students. On the contrary, once these students graduate from school, their chances of finding higher paying employment and contributing more to the Social Security Trust Fund over the long run will be increased.

Thank you for the opportunity to discuss this important matter.

Sincerely,

Steve Cowper
Governor