[ORAL ARGUMENT NOT YET SCHEDULED]

No. 17-5225

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELECTRONIC PRIVACY INFORMATION CENTER,
Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE,
Defendant-Appellee.

On Appeal from an Order of the
U.S. District Court for the District of Columbia
Case No. 17-cv-670(JEB)

ADDENDUM OF APPELLANT

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U.S.C. TITLE 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

5 U.S.C. § 552(a)(3)(A)

Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

5 U.S.C. § 552(a)(6)(A)

Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of—

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination—

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

5 U.S.C. § 552(a)(6)(C)(i)

Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

5 U.S.C. § 552(a)(8)(A)

An agency shall—

(i) withhold information under this section only if—

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii)

(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information;

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5 U.S.C. § 552(b)

This section does not apply to matters that are—

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(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute—

(A)

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

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5 U.S.C. § 702

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for

compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. § 704

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S.C. § 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

U.S.C. TITLE 26 – INTERNAL REVENUE CODE

26 U.S.C. § 6103(a)

General rule.--Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(1)(C) or (7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (k)(10), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or

under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

26 U.S.C. § 6103(b)(4)

Tax administration.--The term "tax administration"--

(A) means--

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

26 U.S.C. § 6103(c)

Disclosure of returns and return information to designee of taxpayer.--The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

26 U.S.C. § 6103(k)(3)

Disclosure of return information to correct misstatements of fact.--The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer's return or any transaction of the taxpayer with the Internal Revenue Service.

26 U.S.C. § 7852(a)

Separability clause If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby

U.S.C. TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

28 U.S.C. § 1291

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

INTERNAL REVENUE MANUAL

IRM 1.2.49 (06-23-17)
Delegations of Authority for Communications, Liaison and Disclosure Activities

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Exhibit 1.2.49-1
Delegation Order 11-2 (Rev. 2) Reference Chart

*Accounting Required

Authority	Subject Matter	Delegated To	Redelegation (requires a separate document/act) May Be Made To	Comments
***				
6103(k)(3)*	To correct misstatement of fact	Director, GLDS; Chief, Communications and Liaison	May not be redelegated	Delegated officials may exercise authority only at the request of the Commissioner and with the approval of the Joint Committee on Taxation

IRM 11.3.11.3 (09-21-2015)
Disclosure to Correct Misstatement of Fact

1. There may be instances where limited disclosures to correct a misstatement of fact may be warranted.
2. These situations are rare and require disclosure approval by the Commissioner IRS and the Joint Committee on Taxation. These disclosures will be approved only if the misstatement will have a significant impact on tax administration. See IRC § 6103(k)(3) and Delegation Order 11-2.
3. The IRS should seek authorization to disclose only when a misstatement of fact can potentially instigate taxpayer noncompliance, cause a proliferation of taxpayer noncompliance, or impugns the integrity of the IRS.
4. Whenever field personnel become aware of any situation where a misstatement may warrant correction by the IRS through the disclosure of return information, they should contact their servicing Disclosure Manager for assistance.
5. The Office of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for coordinating efforts to secure Joint Committee authorization. The Disclosure Manager is the initial contact point in the field. The Disclosure Manager will collect all necessary information from the field function requesting the disclosure and documentation as specified below and will forward it to the Disclosure Policy & Program Operations Manager.
6. The Disclosure Policy & Program Operations Manager or his/her delegate will forward a request to the Director, Office of Governmental Liaison, Disclosure and Safeguards (GLDS) via memo, requesting Joint Committee approval to disclose return information in order to correct the misstatement

of fact. Adequate supporting documentation (e.g., copies of articles containing the misstatement, reports by IRS personnel, transcripts of accounts, examination reports, work papers) will be attached. A courtesy copy should be shared with the local Disclosure staff that helped to prepare the package. See (5) above. If OD/FD/HQ functions wish to require management involvement at a higher level than the area level, they should establish additional procedures for this purpose.

7. The memo from the Disclosure Policy & Program Operations Manager to the Director GLDS should contain the following information:
    a. The name, address and SSN of the taxpayer with respect to whom the disclosure is requested.
    b. A brief history of the taxpayer's dealings and status with the IRS (e.g., activities associated with non-compliance, record of late filings and payments, audits, penalty assessments, Title 26 convictions). The description should give an adequate profile of the taxpayer's tax affairs with the IRS.
    c. The nature and/or specifics of the misstatement including all documentation;

        Note:

        This would include, but is not limited to, what was said and why it is considered a misstatement; when it was said; how it was communicated (e.g., live speech, newspaper article); and its geographic impact.
    d. The effect on tax administration. To the extent possible, affected IRS operations should provide specific reasons why the misstatement actually or potentially instigates noncompliance, causes a proliferation of noncompliance, or impugns the

integrity of the IRS. A general statement to this effect in the memorandum is not adequate.

e. Repercussions resulting from the misstatement, such as media stories, interview requests, letters to the editor, and calls or letters from taxpayers who had seen or heard the misstatement, and perhaps expressed support for the originator of the misstatement. If there were no such repercussions, the memo must state that as well.

f. The proposed disclosure to correct the misstatement of fact. This does not have to be a verbatim statement of the contemplated disclosure. However, it should contain enough information to allow the Office of Governmental Liaison, Disclosure and Safeguards to prepare a verbatim statement of the information proposed for disclosure if requested by the Joint Committee.

g. The reason why disclosure is necessary for tax administration purposes. The information developed in c), d), and e) above should help to summarize why disclosure of return information will correct any harm caused by the misstatement.

h. If the taxpayer was not the source of the misstatement, provide the identity of the person who made the misstatement and his or her relationship to the taxpayer. Note whether the person making the misstatement has power of attorney. If known, indicate his or her purpose for making the misstatement;

i. If the misstatement is reported by the media, clarify whether the misstatement is a direct quote from or simply attributed to the taxpayer.

j. Any other information about the misstatement that the Commissioner should have in order to make an informed decision.

8. After receipt of the request for disclosure from the referring office, the Office of Governmental Liaison, Disclosure and Safeguards will prepare a letter to the Chairman of the Joint Committee on Taxation for the Commissioner's signature. The letter must contain the information in *IRM 11.3.11.3.1* or *IRM 11.3.11.3.2*, below, depending on whether the taxpayer or a third party made the misstatement.

IRM 11.3.11.3.1 (09-21-2015)
Misstatement Made by the Taxpayer

1. If the taxpayer made a misstatement, the Office of Governmental Liaison, Disclosure and Safeguards will prepare a letter indicating the following:
   a. The person about whom the disclosure is requested;
   b. The nature of the misstatement;
   c. The general nature of the disclosure proposed to correct the misstatement, including what will be disclosed, how the information will be disseminated, and who has the authority to make the disclosure; and
   d. Why the disclosure is necessary for tax administration purposes.
2. The information should be a condensed version of what the referring office provided. While individual cases vary, each item should generally be limited to one paragraph.
3. In cases where the taxpayer makes the misstatement, the Chairman and Vice Chairman of the Joint Committee will authorize disclosure for the Committee.

4. The letter to the Joint Committee will be prepared in duplicate with an authorization line for each signer. One copy will be returned to the IRS.
5. When a misstatement is repeated by the media, a distinction must be made about who actually made the misstatement.
    a. If the media directly quotes the taxpayer, the quote will be considered made by the taxpayer.
    b. If the misstatement is attributed to the taxpayer or otherwise reported without directly quoting the taxpayer, the misstatement will be considered as made by a third party.

IRM 11.3.11.3.2 (06-30-2009)
Misstatements Made by Third Parties

1. The Joint Committee will scrutinize these cases more closely, so it is essential that information about the third party be as complete as possible.
2. A letter will be prepared covering the same information specified in IRM 11.3.11.3.1. An additional paragraph will be added outlining the circumstances where the third party made the misstatement. These guidelines should be followed for specific situations:
    a. If the third party is the taxpayer's representative, attach any documentation establishing their relationship.
    b. If the third party is a member of the media, explain how he/she reported the misstatement. If possible, send a copy of the article or transcript of the report with the letter.

IRM 11.3.11.3.3 (09-21-2015)
Coordination of Authorization

1. The Chief Communications and Liaison through the Director, Office of Communications is responsible for reviewing the request prior to obtaining the Commissioner's signature.
2. Once the Commissioner signs the request, it will be delivered expeditiously to the Joint Committee.
3. When the Joint Committee approves the disclosure, the Director, Office of Governmental Liaison, Disclosure and Safeguards will notify the referring office. The referring office will then notify the appropriate subordinate office.
4. The disclosing office will submit a written report of the disclosure to the Director, Office of Governmental Liaison, Disclosure and Safeguards.

IRM 11.3.35.3 (12-28-2015)
Definitions

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7. A **request** is any request for testimony by an IRS officer, employee, or contractor for production of IRS records or information, oral or written, by any person, which is not a demand.
8. A **demand** is any subpoena or other order from any court (including a military court), administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition, and includes:
    - Subpoena
    - Summons

- Notice of deposition (either upon oral examination or written questions);
- Request for admissions
- Other notice of, request for, or service for discovery in a matter before any court, administrative agency or other authority
- Request for production of documents or things
- Written interrogatories to parties

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IRM 11.3.35.5 (12-28-2015)
Requests Requiring Headquarters Authorization

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2. The following requests or demands for testimony or production of IRS information must be authorized by the Commissioner, the appropriate Deputy Commissioner, or other delegated official in accordance with Delegation Order 11-2 (see IRM 1.2.49):
    - Requests made by a Congressional committee. These requests will immediately be brought to the attention of the Office of Legislative Affairs.
    - Requests involving disclosure to the President or certain other persons under IRC 6103(g)
    - Requests involving disclosure to correct a misstatement of fact under IRC 6103(k)(3)

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IRM 34.9.1.2 (05-03-2013)
Definitions

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4. A "request" is "any request for testimony of an IRS officer, employee or contractor or for the production of IRS records or information, oral or written, by any person, which is not a demand." Treas. Reg. § 301.9000-1(d).
5. A "demand" is "any subpoena, or other order, of any court, administrative agency or other authority or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition (either upon oral examination or written questions), request for admissions, request for production of documents or things, written interrogatories to parties, or other notice of, request for, or service for discovery in a matter before any court, administrative agency, or other authority." Treas. Reg. § 301.9000-1(e).

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IRM 34.9.1.4.1 (05-03-2013)
Requests Requiring Additional Authorization

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2. The following requests or demands for testimony or production of documents must be authorized by the Commissioner, the appropriate Deputy Commissioner, or other delegated official in accordance with Delegation Order No. 11-2:
    a. Requests for testimony made by a congressional committee (these requests should be immediately brought to the attention of the Office of Legislative Affairs)

Note:

Requests for interviews made by a congressional committee may be authorized by the Director, Legislative Affairs.

b. Requests involving disclosure to the President or certain other persons under IRC § 6103(g)

c. Requests involving disclosure to correct a misstatement of fact under IRC § 6103(k)(3)

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IRM 4.12.2.5 (04-30-1999)
Disclosure to Correct Misstatement of Fact
[Prior version of Internal Revenue Manual]

1. IRC Section 6103(k)(3) allows the Director, subject to the approval of the Joint Committee on Taxation, to disclose return information or any other information necessary to correct misstatements of fact when it is determined that such a correction of the record is necessary for tax administration purposes. (See Policy Statement P–1–185).
2. All examination personnel should be alert to situations where we should be pursuing Joint Committee approval to correct misstatements of fact. An example would be when leaders promoting frivolous argument schemes make false claims about their personal tax situations and IRS dealings with them. In such situations, as is explained in text (11)30 of the former IRM 1272, Disclosure of Official Information Handbook, the local Disclosure Officer should be informed immediately.

IRM 9.3.1.14.1 (09-25-2006)
Approval of the Joint Committee on Taxation to Correct Misstatement of Fact on an Investigation

1. There may be instances when the limited disclosure of tax information, to the extent necessary to correct a misstatement of fact, may be warranted. When it is determined that such a correction is necessary for tax administration purposes, the Commissioner is authorized to make such disclosures, but only with the approval of the Joint Committee on Taxation on an investigation-by-investigation basis (see 26 USC §6103(k)(3)).
2. The IRS should seek authorization to disclose when:
    a. A misstatement of fact has the potential for instigating taxpayer noncompliance or causing a proliferation of taxpayer noncompliance.
    b. A misstatement of fact discredits the integrity of the IRS.
3. Whenever field personnel become aware of any situation where a misstatement may warrant correction by the IRS through the disclosure of return information, they should contact their Disclosure Office for assistance. Particular attention should be paid to those situations involving abusive tax shelters.
4. Additional information may be found in IRM 11.3, Disclosure of Official Information.

TREASURY REGULATIONS

26 C.F.R. § 301.9000-1

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(d) A **request** is any request for testimony of an IRS officer, employee or contractor or for production of IRS records or information, oral or written, by any person, which is not a demand.

(e) A **demand** is any subpoena or other order of any court, administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition (either upon oral examination or written questions), request for admissions, request for production of documents or things, written interrogatories to parties, or other notice of, request for, or service for discovery in a matter before any court, administrative agency or other authority.

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26 C.F.R. § 601.702(c)(4)(i)(E)

In the case of a request for records the disclosure of which is limited by statute or regulations (as, for example, the Privacy Act of 1974 (5 U.S.C. 552a) or section 6103 and the regulations thereunder), establish the identity and the right of the person making the request to the disclosure of the records in accordance with paragraph (c)(5)(iii) of this section;

26 C.F.R. § 601.702(c)(5)(iii)(C)

In the case of an attorney-in-fact, or other person requesting records on behalf of or pertaining to other persons, the requester shall furnish a properly executed power of attorney, Privacy Act consent, or tax information authorization, as appropriate.

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CONSTITUTIONAL PROVISIONS

United States Constitution, Art. I, § 7

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Confidentiality of Tax Return Information: Hearing Before the H. Comm. on Ways and Means, 94th Cong. 23 (1976)
(statement of Donald C. Alexander, IRS Comm'r)

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE

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MISSTATEMENTS OF FACT

Existing law does not provide clear authority permitting the Secretary or his delegate to disclose return information with respect to a particular taxpayer in order to correct a misstatement of fact published or disclosed with respect to that taxpayer's return or his dealing with IRS. H.R. 11090 would permit the Secretary or his delegate to disclose tax return information or any other information with respect to that taxpayer under these circumstances to the extent necessary to correct his public misstatement in the interests of Federal tax administration.

S. 442 contains a provision corresponding to that of H.R. 11090, but none of the other taxpayer privacy proposals would authorize such disclosures. It is extremely important to Federal tax administration that IRS be given discretionary authority to make limited disclosures necessary to protect itself and the tax system against unwarranted public attacks on its integrity and fairness in administering the tax laws.

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Confidentiality of Tax Return Information: Hearing Before the H. Comm. on Ways and Means, 94th Cong. 91–92 (1976)
(statement of Rep. Jerry Litton)

STATEMENT OF HON. JERRY LITTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

THE TAXPAYER PRIVACY ACT, A BILL TO PROTECT CONFIDENTIALITY OF INCOME TAX RETURNS AND RESTORE INTEGRITY OF THE INTERNAL REVENUE SERVICE

Mr. Chairman, in January of 1973 I discovered in the Federal Register Executive orders number 11697 and number 11709 issued by former President Nixon authorizing the Department of Agriculture to inspect income tax returns filed by persons having farming operations. Since this regulation which would provide blanket authority for the government to invade the privacy of three million farmers was published only in that source and was not accompanied by the usual press releases that would be justified by such a far reaching development, it is doubtful that more than a few farmers realized that their interests were thus threatened. From that moment I resolved to alert Congress and the nation to the existence and threat created by this order and to try to discover if the means were justified by the statistical ends the Administration claimed they were seeking or whether the same information could be obtained directly from the farmer with his consent. Further investigations and off-the-record interviews with Treasury and Agriculture Department officials revealed a pattern of government intrusion thru the use of tax returns. The story of enemies lists and groups targeted for harassment thru the Internal Revenue Service were difficult to believe in 1973. Unfortunately today, these stories are all too easy to believe. In October of 1973, I introduced legislation which provided for reasonable alternatives for developing statistical data with the knowledge of the subjects of that data, and which would plug an antiquated loophole through which the federal government constantly threatens the privacy of us all.

Understandably, this Congress has been concerned with other issues; but thirty-six months later, government agencies continue to have the same far reaching power to intrude that they possessed when the above orders were issued. During that time, this country has endured constant revelations concerning the misconduct on the part of government officials and he seemingly endless tale of government disregard for the privacy of its citizens.

It is with a great sense of personal satisfaction that I appear before this committee today to bring once more before the public consciousness the urgency of this issue. In the past, the efforts by myself, Members of this Committee, and other Members of Congress have successfully created alarm on the part of millions of citizens and many Members of Congress. The time has now come for the conclusion to be written to the tale of government disregard for citizens rights. The time has come for legislation to end the political misuse of the Internal Revenue Service. The time has come for the Congress to establish that the Internal Revenue Service is for collecting taxes, not for the pursuit of political vendettas.

The legislation that I introduced in 1973 and reintroduced as H.R. 616 and later as H.R. 9735 in January 1975, has been cosponsored by two-thirds of the Members of the Oversight Sub-committee, by two-thirds of the Members of the Ways and Means Committee, and by more than half the Members of the House of Representatives. In the Senate, Senator Weicker introduced the same legislation and that bill has the support of thirty-seven Senators. Time magazine hailed the Litton-Weicker bill as one of the five major reforms that might come out of Watergate. Editorials in leading newspapers across the country have made similar comments about my proposal. I submit to you today that the time has come for immediate action on this most important measure.

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In addition, taxpayer identity information (name, mailing address, and taxpayer identifying number) of any tax return preparer (as defined in section 7701(a)(36)) could be disclosed to any State or local agency, body, or commission charged with licensing, registration, or regulation of tax return preparers. The fact of any penalty imposed on a tax return preparer under sections 6694, 6695, or 7216 for the unlawful disclosure or use of tax information could also be disclosed.

j. Taxpayers With a Material Interest

Present law

Under the regulations, income tax returns presently are open to the filing taxpayer, trust beneficiaries, partners, heirs of the decedent, etc. "Return information", as opposed to the tax returns themselves, is only available to the taxpayer, etc., at the discretion of the IRS.

Also, the statute specifically authorizes the inspection of a corporation's income tax returns by a holder of 1 percent or more of the corporation's stock. (Sec. 6103(c).)

Reasons for change

The committee decided that persons with a material interest should continue to have the right to inspect returns and, where appropriate, return information to the same extent as provided under current regulations.

Explanation of provision

Under the committee amendment, disclosure could be made, upon written request, to the filing taxpayer, either spouse who filed a joint return, the partners of a partnership, the shareholders of subchapter S corporations, the administrator, executor or trustee of an estate (and the heirs of the estate with a material interest that may be affected by the information), the trustee of a trust (and beneficiaries with a material interest), persons authorized to act on behalf of a dissolved corporation, a receiver or trustee in bankruptcy, and the committee, trustee or guardian of an incompetent taxpayer.

The provision in present law authorizing a one percent shareholder to inspect a corporation's return would also be retained.

Return information (in contrast to "returns") could be disclosed to persons with a material interest only to the extent the IRS determines this would not adversely affect the administration of the tax laws.

k. Miscellaneous Disclosures

Present law

Under present law, several provisions of the regulations allow disclosure of tax information for miscellaneous administrative and other purposes. For example, accepted offers in compromise (under sec. 7122) are open to inspection. Internal Revenue officers may disclose limited information to verify a deduction, etc. Additionally, in a number of cases, tax information may be disclosed at the discretion of the Commissioner, as the statute is wholly silent with respect to certain types of returns. For example, FICA tax returns are within this category.

In other cases, the statute specifically requires public disclosure of certain types of returns. Under the Code, applications for exempt

status by organizations and applications for qualification of pension, etc., plans are generally open to public inspection. (Sec. 6104(a)(1).) Also, the annual reports of private foundations are open to public inspection. (Sec. 6104(d).) Returns with respect to the taxes on gasoline and lubricating oils are open to inspection by State officials. (Sec. 4102.) Under certain circumstances, the amount of an outstanding tax lien may be disclosed. (Sec. 6323(f).)

Upon inquiry, the IRS is to disclose whether any person has filed an income tax return for the year in question. (Sec. 6103(f).) Inquiries under section 6103(f) are made by, among others, news media and commercial concerns.

Additionally, the IRS sometimes is asked to provide information concerning a taxpayer's address. Address information will be provided to State or local officials for tax administration purposes, to State or local enforcement officials if furnishing the information will aid in Federal special enforcement programs (*e.g.*, narcotics programs), to Federal agencies in general to assist in administering their responsibilities and to "educational lending institutions" to locate delinquent borrowers under Federal loan guarantees. Address information will not, however, be provided to commercial concerns. Also, address information is provided to the Federal Parent Locator Service regarding "absent parents" under Public Law 93–647 (section 453 of the Social Security Act). Address information also may be provided individuals in emergency situations.

Reasons for change

The committee decided that it was necessary to allow the disclosure of returns and return information in certain miscellaneous situations. In most of these situations, disclosure is permitted under present law. In each situation, the committee decided either that the returns or return information should be public as a matter of policy, or that the reasons for the limited disclosures involved outweighed any possible invasion of the taxpayer's privacy which might result from the disclosure.

Explanation of provision

Returns would continue to be open to public inspection in those situations where public disclosure is provided for in present law under section 6104. This includes applications for exempt status by organizations, applications for qualification of pension, etc. plans, the annual reports of private foundations, and returns filed with respect to the excise taxes imposed on private foundations and pension plans (under chapters 42 and 43).

Return information would be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122. If a notice of lien has been filed (pursuant to section 6323(f)), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record and may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property. Disclosures to foreign governments would be authorized to the extent provided for in tax treaties.

Disclosure would be made to the General Accounting Office in accordance with the committee's prior decision to order H.R. 8948 reported favorably, as amended by the committee. This would permit the General Accounting Office to audit the Internal Revenue Service and the Bureau of Alcohol, Tobacco and Firearms, and would provide access to tax returns and tax return information in connection with such audits. The committee amendment would limit access to tax returns and tax return information to the instances where prior consent has been obtained from, and the audit is conducted under the supervision of, the Ways and Means Committee, the Finance Committee, or the Joint Committee on Internal Revenue Taxation.

Alcohol, tobacco, wagering and firearms tax information could be disclosed pursuant to Treasury regulations to Federal agencies that require this information in their official duties.

Returns and return information of taxpayers and spouses could be disclosed to appropriate Federal, State, and local agencies for purposes of, and only to the extent necessary in, locating deserting parents and determining ability to make support payments.

The committee amendment authorizes the IRS, upon written request, to disclose returns and return information to the Privacy Protection Study Commission, or to such members, officers, or employees of the commission as may be named in the written request, to the extent, and for such purposes, as provided by section 5 of the Privacy Act of 1974.

The IRS would be authorized to disclose, to the extent necessary for purposes of tax administration, returns and return information to any person with respect to his performance of services in connection with the processing, storage, transmission, or reproduction of returns and return information or in connection with the programming, maintenance, repair, testing, and procurement of equipment.

Disclosures to the press and other media is to be permitted for purposes of notifying a person entitled to a Federal tax refund when, after reasonable time and effort, the IRS is unable to locate the person.

The IRS would be authorized to disclose relevant returns and return information to an employee (or former employee) of the IRS and to his attorney in an adverse proceeding against the employee. This need for limited disclosures arises, for example, in proceedings brought against the employee for harassment of a taxpayer.

Disclosures, as necessary, would also be permitted to persons (and their legal representatives) whose rights to practice before the IRS may be affected by an administrative action or proceeding.

Under the committee amendment, the Secretary may, in his discretion but only following approval by the Joint Committee on Internal Revenue Taxation, disclose, as he considers advisable for purposes of tax administration, such return information or other information with respect to any specified taxpayer to the extent necessary to correct a misstatement of fact published or disclosed with respect to such taxpayer's return or dealing with the IRS.

IRS officials and employees would be permitted, if no reasonable alternative exists, to make limited disclosures of return information in connection with an audit or investigation to the extent necessary

in arriving at a correct determination of tax, liability for tax, or the amount to be collected, or otherwise in the enforcement of any provision in the Code.

In certain instances, it may be necessary for IRS personnel, in obtaining information with respect to a taxpayer from a third party, to disclose the fact that the request for information is in connection with an audit or other tax investigation of the taxpayer. In rare and extraordinary cases, it may also be necessary for IRS personnel in obtaining information from a third party to disclose additional return information, such as the manner in which the taxpayer treated on his return a transaction with the third party. Disclosures under this provision are to be made only in situations and under conditions specified in the regulations. This provision is not intended to permit disclosure which would not be permitted under current law. *Ct.* Rev. Rul. 58–120, 1958–1 Cum. Bull. 498.

Certain miscellaneous disclosures provided for in present law would no longer be authorized. For instance, the provision in present law authorizing the IRS to disclose, upon inquiry, whether a person has filed an income tax return for a particular year, would be repealed.

l. Procedures and Records Concerning Disclosure

Present law

Several different offices of the IRS have responsibility for approving disclosure of tax information to particular agencies. For example, the Disclosure Staff (National Office) deals with case-by-case requests for tax returns by other Federal agencies while the Statistics Division deals with the disclosure of information to Federal agencies (largely on magnetic tape) to be used for statistical purposes. Additionally, the Planning and Research Division deals with disclosure of information on magnetic tape to the States while the Disclosure Staff deals with case-by-case disclosure to the States.

While these offices negotiate and approve disclosures of tax information, the actual transfer of the information generally takes place in other offices, such as the Service Centers, District Office, Computer Center, etc. In addition, District Directors and Service Center Directors are authorized to approve applications for certain types of disclosure, such as disclosure to persons with a material interest in the returns, and returns of the taxpayer (in tax cases) to U.S. attorneys.

The IRS presently maintains records concerning disclosure. However, it is understood that the type of records maintained are not standardized as between, e.g., Service Centers, and that the IRS does not maintain a complete inventory of records so, for example, it cannot determine what has been disclosed and what has been returned or destroyed.

Under the Privacy Act of 1974 (P.L. 93–579), each Federal agency is to account for disclosures to other agencies, noting the date, nature, and purpose of each disclosure and the name and address of the agency to which disclosure is made. This rule does not apply to disclosures by State agencies. The accounting is designed to enable the agency to inform the individual concerned of disclosures made with respect to him.

question is on agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

Mr. LONG. Mr. President, I was under the impression that the Senator from Colorado (Mr. HASKELL) was going to offer another amendment.

Mr. MANSFIELD. That is correct. He will be here.

Mr. LONG. Mr. President, there is an amendment regarding administrative summonses to be offered by the Senator from Nebraska (Mr. HRUSKA), and I believe that amendment is still in preparation. So I ask unanimous consent that section 1205, dealing with administrative summons, be regarded as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CURTIS. Mr. President, reserving the right to object——

Mr. LONG. The purpose of this is to enable us to go ahead and complete action on title XXII in other respects and vote on the Hruska amendment, with regard to administrative summons, some time tomorrow or the next day.

Mr. CURTIS. Mr. President, reserving the right to object—and I shall not object—the intention is that, notwithstanding that we vote on title XII, it will be in order for the Senator to amend section 1205?

Mr. LONG. That is correct.

Mr. KENNEDY. I ask this of the Senator as a point of information: I understand that after we finish these other amendments, we will go to title XIII. Is that the Senator's intention?

Mr. LONG. That is my plan.

Mr. KENNEDY. Then we will complete title XIII and come back to title VIII. Is that the intention? I ask this so that we can prepare the amendments.

Mr. LONG. At the moment, I will ask that we consider title XIV next. I want to have a conference with some Senators on title VIII tomorrow. We will let the Senator know.

Mr. KENNEDY. We will start off with title XIII and will leave it open after that?

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BUMPERS. Mr. President, I wish to address an inquiry to the floor manager, to make sure that we all understand this.

I understood the Senator from Massachusetts to say that we would hang loose after title XIII, and I think the floor manager intended to go to title XIV after title XIII. Is that correct?

Mr. LONG. That is my intention.

We have been moving along step by step, by unanimous consent. The reason I have for doing this is that some of these amendments will require a great deal more debate than others. So far, we have been able to accommodate ourselves in the order in which we have considered amendments, and I hope we will continue to do so.

Mr. BUMPERS. Can the Senator give us any idea as to how many amendments, if he knows, are pending on title XIII?

Mr. KENNEDY. I know of two on title XIII.

Mr. LONG. The committee has a modification on title XIII also.

Mr. PASTORE. Why do we not finish title XII?

Mr. KENNEDY. I should like to find out when we will begin on title VIII. As the Senator pointed out, title VIII has been a title of considerable controversy, but we have gone by that in the order for some time.

Mr. LONG. I have a gentleman's agreement with certain Senators that we are not going to consider title VIII on Friday, Saturday, or Monday. However, we are going to hold a conference tomorrow and talk about an amendment that we are going to debate regarding employee stock ownership, which is to be offered. I am very interested in that amendment, as the Senator well knows. I wish to discuss that tomorrow with Senators interested in that matter.

At the moment, I cannot tell the Senator when I am going to suggest that we discuss it, but I think perhaps I can tell him better tomorrow, after we have a conference.

What I am trying to do is to keep moving on these amendments that can be disposed of in perhaps an hour of debate. So far, we have been able to do that, and I hope we can continue to do so. We have a lot of decisions to make as yet, but we are making them.

UP AMENDMENT NO. 254

Mr. HASKELL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes an unprinted amendment numbered 254.

Mr. HASKELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 681, strike out lines 16 through 20, and insert in lieu thereof the following:

"(B) any part of any written determination or any document in any background file relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110, but such term does not include data in a form which cannot be associated, with or otherwise identify, directly or indirectly, a particular taxpayer."

Mr. HASKELL. Mr. President, the purpose of this amendment is to insure that statistical studies and other compilations of data now prepared by the Internal Revenue Service and disclosed by it to outside parties will continue to be subject to disclosure to the extent allowed under present law. Thus the Internal Revenue Service can continue to release for research purposes statistical studies and compilations of data, such as the tax model, which do not identify individual taxpayers.

The definition of "return information" was intended to neither enhance nor diminish access now obtainable under the Freedom of Information Act to statistical studies and compilations of data by the Internal Revenue Service. Thus, the addition by the Internal Revenue Service of easily deletable identifying information to the type of statistical study or compilation of data which, under its current practice, has been subject to disclosure, will not prevent disclosure of such study or compilation under the newly amended section 6103. In such an instance, the identifying information would be deleted and disclosure of the statistical study or compilation of data be made.

Mr. President, it is my understanding that the committee staff has discussed this amendment with the Senator from Louisiana and that it is acceptable.

Mr. LONG. Mr. President, I will be happy to take this amendment to conference. It might not be entirely necessary, but it might serve a good purpose. I will be happy to take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

COMMITTEE AMENDMENT NO. 22 (TITLE XII)

The PRESIDING OFFICER. The question now on committee amendment No. 22.

Mr. LONG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been asked for. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GLENN. Will the Senator yield for a unanimous consent request?

Mr. LONG. I yield.

Mr. GLENN. Mr. President, I ask unanimous consent that Richard Ross and Jim Grogan be granted the privilege of the floor during discussion and debate on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS SUBMITTED

ADMINISTRATIVE REFORM OF INTERNAL REVENUE CODE

Mr. DOLE. Mr. President, as ranking minority member of the Subcommittee on Administration of the Internal Revenue Code, I strongly support the much needed administrative reforms in title XII of the Finance Committee bill. I am particularly pleased that the Finance Committee has adopted stringent tax return privacy provisions, patterned after S. 2324, the tax return Confidentiality Act of 1975, which I introduced last year.

I cannot stress enough the importance of preserving the confidentiality of individual tax returns. These reforms respond in part to the challenge we face as public officials—the restoration of public trust in Government and Government officials. Past abuses and lax administration demonstrate the need for reform of the Nation's income tax system so that doubts in the public mind about the integrity of the Internal Revenue Service can be dispelled.

I am speaking not of perceived inequities in the tax code for which the remedy is "tax reform." Such inequities involve only so many dollars and cents, and we have made substantial progress in improving the substance of the Internal

Revenue Code in H.R. 10612 and previous tax revision bills. Rather, I speak of a more basic, procedural unfairness in the tax laws which presently permits supposedly confidential individual income tax returns to come into the hands of literally thousands of bureaucrats outside the Internal Revenue Service, and which leaves open the possibility that mischievous political operatives will again attempt to gain access to such returns for partisan political purposes.

The tax privacy sections of H.R. 10612 will assure every American that his or her tax return will remain confidential and immune from political misuse.

This legislation has been developed as a result of hearings held earlier this Congress by the Subcommittee on Administration of the Internal Revenue Code, chaired by the Senator from Colorado. In addition to adopting several provisions of my tax return privacy legislation, we received valuable testimony from the Senator from Connecticut (Mr. WEICKER), the Senator from Texas (Mr. BENTSEN), and the Senator from New Mexico (Mr. MONTOYA), each of whom has introduced strong tax privacy legislation.

Adoption of the reforms contained in title XII will insure that there will be no repetition of the highly publicized attempts to use the Internal Revenue Service for political purposes. President Ford, through issuance of Executive Order 11805 on September 20, 1974, has already established strict procedures by which White House personnel may inspect tax returns. And I again commend the President for this action. By this bill, we go even further to assure that future administrations will not be tempted to use an individual's income tax returns for partisan political advantage.

The tax return privacy provisions of this bill balance Government's need for tax return information with the citizens' right of privacy and the related impact of disclosures upon continued compliance with our country's successful voluntary assessment system. I urge the Senate to support the committee amendments.

Mr. WEICKER. Mr. President, 3 years ago, this Senator determined that until three vital measures had been passed by the Senate, Watergate, for him, was not over. Today, the third of those measures is before us. Thanks to the efforts of the Finance Committee, and its distinguished members, Senators HASKELL and DOLE, tax privacy legislation soon will join its siblings—the intelligence oversight and Watergate reform bills. It is the third and final legislative remedy to the flaws of Government exposed by the chain of abuses we call Watergate.

On May 4, the Senate adopted a resolution expressing its desire to reach a final passage vote on these reform bills in this Congress. I would like to express my deep appreciation to the distinguished majority leader (Mr. MANSFIELD) for his persistent efforts to meet this timetable. He has been a steadfast ally in the fight for these reforms, and a courageous defender of the rights and ideals of his colleagues on both sides of the aisle.

Mr. President, nearly 2 years ago, along with Congressman JERRY LITTON, I introduced legislation to plug loopholes that currently make it possible for White House or various Federal agencies to gain access to tax information.

Under present law, tax returns are considered to be "public records" and "shall be open for inspection only upon Executive order of the President and under rules and regulations prescribed by the Secretary."

Through this provision, the Congress granted to the executive branch broad discretion regarding the extent and circumstances under which tax return information could be disclosed to other Government agencies. Over the years, a myriad of Government agencies have gained access to tax information of the IRS. Defacto, IRS became a lending library of confidential tax information. As the Privacy Commission noted, information the IRS maintained was treated as a "generalized governmental asset."

I am pleased that the Finance Committee has, for the first time in 40 years, taken a comprehensive review of this outdated statute. Extensive hearings have been held by the Senate Finance Committee, Ways and Means Committee and the Privacy Commission. Under the committee proposal, return information will be treated as confidential and not subject to any disclosure except as provided for by law.

The bill sets forth restrictive disclosure rules, under which certain agencies and the President can obtain tax information. Importantly, all such requests must be made in writing. Furthermore, all requesting parties must file an annual report with the Joint Committee on Internal Revenue Taxation. This report is to set forth taxpayers' returns involved, and the reasons for requesting those returns. If the joint committee determines that this information was used for improper political purposes, it can make this fact known to the Congress and the public.

In two important ways, the committee bill would tighten the rules under which State governments receive tax data. First, tax information will be provided only to the principal tax official of the State. Thus, the Governor would be unable to obtain confidential financial records of individual citizens. Second, no tax information could be furnished to the State unless the State government establishes procedures for safeguarding the tax information it receives. Should State officials improperly disclose tax information, the flow of all tax data from the IRS to the State would be stopped, until adequate protective measures had been taken to prevent a repetition of an unauthorized disclosure.

In my research in the tax privacy area, I was deeply concerned over the lack of appropriate safeguards at the State and local levels. I believe these provisions will ensure that tax information will not be used for unwarranted purposes.

Finally, the bill increases the criminal penalties for improper use or disclosure of tax returns to a felony rather than a misdemeanor. Specifically, a violation of this statute would mean up to $5,000 fine—instead of $1,000—and up to 5 years imprisonment—instead of 1 year—or both. With this change, Government officials seeking to pry open confidential tax files for political or personal purposes would at least face stiff criminal penalties.

Mr. President, the American system of Internal Revenue is uniquely successful; its success flies in the face of the experience of most nations in the world, and throughout the history of the world. We do not need rampaging tax collectors, we have cooperative citizens. Virtually no one finds the obligation of paying taxes pleasant. Yet although April 15 is generally regarded as a national day of reckoning, private income taxes are collected with relative ease.

I attribute this to one central fact: trust. Taxpayers disclose their private financial circumstances, things that they would not mention to inlaws or friends, to their Government because they understand the need for taxes, and trust their Government to keep their private lives private.

Each taxpayer should be confident that the filing of his or her tax returns in no way compromises the right of privacy. With the adoption of these provisions, we will be able to give the American people that assurance.

The tax privacy provisions will guarantee to Americans by law the privacy that should never have been eroded by practice. The rights of individuals to be free from political manipulation by tax blackmail soon will be law. Future henchmen of corruption will lose one more weapon. All of us gain one more shield.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment No. 22. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Montana (Mr. METCALF), the Senator from Hawaii (Mr. INOUYE), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. MONDALE), the Senator from Missouri (Mr. SYMINGTON), and the Senator from California (Mr. TUNNEY) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. BUCKLEY), and the Senator from Arizona (Mr. GOLDWATER) are necessarily absent.

The result was announced—yeas 90, nays 0, as follows:

[Rollcall Vote No. 424 Leg.]

YEAS—90

Abourezk	Byrd, Harry F., Jr.	Domenici
Allen	Byrd, Robert C.	Durkin
Baker	Cannon	Eagleton
Bartlett	Case	Eastland
Bayh	Chiles	Fannin
Bellmon	Church	Fong
Bentsen	Clark	Ford
Biden	Cranston	Garn
Brock	Culver	Glenn
Brooke	Curtis	Gravel
Bumpers	Dole	Griffin
Burdick		Hansen

"Even when he was a young man, he was so appreciative and very helpful, and he hasn't changed too much since he's gotten older," Carnahan said. "He taught me an awful lot. He taught me so much that I feel I could almost diagnose patients and almost presuppose what he's going to tell them. I don't, of course, but it makes me feel more confident, and I can help people more.

"He was the kindest man I've ever known. He had a wonderful way with people and was very easy to know. He wasn't easily upset or frustrated. Everybody tried to please him, and everything went pretty well with him."

After he stopped his operating room work. Dr. Ochsner continued to make his rounds at the hospital, to treat patients—as many as four per day—and to keep up a schedule of speaking engagements before medical and non-medical organizations. Among his favorite topics was the danger of communism in the Western Hemisphere; he was a founder of the Information Council of the Americas, which spoke out against Communist inroads in Latin America.

In addition to writing more than 500 articles for medical journals, he wrote six books and 24 sections of books.

Dr. Ochsner received honorary degrees from 10 universities, including institutions in Nicaragua, Spain and Greece, and received orders of merit from Ecuador, Panama, Guatemala and Venezuela. These and other decorations and citations filled the walls in his and Forshag's offices at Ochsner Medical Institutions, and others were displayed in stacks atop filing cabinets ringing his secretary's desk.

An honorary fellow of the royal colleges of surgeons of Ireland and of England, Ochsner was president of the International Society of Surgery, the Pan-Pacific Surgical Association, the International Cardiovascular Society, the American College of Association for Thoracic Surgery and the Society for Vascular Surgery. The Alton Ochsner Surgical Society, composed of surgeons he trained, was established in 1959.

Dr. Ochsner was married twice. His first wife, Isabel Lockwood Ochsner, whom he married just before he went to Europe in 1922, died in 1969. The couple had a daughter, Isabel Ochsner Mann, and three sons.

The sons became doctors. Dr. Alton Ochsner, Jr., is in private practice, Dr. John L. Ochsner is chairman of surgery at Ochsner, and Dr. Mims G. Ochsner is a urologist there.

In 1970, Dr. Ochsner married Jane Kellogg Sturdy of Los Angeles.

In an interview with the Journal of the American Medical Association, Dr. Ochsner said he had been blessed throughout his long life with "Presbyterian luck": "If you do the right thing, no matter what happens, it will turn out for the best."

"I believe in luck," he added. "The harder I work, the luckier I get."

Mr. ABDNOR. Madam President, I say to the Senator from Louisiana that the good doctor was born and reared in South Dakota. We are extremely proud of the great record he has established. We deeply regret his passing, because he made a great, great contribution to this Nation. We were very proud of him in South Dakota.

Mr. LONG. I am sure the Senator joins me in regretting his passing.

TAX RETURN DISCLOSURE

Mr. GRASSLEY. Madam President, the Internal Revenue Service recently announced their intent to request the authority under Internal Revenue Code section 6103(k)3 to disclose tax return information to correct misstatements of fact by a taxpayer about his or her transactions with the Internal Revenue Service or information contained within the taxpayer's return. The purpose of this disclosure is to enable the Service to refute the claims of some tax protestors who allege they have successfully evaded tax without penalty or have been unfairly harrassed by the IRS. Certainly, the system of voluntary compliance depends upon each taxpayer's perception that everyone pays his or her fair shares; however, I am troubled about the ramifications of disclosing return information on the personal freedoms of individuals, even if that disclosure is for a limited purpose.

While I agree with the premise that all citizens should pay their fair share of the cost of operating our Government, I am concerned that this new authority might infringe upon each individual's right to privacy. Justice Douglas in Griswold against Connecticut described the right to privacy as a constitutional right within the penumbra of other Bill of Rights guarantees, including the first amendment right of freedom of speech and association, the fourth amendment right of people to be secure in their "persons, houses, papers and effects against unreasonable searches and seizures" and the ninth amendment which reserves to the people all powers not specifically enumerated in the Constitution.

Whether or not the disclosure of return information unconstitutionally or improperly violates an individual's right to privacy, depends on the reason for the disclosure and the type of information to be disclosed. The rationale for the disclosure and the choice of relevent information to be disclosed are value judgments to be made by an administrator. I know of no reason the current IRS Commissioner or his top level executives are unable to make these sensitive choices, but to give any agency such broad discretion in an area which would inhibit an individual's personal freedom seems to me unwise. The damage to an individual of an imprudent disclosure by the IRS could result in irreparable harm. Congress should carefully scrutinize the transfer of this power.

The Joint Committee on Taxation should not approve such a request in my judgment for the following reasons. Congress should establish two sets of standards for disclosures under section 6103(k)3—one set governing what constitutes a permissible reason for disclosure of return information and a second set clearly setting forth the type of information the agency may disclose.

For the first set of standards, Congress should establish the specific reasons a taxpayer's return may be made public. Many taxpayers make misstatements of fact about their true tax liability for a variety of reasons, forgetfulness, bravado or an intent to encourage others to violate the law. The consequences of these misstatements vary in their degree of seriousness. Congress should clarify what type of factual misstatements should trigger disclosure of return information. The code section currently provides that the Service can disclose return information to refute misstatements of fact to the extent necessary for tax administration. This purpose is too broad and should be narrowed by congressional action.

The second set of standards should state what sort of return information is eligible for disclosure. All return information not relevent to law enforcement efforts should be off limits for disclosure.

The advantages of clear standards are numerous. Specific standards will shield an agency from constitutional challenge on the grounds that their actions are void because of the vagueness of the underlying statute. Also, standards will give Congress a yardstick by which to measure the actions of the Service.

The controversy brought about by the efforts of the IRS to publicize return information of certain taxpayers has emphasized one fact to me—the evolutionary character of our Tax Code. The Federal Government's need to collect revenue is not static; it continues to change as circumstances dictate. In this case, I am committed to insuring that whatever evolves is the result of a thorough and deliberate study by the legislative and executive branches of government. This matter is simply too important to leave it solely to the executive branch.

PROPOSED ARMS SALE

Mr. DODD. Madam President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulated that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is available to the full Senate, I ask unanimous consent to have printed in the RECORD at this point the notifications which have been received. The classified annex referred to in one of the covering letters is available to Senators in the office of the Foreign Relations Committee, room 4229 Dirksen Building.

There being no objection, the notifications were ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., September 17, 1981.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 81-41, concerning the Department of the Air Force's proposed Letter of Offer to Tunisia for defense articles and services estimated to cost $65 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

ERICH F. VON MARBOD,
Director.

BECOME WARRANTED. WE OFTEN MUST ACT REGARDLESS OF THE AD HOC YIELD WHERE AN ILLEGAL TAX PROTESTER USES A SCHEME KNOWN TO BE IN FREQUENT USE BY OTHER TAX PROTESTERS, AND WIDESPREAD USE COULD ADVERSELY AFFECT VOLUNTARY COMPLIANCE.

ANOTHER MATTER ABOUT WHICH YOU INQUIRED IN YOUR LETTER CONCERNS IRS' USE OF SEARCH AND SEIZURE POWERS IN THE ILLEGAL TAX PROTESTERS PROGRAM. SECTION 7608 OF THE INTERNAL REVENUE CODE OF 1954, AS AMENDED, AUTHORIZES CRIMINAL INVESTIGATION PERSONNEL (IN OUR CRIMINAL INVESTIGATION AND INSPECTION FUNCTIONS) TO SERVE SEARCH WARRANTS WHEN SUPPORTED BY PROBABLE CAUSE OF CRIMINAL ACTIVITY AND AUTHORIZED BY A COURT. THIS AUTHORIZATION IS CONTAINED IN THE IR MANUAL IN SECTION 9451.1; SUBSEQUENT SECTIONS DETAIL THE PROCEDURES TO BE FOLLOWED IN OBTAINING AND EXECUTING SEARCH WARRANTS. HOWEVER, WE DO NOT HAVE SEPARATE SEARCH STATISTICS ON TAX PROTESTERS.

WITH RESPECT TO SEIZURES, WE DO NOT DIFFERENTIATE ILLEGAL TAX PROTESTERS FROM OTHER DELINQUENT TAXPAYERS IN OUR COLLECTION ACTIVITY; IN OTHER WORDS, THE DECISION TO USE SEIZURE AUTHORITY IS NOT BASED ON THE REASON A TAXPAYER IS DELINQUENT. INSTEAD, IT IS BASED ON A TAXPAYER'S ABILITY AND WILLINGNESS TO SATISFY THE LIABILITY. SINCE AS I SAID, WE DO NOT TREAT ILLEGAL TAX PROTESTERS UNIQUELY OR DIFFERENTLY, WE DO NOT HAVE SEPARATE SEIZURE STATISTICS ON THEM EITHER.

IN CLOSING, LET ME REEMPHASIZE MY CONCERN OVER THE EFFECTS THE TAX PROTESTER "MOVEMENT" MAY HAVE ON TAX ADMINISTRATION. AT THE PRESENT TIME, HOWEVER, WE CAN NOT SAY THAT THERE IS A

DISCERNABLE RELATIONSHIP BETWEEN THE ILLEGAL TAX PROTESTER "MOVEMENT" AND OUR ABILITY TO MAINTAIN AN EFFECTIVE VOLUNTARY COMPLIANCE SYSTEM.

IN TERMS OF ABSOLUTE NUMBERS THE ILLEGAL TAX PROTESTERS THAT WE HAVE IDENTIFIED ARE NOT A SERIOUS PROBLEM. FOR EXAMPLE, IN 1980 SOME 143,446,000 TAX RETURNS AND SUPPLEMENTAL DOCUMENTS OF ALL TYPES WERE FILED WITH THE IRS, YET ONLY 18,225 RETURNS OR DOCUMENTS WERE IDENTIFIED AS PROTEST RETURNS. I THINK THIS REINFORCES MY ASSERTION THAT THE VAST MAJORITY OF TAXPAYERS ARE HONEST, AND DO NOT ATTEMPT TO THWART THE TAX ADMINISTRATION SYSTEM.

BUT AT THE SAME TIME IT IS POSSIBLE FOR PUBLIC CONFIDENCE IN THE GOVERNMENT'S ABILITY TO FAIRLY AND FIRMLY ADMINISTER THE TAX LAWS TO BE JEOPARDIZED IF THE ILLEGAL TAX PROTESTER "MOVEMENT" CONTINUES TO GROW. FOR THIS REASON, WE THINK IT IS ESSENTIAL, DESPITE THE COST AND EFFORT, TO ENFORCE THE LAWS VIOLATED BY THESE INDIVIDUALS, AND TO DEMONSTRATE TO THE PUBLIC THAT THESE TACTICS SHOULD NOT BE ATTEMPTED BY OTHERS.

MR CHAIRMAN, THIS CONCLUDES MY PREPARED REMARKS. MY ASSOCIATES AND I WILL BE PLEASED TO TRY AND ANSWER ANY QUESTIONS YOU OR THE MEMBERS MAY HAVE.

2. To the extent disclosure law and regulations permit, claims of tax protesters should be rebutted as soon as possible.

3. If necessary, IRS should consider legislative recommendations that would permit the disclosure of the proper information where false assertions have been made by the protester. An alternative would be to reach an understanding with the Joint Committee on Taxation regarding our rebuttal of the false statements wherein they would permit the Commissioner some latitude in responding to the false statement made by illegal tax protesters. (IRC Section 6103(k)(3))

4. Since the credibility of the illegal tax protester is a principal force in the expansion of the protest movement, IRS should counteract their apparent credibility through the use of public announcements and timely publication of enforcement action taken against illegal tax protesters.

5. PAO should respond to exaggerated claims regarding numbers of protesters in the media by reporting the correct numbers as the IRS knows them, even if only in general terms, i.e. "less than 0,000."

Finding Seven - IRS employees have become frustrated by illegal tax protesters directing unwarranted criticism toward them, harrassing them at work and at home, and conducting character assassinations through various publications. Potential exists for physical attack on IRS employees dealing with illegal tax protesters since they are not always initially identified as such and an employee may not take prudent precautions.

IRS employees have experienced a wide range of threats, assaults and harrassments from members of the illegal tax protest movement. In certain parts of the country -- rural areas more than urban -- violent protest has occurred. In many of these situations a seizure of property for nonpayment of taxes has evoked threats and assaults. Response to these situations by Inspection, Criminal Investigation and local authorities has been appropriate and helpful.

Leaders of the illegal tax protest movement strive for publicity and will manipulate every possible situation to attract the media. This includes generating publicity when they or one of their followers have an official contact with representatives of the IRS.

Frequently illegal tax protesters will have a group of 5 to 20 persons accompany them to an IRS office. They will use the same

***

Recommendation 14

On a test case basis, seek Joint Committee approval under Code section 6103(k)(3) to disclose taxpayer return information or any other information necessary to correct misstatements of fact.

Comments

A proposal is being developed to be forwarded to the Joint Committee that will allow the Service to expeditiously correct misstatements of fact under IRC 6103(k)(3).

IR- 81-122 (I.R.S.), 1981 WL 176410

Internal Revenue Service (I.R.S.)
News Release

COMMISSIONER EGGER'S REMARKS ON ABUSIVE TAX SHELTERS

For Release: October 6, 1981

***

Illegal Tax Protesters

As long as we're on the subject of tax scheme promotions let me briefly discuss a breed of promoter who peddles another kind of tax evasion scheme. I'm speaking of the so-called tax protesters who use illegal means to achieve the tax avoidance objective. Their schemes include mail-order ministries, family estate and foreign trusts, claims that the income tax is unconstitutional and the use of fraudulent W-4 forms to avoid tax withholding. This last scheme was used by some 3,500 auto workers in the highly publicized Flint, Michigan, 'tax revolt' early last spring.

We refer to these promoters as illegal protesters. So far their numbers are not great. We identified some 20,000 in 1980—a very small figure compared to the 93 million individual returns filed last year.

***3** Yet, they are clearly a threat to our system of voluntary compliance. First, with their emotional arguments they mislead otherwise law-abiding citizens into breaking the tax laws, as occurred in the 'Flint revolt.' And second, their claims that they are getting away with not filing tax returns can undermine the morale of a lot of people who regularly file and pay their legal share of taxes.

We are moving on several fronts to end these abuses.

Since October 1977, 496 illegal tax protesters have been convicted of criminal tax offenses. This number includes all four ring leaders of the 'Flint revolt' who last month received prison sentences ranging from one-and-a-half to three years. These were the people, you may recall, who urged their fellow workers to file false W-4 forms, assuring

them that the IRS could do nothing about it. We are now conducting criminal investigations of 382 other individuals suspected of participating in illegal tax protester schemes. In addition to criminal investigations, we are using our audit and collection functions to ensure that the illegal protesters file and pay their correct tax. To deal with W-4 abuses, we now require employers to submit to the IRS any W-4 claiming more than nine allowances or outright exemption from withholding. Where we find that the employee is not entitled to the claimed allowances, we direct the employer to withhold at the correct rate. Starting January 1, 1982, a new penalty of $500 can be imposed for filing a false W-4.

Some State governments are using consumer protection laws to prosecute sellers of mail-order ministries and other tax avoidance schemes. We are supporting these efforts. We are also developing a proposal to be presented to the Joint Committee on Taxation that will allow the IRS to correct misstatements of fact under Code section 6103(k)(3), which permits such disclosures upon approval of the Committee. This will enable the IRS to refute false charges by illegal protesters—either that we are letting them get away with not filing or that we are harassing them.

We feel that this balanced, stern, no-nonsense approach will help us put an end to the tax protesters' abuses.

***

EXHIBIT 1-2 -- Letter from Commissioner Richardson

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

February 25, 1997

The Honorable William V. Roth, Jr.
Chairman
Senate Committee on Finance
U.S. Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Recent media reports have alleged politically targeted examinations of tax exempt organizations by the Internal Revenue Service. These reports are inaccurate and misleading and suggest incorrectly that the IRS is enforcing the internal revenue laws for partisan political purposes. Such unfounded reports erode public confidence in the integrity of the IRS, thereby undermining the self-assessment compliance system.

I am writing to you to express our willingness to provide the Finance Committee, as authorized by section 6103(f), information relating to these allegations. I am certain that information will demonstrate the IRS' fair, impartial, and nonpartisan enforcement of the internal revenue laws in the exempt organization arena.

I would also like to explore with you and Congressman Archer having the Joint Committee on Taxation authorize the use of section 6103(k)(3) to permit the IRS to correct the misstatements of fact regarding examinations of tax exempt organizations.

If you have any questions, please do not hesitate to let me know.

Sincerely,

Margaret Milner Richardson

cc: The Honorable Bill Archer

1997-SPG Fed. B.A. Sec. Tax'n Rep. 1

Federal Bar Association Section of Taxation Report
Spring, 1997

FINAL REMARKS BY MARGARET MILNER RICHARDSON COMMISSIONER OF INTERNAL REVENUE

The Twenty-First Annual Conference of the Section of Taxation of the Federal Bar Association

Washington, D.C. March 4, 1997

***

In closing, I wanted to take a moment to share some thoughts as I look forward to a new phase of my professional life. I feel truly privileged to have had the opportunity to serve as Commissioner, returning to the agency where I began my career as a lawyer in the Chief Counsel's Office. In the past few years, the many dedicated employees of the Internal Revenue Service have accomplished a significant amount.

We have provided taxpayers with more options for getting information, filing, paying and getting refunds. We have also served more taxpayers, processed more returns and collected more money, while the workforce was being reduced by over 14,000 FTE. You may be interested in the fact that the cost of collecting $100 (already one of the lowest in the world) has gone from 60 cents in 1992 to 54 cents in 1996.

I am proud to have been able to play a role in these accomplishments. It is a credit to the dedication and professionalism of the employees at the IRS that they have continued to find ways to better serve the American taxpayer at a time of unprecedented attack upon the tax system, as well as those who administer it.

Some of the attacks have taken the form of inaccurate and misleading allegations that certain taxpayers, particularly tax exempt organizations, have been unfairly targeted for audit for partisan political purposes. Federal law, which protects the confidentiality of tax

return information, and I believe properly so, precludes me and every other IRS employee from responding publicly to these allegations, innuendos and suggestions. That means that generally the Service cannot confirm or deny or clarify or correct statements unless a taxpayer is willing to waive restrictions on disclosure.

Because of my grave concern about the impact these repeated allegations may have on the public's confidence in the integrity and impartiality of the IRS, I have notified Chairman Archer and Senator Roth as the heads of the Joint Committee on Taxation that the IRS is willing, as provided by law, to share information with appropriate Congressional committees relating to the allegations and to explore the use of a provision of the law that permits the IRS to disclose tax return information to correct misstatements of fact without a waiver from the taxpayer. I am certain that the information the IRS can legally share will demonstrate the IRS' fair, impartial, and nonpartisan enforcement of the internal revenue laws, particularly in the exempt organization area.

Being Commissioner has been challenging and at times difficult, but mostly it has been a pleasure to lead what by anyone's measure is the best tax administration agency in the world. It is the envy of the rest of the world, and the tax administration system most other countries strive to emulate. We at the IRS know that some changes are needed to improve tax administration. But as we say in Waco, Texas, "you don't burn the house down just because a room or two need fixing up."

***

JCT, *Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters*, JCS No. 3-00, at 1 (2000)

INTRODUCTION

Beginning in 1996, certain news media reports alleged bias in the handling of tax-exempt organization matters by the Internal Revenue Service ("IRS"). A list of some of the articles addressing issues relating to the IRS's handling of tax-exempt organizations is included in Exhibit 1-1.

On February 25, 1997, then-IRS Commissioner Margaret Milner Richardson wrote to Chairman Bill Archer of the House Committee on Ways and Means ("Ways and Means Committee") and Chairman William V. Roth, Jr., of the Senate Committee on Finance ("Finance Committee").[1] In her letter, Commissioner Richardson noted that recent media reports had alleged politically targeted examinations of tax-exempt organizations by the IRS. Commissioner Richardson requested the opportunity to provide to the Ways and Means Committee and the Finance Committee information relating to these allegations, as authorized under section 6103(f)[2] of the Internal Revenue Code ("the Code"). In addition, Commissioner Richardson requested the opportunity to explore with Chairman Archer and Chairman Roth the possibility of using Code section 6103(k)(3)[3] to permit the IRS to correct misstatements of fact regarding examinations of tax-exempt organizations.

On March 24, 1997, Chairman Bill Archer, Vice Chairman William V. Roth, Jr., Senator Daniel Patrick Moynihan and Congressman Charles B. Rangel of the Joint Committee on Taxation ("Joint Committee") sent a letter to then-Joint Committee Chief of Staff Kenneth J. Kies.[4] In that letter, the Chairman, Vice Chairman, Senator Moynihan, and Mr. Rangel ("the Members") indicated their concern about recent reports alleging politically motivated treatment of certain tax-exempt organizations and individuals by the IRS. Pursuant to section 8022 of the Code,[5] the Members directed the staff of the Joint Committee ("Joint Committee staff") to

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[1] A copy of Commissioner Richardson's letter is included as Exhibit 1-2.

[2] Code section 6103(f) authorizes the disclosure of confidential taxpayer return information to committees of Congress and the Chief of Staff of the Joint Committee on Taxation.

[3] Code section 6103(k)(3) authorizes the Secretary of the Treasury, subject to the approval of the Joint Committee on Taxation, to disclose information relating to a specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to the taxpayer's return or any transaction of the taxpayer with the IRS.

[4] A copy of this letter is included as Exhibit 1-3.

[5] Code sec. 8022 requires the Joint Committee, among other things, to investigate the administration of the Federal system of taxes by the IRS.

Disclosure Report for Public Inspection
Pursuant to 26 U.S.C. 6103(p)(3)(C)

Internal Revenue Service

CY 2000

Calendar Year 2000 Volume of Disclosures of Tax Returns and/or Return Information Required to be Accounted for Pursuant to 26 U.S.C. 6103(p)(3)(A)

Disclosure To/For	IRC Section 6103 Subsections	Tape Extracts (1)	Other Disclosures (2)	Total Number of Disclosures
States	(d)	2,048,204,966	29,710	2,048,234,676
Congressional Committees and/or their agents including GAO Representatives	(f)	146,126,879	4,648	146,131,527
Tax Checks	(c)		8,920	8,920
Department of Justice	(h)(3)(B)		61	61
Prospective Jurors	(h)(5)		138	138
US Attorneys DEA FBI Other	(i)(1)		39,760 767 2,845 4,175	 47,547
US Attorneys	(i)(2)		131	131
FBI INS Other	(i)(3)		1 3 23	 27
General Accounting Office	(i)(7)	162,769,453	6,026	162,775,479
Bureau of Census Bureau of Economic Analysis	(j)(1)(A) (j)(1)(B)	963,043,416 20,873,348		983,916,764
Federal Agencies	(k)(3)		10	10
Foreign Countries Tax Treaty Authority	(k)(4)		76,861	76,861
Department of Labor Pension Benefit Guaranty Corporation	(l)(2)		400 1,061	 1,461
Federal Agencies	(l)(3)		16	16
Department of Treasury Employees	(l)(4)(A)		3	3
Child Support Enforcement Agencies	(l)(6)	11,944,376	1,034	11,945,410

Calendar Year 2000 Volume of Disclosures of Tax Returns and/or Return Information Required to be Accounted for Pursuant to 26 U.S.C. 6103(p)(3)(A), continued

Disclosure To/For	IRC Section 6103 Subsections	Tape Extracts (1)	Other Disclosures (2)	Total Number of Disclosures
Federal Agencies	(o)(1)		13	13
Totals:		3,352,962,438	176,606	3,353,139,044

* (1) Tape Extracts **B**disclosures made from extracts of Master File tapes.
(2) Other Disclosures **Bdisclosures made by furnishing transcripts of records, permitting inspection of records, furnishing photocopies of records, oral disclosures, and disclosures by means of correspondence without furnishing a copy of the record. Also, includes disclosures from locally automated files.

Filing Season Statistics for Week Ending February 10, 2017

Cumulative statistics comparing 02/12/2016 and 02/10/2017

Calendar year-to-year comparisons are difficult at this early point in the season as four additional days of tax return processing are included in the 2016 totals. However, when comparing the same number of days of filing, IRS is seeing an increase in returns received and accepted over 2016.

Early season refund numbers and dollar amounts are affected by the new law requiring refunds involving the Earned Income Tax Credit and Additional Child Tax Credit to be held until the later part of February. Many taxpayers claiming these credits traditionally file during the opening weeks of tax season.

Individual Income Tax Returns:	**2016**	**2017**	**% Change**
Total Returns Received	38,737,000	32,090,000	-17.2
Total Returns Processed	37,672,000	31,420,000	-16.6
E-filing Receipts:			
TOTAL	37,106,000	30,827,000	-16.9
Tax Professionals	17,122,000	13,518,000	-21.0
Self-prepared	19,984,000	17,309,000	-13.4

Web Usage:					
Visits to IRS.gov	140,786,322		98,635,810		-29.9
Total Refunds:					
Number	29,155,000		14,059,000		-51.8
Amount	$94.001	Billion	$28.929	Billion	-69.2
Average refund	$3,224		$2,058		-36.2
Direct Deposit Refunds:					
Number	27,367,000		13,039,000		-52.4
Amount	$90.561	Billion	$27.777	Billion	-69.3
Average refund	$3,309		$2,130		-35.6

Page Last Reviewed or Updated: 25-Jan-2018

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, District of Columbia 20004
Tel. 202.373.6000
www.morganlewis.com

Sheri A. Dillon
Tax Partner

William F. Nelson
Tax Partner

Morgan Lewis

March 8, 2017

President Donald J. Trump
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Transactions with Russian counterparties reported on your U.S. federal income tax returns

Dear President Trump:

We, Sheri Dillon and William Nelson, have served as tax counsel to you and The Trump Organization ("TTO") continuously since 2005. As such, we are familiar with your U.S. federal income tax returns and with transactions that are reported on your returns. In this capacity, you have asked us to review your returns for the past 10 years. Following such review, we hereby confirm the following facts:

As disclosed in your most recent Executive Branch Personnel Financial Disclosure Report (OGE Form 278e), filed on May 16, 2016, you hold interests as the sole or principal owner in more than 500 separate entities. These entities are collectively referred to and do business as TTO. Because you operate these businesses almost exclusively through sole proprietorships, S-corporations, and/or partnerships, your personal federal income tax returns reflect income that is earned by these entities and interest that is paid or received by these entities, as well as income that you directly earned or interest that you paid or received.

With a few exceptions – as detailed below – your tax returns do not reflect (1) any income of any type from Russian sources, (2) any debt owed by you or TTO to Russian lenders or any interest paid by you or TTO to Russian lenders, (3) any equity investments by Russian persons or entities in entities controlled by you or TTO, or (4) any equity or debt investments by you or TTO in Russian entities. The exceptions are: (1) in 2013, the Miss Universe pageant was held in Moscow, and of the $12.2 million of foreign income that it earned that year, a substantial portion of it was attributable to the Moscow event; (2) in 2008, Trump Properties LLC sold an estate in Florida, that it had acquired in 2005 for approximately $41 million, to a Russian billionaire for $95 million; and (3) over the years, it is likely that TTO or third-party entities engaged in ordinary course sales of goods or services to Russians or Russian entities, such as sales / rentals / fees for condominiums, hotel rooms, rounds of golf, books or Trump-licensed products (e.g., ties, mattresses, wine, etc.) that could have produced income attributable to Russian sources (such income would not have been separately identified as "Russian" in your books and records and therefore not separately reflected on your tax returns). With respect to this last exception, the amounts are immaterial.

Regards,

Sheri A. Dillon

William F. Nelson

Office of the Deputy Attorney General
Washington, D.C. 20530

ORDER NO. 3915-2017

APPOINTMENT OF SPECIAL COUNSEL
TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE
2016 PRESIDENTIAL ELECTION AND RELATED MATTERS

By virtue of the authority vested in me as Acting Attorney General, including 28 U.S.C. §§ 509, 510, and 515, in order to discharge my responsibility to provide supervision and management of the Department of Justice, and to ensure a full and thorough investigation of the Russian government's efforts to interfere in the 2016 presidential election, I hereby order as follows:

(a) Robert S. Mueller III is appointed to serve as Special Counsel for the United States Department of Justice.

(b) The Special Counsel is authorized to conduct the investigation confirmed by then-FBI Director James B. Comey in testimony before the House Permanent Select Committee on Intelligence on March 20, 2017, including:

(i) any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump; and

(ii) any matters that arose or may arise directly from the investigation; and

(iii) any other matters within the scope of 28 C.F.R. § 600.4(a).

(c) If the Special Counsel believes it is necessary and appropriate, the Special Counsel is authorized to prosecute federal crimes arising from the investigation of these matters.

(d) Sections 600.4 through 600.10 of Title 28 of the Code of Federal Regulations are applicable to the Special Counsel.

5/17/17
Date

Rod J. Rosenstein
Acting Attorney General

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

September 14, 2017

John Davisson
Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009

Dear John Davisson:

This is our final response to your Freedom of Information Act (FOIA) request dated April 27, 2017, that we received on April 27, 2017.

Your request seeks all records concerning IRS's use (or contemplated use) – in 1981, in 1997, and all other records – "of its power to release tax information under 26 U.S.C. § 6103(k)(3), including but not limited to communications with the Joint Committee on Taxation" (JCT).

We conducted a search of the IRS's Office of Legislative Affairs, Office of Chief Counsel, and the Office of the Chief of Staff to the IRS Commissioner and found no records responsive to your request. Please be advised that the records maintained in the IRS correspondence tracking system - which maintains and controls the processing of all correspondence to and from the IRS Commissioner, including correspondence with the JCT - are generally retained for ten years.

As you have expressed an interest in these types of disclosures, you should know that the IRS is required, on an annual basis, to account for and report to the JCT, all disclosures made pursuant to IRC § 6103(k)(3). Consequently, the IRS tracks all such disclosures, to the extent any are made, and we were able to ascertain that the most recent disclosure made pursuant to IRC § 6103(k)(3) occurred during calendar year 2000. There have been no disclosures made pursuant to IRC § 6103(k)(3) during the time period from January 1, 2001 through April 27, 2017. The JCT makes the annual "Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C)" available to the public on their website at www.jct.gov.

There are no fees associated with this request.

APPEAL RIGHTS

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. I've enclosed Notice 393, *Information on an IRS Determination to Withhold Records Exempt From the Freedom of Information Act - 5 U.S.C. 552,* to explain your appeal rights.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact me, the FOIA Public Liaison, for assistance at:

David Nimmo
Internal Revenue Service
Disclosure Office 13
24000 Avila Road, M/S 2201
Laguna Niguel, CA 92677
949-575-6328

The FOIA Public Liaison responds to FOIA and Privacy Act requests for copies of documents maintained by the IRS. There is no provision in either Act to resolve tax, collection, or processing issues and our staff is not trained to answer questions regarding those issues. If you need assistance with tax related issues you may call the IRS toll free number at 1-800-829-1040.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road--OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

If you have any questions please call Tax Law Specialist, Michael C. Young, ID # 1000436696, at 949-575-6406 or write to: Internal Revenue Service, HQ FOIA – Stop 211, PO Box 621506, Atlanta, GA 30362. Please refer to case number F17117-0086.

Sincerely,

David Nimmo

David Nimmo
Disclosure Manager
Disclosure Office 13

Enclosure: Notice 393

epic.org

Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 20009, USA

+1 202 483 1140
+1 202 483 1248
@EPICPrivacy
https://epic.org

VIA FAX

February 5, 2018

IRS FOIA Request
HQ FOIA, Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

Dear FOIA Officer:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Internal Revenue Service ("IRS").

EPIC seeks the release of all accepted offers-in-compromise—as well as any tax return information "necessary to permit the inspection of [such] accepted offer[s]-in-compromise"[1]—relating to any past or present tax liability of President Donald J. Trump and the business entities he is associated with.[2] Public disclosure of such records is mandated by both 5 U.S.C. § 552(a) and 26 U.S.C. § 6103(k)(1).

Documents Requested

EPIC seeks the following categories of records for all years, whether such records take the form of a Public Inspection File,[3] an AOIC Masterfile Screen transcript,[4] a TDS transcript,[5] a Form 656,[6] a Form 433,[7] a Form 7249,[8] or any other agency document:

(1) All accepted offers-in-compromise relating to any past or present tax liability of Donald John Trump, the current President of the United States.

(2) All other "return information . . . necessary to permit inspection of [the] accepted offer[s]-in-compromise"[9] described in Category 1 of this request. Records responsive to Category 2 include, but are not limited to, "income, excess profits, declared value

[1] 26 U.S.C. § 6103(k)(1).
[2] *See, e.g.*, *Trump: The Trump Organization*, https://www.trump.com/ (last visited Jan. 31, 2018).
[3] I.R.M. 5.8.8.9.
[4] I.R.M. 5.8.8.9(3).
[5] *Id.*
[6] 26 C.F.R. § 601.203(b).
[7] *Id.*
[8] 26 C.F.R. § 601.702(d)(8); I.R.M. 5.8.8.9(2)–(3).
[9] 26 U.S.C. § 6103(k)(1).

excess profits, capital stock, and estate or gift tax returns for any taxable year," as applicable.[10]

(3) All accepted offers-in-compromise relating to any past or present tax liability of any entity identified in Appendix A of this request.

(4) All other "return information . . . necessary to permit inspection of [the] accepted offer[s]-in-compromise"[11] described in Category 3 of this request. Records responsive to Category 4 include, but are not limited to, "income, excess profits, declared value excess profits, capital stock, and estate or gift tax returns for any taxable year," as applicable.[12]

Per I.R.M. 5.8.8.9, such records may be located in the IRS area office "where [each described] taxpayer resides." However, EPIC seeks **all** of the above records for **all** years regardless of where and in what form the IRS maintains them.

Copies of the requested records may be furnished to EPIC in electronic format, either by sending an email to FOIA@epic.org or mailing a disc to the address at the top of this letter.

Background

If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the President of the United States has financial dealings with a foreign adversary.[13] Yet Donald J. Trump has consistently refused to disclose any personal tax records or the tax records of his businesses, leaving the American public "in the dark"[14] as to his financial entanglements with Russia.

President Trump's failure to release his tax records is unprecedented and goes directly against the long-standing tradition of candidates for the U.S. presidency.[15] He was the first major party presidential candidate in 40 years not to make his returns available for public review.[16] Though he initially promised to release his tax information, President Trump withdrew this commitment after his election.[17]

[10] Exec. Order No. 10,386, 17 Fed. Reg. 7,685 (Aug. 20, 1952) ("Inspection of Files Covering Compromise Settlements of Tax Liability"); *see also* I.R.M. 5.8.8.9(2) (citing Exec. Order No. 10,386).
[11] 26 U.S.C. § 6103(k)(1).
[12] Exec. Order No. 10,386; *see also* I.R.M. 5.8.8.9(2) (citing Exec. Order No. 10,386).
[13] *Cf. Stanley v. Georgia*, 394 U.S. 557, 565 (1969) ("If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch.").
[14] *EPIC v. IRS*, 261 F. Supp. 3d 1, 3, 2 (D.D.C. 2017) ("Like many Americans, Plaintiff Electronic Privacy Information Center wants to see President Donald J. Trump's personal income-tax returns.").
[15] Julie Hirschfeld Davis, *Trump Won't Release His Tax Returns, a Top Aide Says*, N.Y. Times (Jan. 22, 2017), https://www.nytimes.com/2017/01/22/us/politics/donald-trump-tax-returns.html.
[16] *Id.*
[17] *Id.*

The contents of the President's tax records are of exceptional interest to Americans, who favor their disclosure by a wide margin.[18] More than 1 million people signed a petition urging the federal government to "[i]mmediately release Donald Trump's full tax returns, with all information needed to verify emoluments clause compliance."[19] According to a ABCNews poll, three-quarters of Americans say the President should release his returns.[20] Still, the White House has refused to make these records available.

The importance of public access to President Trump's tax records has only grown over the past year. Since at least May 2017, President Trump, the President's campaign, and many of the President's closest associates have been under federal investigation for allegedly coordinating with the Russian government to interfere in the 2016 U.S. presidential election.[21] That investigation has produced indictments of two close Trump associates for money laundering and other offenses, while two more associates—including former National Security Advisor Michael Flynn—have pled guilty to making false statements.[22]

Meanwhile, President Trump has issued provably false denials about his financial entanglements with Russia. The President actually stated:

> For the record, I have ZERO investments in Russia.[23]
>
> Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA—NO DEALS, NO LOANS, NO NOTHING![24]

However, his own law firm has described numerous financial relationships between the President and Russian organizations.[25] The public urgently requires as much information about President Trump's finances as the IRS can lawfully release.

The IRS, in response to a previous FOIA request and lawsuit brought by EPIC,[26] has sought to evade its responsibility to release President Trump's tax returns pursuant to 26 U.S.C.

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[18] *CNN Poll: 73% Think Trump Should Release Tax Returns*, CNN (Dec. 20, 2017) (finding that 73% Americans think President Trump should "release his tax returns for public review"), *available at* https://youtu.be/02694Tusp3g?t=18m38s; *accord CNN December 2017* at 7, CNN (Dec. 19, 2017), *available at* http://cdn.cnn.com/cnn/2017/images/12/18/rel12a.-.trump.and.taxes.pdf.

[19] A.D., *Immediately release Donald Trump's full tax returns, with all information needed to verify emoluments clause compliance.*, We the People (Jan. 20, 2017), https://petitions.whitehouse.gov/petition/immediately-release-donald-trumps-full-tax-returns-all-information-needed-verify-emoluments-clause-compliance.

[20] Gary Langer, *Public Splits on Trump's Ethics Compliance; Three-Quarters Want Tax Returns Released (POLL)*, ABC News (Jan. 16, 2017), http://abcnews.go.com/Politics/public-splits-trumps-ethics-compliance-quarters-tax-returns/story?id=44811545.

[21] *See, e.g.*, Rod J. Rosenstein, *Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017), *available at* https://www.justice.gov/opa/press-release/file/967231/download.

[22] *Special Counsel's Office*, The United States Department of Justice (Dec. 1, 2017), https://www.justice.gov/sco.

[23] *EPIC*, 261 F. Supp. 3d at 4 (quoting @realDonaldTrump, Twitter (July 26, 2016, 3:50 PM)).

[24] *Id.* (quoting @realDonaldTrump, Twitter (Jan. 11, 2017, 4:31 AM)).

[25] Letter from Sheri A. Dillon & William F. Nelson, Tax Partners, Morgan Lewis & Bockius LLP, to President Donald J. Trump (Mar. 8, 2017) (letter from President Trump's attorneys detailing the President's numerous Russian sources of income).

[26] *EPIC v. IRS (Donald Trump's Tax Records)*, EPIC.org (2018), https://epic.org/foia/irs/trump-taxes/.

§ 6103(k)(3).[27] That case is now before the United States Court of Appeals for the D.C. Circuit.[28] Fortunately, § 6103(k)(3) is not the full extent of the IRS's disclosure obligations. Under 26 U.S.C. § 6103(k)**(1)**, the IRS is unequivocally required to make certain of President Trump's tax records available in response to this FOIA request.[29]

EPIC's Right to the Requested Records

EPIC has a legal right to release of the requested records because their disclosure is mandated by the Internal Revenue Code and the FOIA. Although most tax returns and return information "shall be confidential,"[30] 26 U.S.C. § 6103(k)(1) requires the disclosure of accepted offers-in-compromise and certain related return information:

> **(1) Disclosure of accepted offers-in-compromise**
> Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.[31]

Section 6103(k)(1) is one of several provisions in the Tax Reform Act of 1976 reflecting Congress's judgment that certain "returns or return information should be public as a matter of policy, or that the reasons for the limited disclosures involved outweighed any possible invasion of the taxpayer's privacy which might result from the disclosure."[32] As one tax official wrote of § 6103(k)(1): "Presumably, the public policy behind the federal exemption from confidentiality of return information is a Congressional belief that the compromise of tax liabilities is affected with significant public interest, to the extent that all taxpayers are affected by such a compromise."[33]

EPIC has requested records that fit squarely within § 6103(k)(1)'s disclosure mandate. EPIC seeks only "accepted offers-in-compromise" and "return information . . . necessary to permit inspection" of those offers-in-compromise.[34] Because such records are not "exempt[ed] from disclosure" by § 6103 or any other statute[35]—indeed, their disclosure is **mandatory**—they must be released to EPIC pursuant to 5 U.S.C. § 552(a)(3)(A).[36]

Notably, Congress's 1976 enactment of § 6103(k)(1) postdates both the Freedom of Information Act Amendments of 1974[37] and the Privacy Act of 1974.[38] Thus even if the FOIA or

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[27] *EPIC*, 261 F. Supp. 3d 1.
[28] *EPIC v. IRS*, No. 17-5225 (D.C. Cir. appeal docketed Oct. 4, 2017).
[29] 5 U.S.C. § 552; 26 U.S.C. § 6103(k)(3).
[30] 26 U.S.C. § 6103(a).
[31] 26 U.S.C. § 6103(k)(1).
[32] S. Rep. No. 94-938, at 340 (1976).
[33] Larry Mednick, OIP Opinion Letter No. 89-3, 1989 WL 406076, at *6 (Nov. 3, 1989).
[34] 26 U.S.C. § 6103(k)(1).
[35] 5 U.S.C. § 552(b)(3).
[36] *See also* Treas. Reg. § 601.702(c)(5)(ii) ("The IRS shall make a reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in 5 U.S.C. 552(b) or any exclusion described in 5 U.S.C. 552(c).").
[37] Pub. L. No. 93-502, 88 Stat. 1561 (1974).
[38] Pub. L. No. 93-579, 88 Stat. 1896 (1974).

the Privacy Act purported to limit the release of the requested records—which neither statute does—§ 6103(k)(1)'s disclosure requirement would supersede such a limitation.[39]

As the IRS states in its own regulations,[40] public disclosure of accepted offers-in-compromise and related return information is further required by Executive Order 10,386. That order mandates that "income, excess profits, declared value excess profits, capital stock, estate or gift tax returns for any taxable year shall be open to inspection to the extent necessary to permit the inspection of any accepted offer in compromise . . . ."[41]

EPIC is aware that—entirely separate from the IRS's FOIA disclosure obligations—26 C.F.R. § 601.702(d)(8) and I.R.M. 5.8.8.9 require IRS Area Offices to retain physical copies of offer-in-compromise records for one year in order to permit in-person inspection by the public. To be clear: these provisions do not in any way limit the scope of EPIC's request or relieve the IRS of its independent obligation to release responsive records pursuant to the FOIA.

First, EPIC is seeking **all** responsive agency records, regardless of where and in what form the IRS maintains them. The IRS may not narrow its search to solely those records maintained by Area Offices for in-person inspection. Second, FOIA compels the IRS to make copies of responsive documents "promptly available to" EPIC "in any form or format requested" (here, by electronic copy).[42] The IRS may not lawfully require EPIC to visit Area Offices in order to obtain any of the requested records.[43]

The D.C. Circuit has stated this point plainly, holding that tax records and information must be released pursuant to a FOIA request unless the IRS can validly assert a § 6103 or other exemption:

> These two statutes [§ 6103 and FOIA] seem to us entirely harmonious; indeed, they seem to us quite literally made for each other: Section 6103 prohibits the disclosure of certain IRS information (with exceptions for many recipients); and FOIA, which requires all agencies, including the IRS, to provide nonexempt information to the public, establishes the procedures the IRS must follow in asserting the § 6103 (or any other) exemption.[44]

There is no FOIA exemption applicable to the requested records—only a disclosure mandate. The IRS must process EPIC's FOIA request and release copies of responsive records to EPIC.

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[39] *EC Term of Years Tr. v. United States*, 550 U.S. 429, 435 (2007) (quoting *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936)) ("[W]here provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one.").

[40] I.R.M. 5.8.8.9(2)(a)–(b).

[41] Exec. Order No. 10,386, 17 Fed. Reg. 7,685 (Aug. 20, 1952) ("Inspection of Files Covering Compromise Settlements of Tax Liability"). Although Executive Order 10,386 predates the passage of the Tax Reform Act of 1976, it remains in force, as the Tax Reform Act "did not in any way change" existing law that already required accepted offers-in-compromise be open to the public. H.R. Rep. No. 94-658, at 316 (1975).

[42] 5 U.S.C. § 555(a)(3).

[43] *See Church of Scientology of California v. IRS*, 792 F.2d 146, 149 (D.C. Cir. 1986) (contrasting 26 U.S.C. § 6103, a section which is "literally made for" FOIA, with 26 U.S.C. § 6110, a section that establishes separate procedures and time limits for making IRS written determinations "open to public inspection").

[44] *Id.*

Additionally, EPIC reminds the IRS of Treasury Regulation § 601.702(c)(14), which strictly prohibits the agency from destroying any record that EPIC has requested: "Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552." To the extent that the disposal schedule set forth in I.R.M. 5.8.8.9(5) might result in the destruction of a document that EPIC has requested, disposal of that record is forbidden during the pendency of this request and any subsequent lawsuit or appeal.

Finally, EPIC's FOIA request does not fall under Treasury Regulation § 601.702(c)(4)(i)(e) or Treasury Regulation § 601.702(c)(5)(iii), which together require proof of taxpayer consent for some requests of tax records. Disclosure of the records EPIC has requested is clearly not "limited by statute or regulations";[45] to the contrary, disclosure is mandated by § 6103(k)(1).

Thus, IRS regulations require no proof of consent and pose no bar to the processing of EPIC's request or to the release of the records described.

Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA.[46] Specifically, expedited processing is justified because this request involves an "urgency to inform the public concerning actual or alleged Federal government activity . . . made by a person primarily engaged in disseminating information."[47]

First, there is an "urgency to inform the public concerning actual or alleged Federal government activity."[48] President Trump's accepted offers-in-compromise and related return information—as well as those of the entities he oversees—are of enormous public interest. They attest to the President's compliance with the Internal Revenue Code and the Emoluments Clause of the U.S. Constitution, his potential conflicts of interest, and his dealings with foreign governments and businesses. Such records would offer the public significant context to understand a vast array of foreign and economic policy decisions that President Trump has made since entering office. Moreover, they would shed light on the IRS's decision(s) to settle tax liabilities with now-President Trump and would allow the public to assess the agency's judgment in doing so.

Further, these records "pertain to a matter of current exigency" well beyond "the public's right to know about government activity generally."[49] It is difficult to imagine a more acute public need for information. As noted, the President and his closest associates are under federal investigation for allegedly coordinating with the Russian government to interfere in the 2016 U.S. presidential election.[50] Yet President Trump has continued to make demonstrably false

[45] Treas. Reg. § 601.702(c)(4)(i)(e).
[46] 5 U.S.C. § 552(a)(6)(E)(v)(II).
[47] 26 C.F.R. § 601.702(c)(6)(i)(B).
[48] *Id.*
[49] *Id.*
[50] *See, e.g.*, Rod J. Rosenstein, *Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017), *available at* https://www.justice.gov/opa/press-release/file/967231/download.

statements about his financial entanglements with Russia.[51] Release of the requested records is urgently needed to inform the public about the President's culpability in the matter. The public also has an immediate need to know the sitting President's record of satisfying—or failing to satisfy—his full tax liabilities.

Second, EPIC is an organization "primarily engaged in disseminating information."[52] As the court explained in *EPIC v. Department of Defense*, "EPIC satisfies the definition of 'representative of the news media.'"[53]

In submitting this detailed statement in support of expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.[54]

Request for 'News Media' Fee Status and Fee Waiver

EPIC, which is "organized and operated to publish . . . information about current events or of current interest to the public,"[55] is a "representative of the news media" for fee classification purposes.[56] Based on EPIC's status as a "news media" requester, EPIC is entitled to receive the requested records with only duplication fees assessed.[57]

Any duplication fees should also be waived as (1) the records "are likely to contribute to the general public's understanding of the agency's operations" and do not consist of "information . . . already available to the general public"; and (2) disclosure "is not primarily in the commercial interest of the requester."[58]

First, "the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities."[59] As noted, President Trump's accepted offers-in-compromise and related return information—as well as those of the entities he oversees—would be enormously informative to the public. Such records would shed light on the IRS's decision(s) to settle tax liabilities with the now-sitting President and would allow the public to assess the agency's judgment in doing so.

Further, the requested records will contribute "*significan[tly]* . . . to the general public's understanding" of President Trump's financial entanglements and the IRS's interactions with the President in his role as a taxpayer.[60] There is very little information available to the public about the IRS's transactions with President Trump or about the President's past and present tax

[51] *E.g.*, *EPIC v. IRS*, 261 F. Supp. 3d 1, 4 (D.D.C. 2017) (quoting @realDonaldTrump, Twitter (Jan. 11, 2017, 4:31 AM)) ("Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA—NO DEALS, NO LOANS, NO NOTHING!").
[52] 26 C.F.R. § 601.702(c)(6)(i)(B).
[53] *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).
[54] 26 C.F.R. § 601.702(c)(6)(ii).
[55] 26 C.F.R. § 601.702(f)(3)(ii)(B).
[56] *EPIC*, 241 F. Supp. 2d at 15.
[57] 5 U.S.C. § 552(a)(4)(A)(ii)(II). EPIC wishes "to have [copies of the requested records] made and furnished without first inspecting them." § 601.702(c)(4)(i)(G).
[58] 26 C.F.R. § 601.702(f)(2)(i).
[59] 26 C.F.R. § 601.702(f)(2)(i)(C).
[60] 26 C.F.R. § § 601.702(f)(2)(i)(D) (emphasis added).

liabilities. By publishing the requested records on the EPIC website,[61] EPIC will add substantially to the store of public knowledge about the IRS and the chief executive who oversees the agency.

Second, as to the "existence and magnitude of the requester's commercial interest . . . being furthered by the releasable records," EPIC has no commercial interest in the requested records.[62] EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.[63]

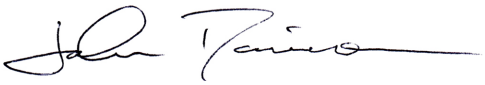
For these reasons, a fee waiver should be granted.

Conclusion

As provided in 5 U.S.C. § 552(a)(6)(A)(i), I will anticipate your determination on our request within twenty working days.

For questions regarding this request I can be contacted at 202-483-1140 x120 or davisson@epic.org, cc: FOIA@epic.org.

Respectfully submitted,



John Davisson
EPIC Counsel[64]

Enid Zhou
EPIC Open Government Fellow

[61] EPIC.org (2018), https://epic.org/.
[62] 5 U.S.C. § 552(a)(4)(A)(iii).
[63] *About EPIC*, EPIC.org (2017), http://epic.org/epic/about.html.
[64] Member of New York bar; serving as Counsel under D.C. Ct. App. R. 49(c)(8) while application to District of Columbia bar is pending.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

February 8, 2018

John Davisson, EPIC Counsel
Electronic Privacy Information Center
1718 Connecticut Avenue NW, Suite 200
Washington, DC 2009

Dear John Davisson:

I am responding to your Freedom of Information Act (FOIA) request dated February 5, 2018 that we received on February 5, 2018.

REQUEST FOR FEE WAIVER

We are granting your request to waive fees associated with this response.

REQUEST FOR EXPEDITED PROCESSING

We are granting your request for expedited processing.

We will search for documents responsive to the request. The request has priority and we will make every effort to respond as quickly as possible. Please be advised that upon receipt of any responsive documents located they will require review by our office prior to release. We may need to request additional time to complete the process and will provide you with written notification if this occurs.

If you have any questions please call Tax Law Specialist Michael Young, ID # 1000436696, at 949-575-6406 or write to: Internal Revenue Service, HQ FOIA – Stop 211, PO Box 621506, Atlanta, GA 30362. Please refer to case number F18036-0068.

Sincerely,

David Nimmo

David Nimmo
Disclosure Manager
Disclosure Office 13

Filing Season Statistics for Week Ending February 9, 2018

2018 Filing Season Statistics

Cumulative statistics comparing 2/10/2017 and 2/09/2018

Calendar year-to-year comparisons are difficult at this early point in the season as six additional days of tax return processing are included in the 2017 totals. However, when comparing the same number of days of filing, IRS is seeing an increase in returns received and accepted over 2017.

Individual Income Tax Returns:	**2017**	**2018**	**% Change**
Total Returns Received	32,089,000	30,881,000	-3.8
Total Returns Processed	31,422,000	30,016,000	-4.5
E-filing Receipts:			
TOTAL	30,827,000	29,724,000	-3.6
Tax Professionals	13,518,000	12,575,000	-7.0
Self-prepared	17,309,000	17,149,000	-0.9
Web Usage:			
Visits to IRS.gov	98,635,810	114,217,997	15.8

Individual Income Tax Returns:	2017	2018	% Change
Total Refunds:			
Number	14,059,000	13,517,000	-3.9
Amount	$28.929 Billion	$28.863 Billion	-0.2
Average refund	$2,058	$2,135	3.7
Direct Deposit Refunds:			
Number	13,039,000	12,685,000	-2.7
Amount	$27.777 Billion	$27.875 Billion	0.4
Average refund	$2,130	$2,198	3.2

Page Last Reviewed or Updated: 17-Feb-2018