The original documents are located in Box 20, folder "Internal Revenue Service - Privacy of Tax Returns (4)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

Tuesday 10/15/74

Meeting
10/18/74
9:30 p.m.

10:05 We have scheduled a meeting on the IRS bill for Friday 10/18 at 9:30 a.m. -- the following will be attending:

Larry Silberman
Dick Albrecht
Geoff Shepard
Stan Ebner
Doug Metz

Mark Wolf will also attend with Mr Silberman

Noted. Please advise where.

P. Here

Friday 10/18/74

4:15 Mr. Metz said at the meeting this morningthey discussed the letter for the President to send to Litton and Weicker. Wondered who would be the source of the coordination. Several of those at the meeting have called back to see who is going to coordinate the letter.

Some items in this folder were not digitized because it contains copyrighted materials. Please contact the Gerald R. Ford Presidential Library for access to these materials.

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

October 22, 1974

Re: Tax Privacy Legislation--Access to Tax Returns by U.S. Attorneys

Dear Mr. Buchen:

Following our meeting in your office of last Friday, I have had further conversations with Commissioner Alexander and with Meade Whitaker concerning their statements of past abuses by U.S. Attorneys on the privacy of tax returns. Commissioner Alexander has asked that I send to you the enclosed copies of memos which he sent to Secretary Simon and Deputy Secretary Gardner on the subject last month.

Sincerely yours,

Richard R. Albrecht

The Honorable
Philip Buchen
Counsel to the President
The White House

Enclosures

Date: SEP 1?

MEMORANDUM FOR: SECRETARY SIMON

From: Commissioner of Internal Revenue /s/ D.C.A.

Subject: Attached Memorandum Discussing Justice Department Access to Tax Returns

In view of the fact that Mr. Philip Buchen heard the Department of Justice pitch about "no problem" and the further fact that there is indeed a problem -- and a serious one -- I recommend that you send a copy of this memorandum to Mr. Buchen so that he may have the correct picture.

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Ex. Sec.
Surname						
Initials / Date	/	/	/	/	/	/

Form OS-3129

SEP 1?

SECRETARY SIMON

/s/ D.C.A.

DONALD C. ALEXANDER
Commissioner of Internal Revenue

Justice Department Access to Tax Returns

The Justice Department asserts that the provision in our recommended legislation limiting their access to tax returns is unnecessary because we have had no problems under existing law without such limitations. In fact, however, we have recently had a number of problems in this area. These problems frequently arise because the U.S. Attorneys apparently do not appreciate or understand the various legal and procedural requirements governing the disclosure of tax information and the prosecution of criminal tax cases. We have attempted to cope with the problems by limiting Justice Department access to tax returns and related information, such as by ceasing to notify U.S. Attorneys of possible criminal tax prosecutions under development and by refusing to furnish copies of Judges' tax returns. We took these actions in response to problems such as the following:

-- A. U.S. Attorney in North Carolina prematurely disclosed to a newspaper an IRS recommendation for criminal tax prosecution resulting from an investigation of political activities in the state (Exhibit 1). The prosecution had to be dropped and the U.S. Attorney resigned after the facts became known by the Attorney General (Exhibit 2). Thus, it was necessary for us to terminate our practice of notifying U.S. Attorneys. (Last month this change was severely criticized by a U. S. Attorney in correspondence with the Assistant Attorney General.)

-- The U.S. Attorney in Oklahoma demanded a copy of a U.S. District Court Judge's tax return information to use as a possible basis for convincing a Court of Appeals to disqualify the Judge from hearing a case being handled by the U.S. Attorney. The Judge had disbarred the U.S. Attorney and several other

Willsey

attorneys in the case. Although we lacked specific authority to do so, we refused to furnish copies of the returns in question.

-- A Justice Department Tax Division attorney secured a copy of a tax return and the related investigative file of a Judge who indicated that he was under tax investigation. When local IRS officials sought to have the material returned, the attorney resisted, asserting his right to the information. When his possession of the return became known to the Judge, the Judge was understandably upset and apparently informed other Judges in that area who were also upset. The attorney later returned the materials. Similarly, Tax Division lawyers attached copies of tax returns to documents filed in a District Court case in Florida, and the government was severely criticized by the Judge.

-- A U.S. Attorney in Pennsylvania introduced a list of nonfiling taxpayers into evidence in a case he was trying in an attempt to prove that the defendant had not filed a return. As a result of this action, which was not authorized, we are now faced with other attorneys attempting to secure and use the list.

We also have a continuing problem with U.S. Attorneys who wish, contrary to current Regulations, to divulge tax information to local enforcement agencies for possible use in investigation of violations of state laws.

-- The U.S. Attorney in Oklahoma is insisting that he be given part of an IRS investigative file and authorized to turn it over to the State Attorney General. When IRS officials informed him that such disclosure was not permitted, he disagreed and indicated that the Department of Justice would approve his action. We are informed, however, that the Department plans to seek our agreement before approving his request.

A somewhat similar problem exists where U.S. Attorneys do not follow established procedures.

-- A. U.S. Attorney in Tennessee held a news conference to announce an investigation of local political corruption in which he would use IRS agents and information. His announcement conflicted directly with the established procedures for initiating investigations of possible criminal tax violations.

-- During the last eight months we have received over twenty requests from various U.S. Attorneys for IRS participation in various Grand Jury or other criminal investigations despite the requirement that IRS initiate criminal tax investigations. Furthermore, several of these requests have come from U.S. Attorneys who have previously been informed that their requests were inappropriate.

In summary, we are convinced that incidents such as these illustrate the necessity for establishing clear statutory guidelines for use of tax data by the Department of Justice in any context. We feel that the relevant provisions in our recommended legislation establish quite reasonable standards. We further believe that we should have emergency authority to withhold the material when we determine that disclosure, pursuant to the guidelines, would nevertheless seriously impair the administration of the tax laws.

Furthermore, you should be aware that this has been a subject of serious concern to the Joint Committee on Internal Revenue Taxation. As a result of this concern, Joint Committee representatives met with Justice and IRS in early 1971 and expressed strong views that the authority for disclosure should be centralized and guidelines for the use of the information should be established. Although some preliminary steps were taken in this direction, enactment of our statutory proposals is a vital final step.

Attachments

BWillsey/smd
9/11/74

AUGUST 22, 1972

IRS Seeks to Indict 13 N.C. Democratic Donors

Scott's '68 Race Cited

By PAT STITH
Staff Writer

The U. S. Internal Revenue Service's regional counsel in

The News and Observer learned Monday that the federal attorney's recommendation had been forwarded to the Justice Department in Washington. A federal official, who declined use of his name, said a final decision would be made there whether to seek to indict the men and bring them to trial.

The IRS counsel recommended that all 13 be prosecuted on charges that they conspired for the purpose of "defeating" U. S. income taxes in connection with the

Those recommended for prosecution are:

— Charles W. Crone of Clayton. Crone owns Charles Crone Associates of Raleigh, the agency that handled Scott's campaign advertising. In the first two years of Scott's administration, the state purchased through the Crone agency more than $1 million worth of tourist and industrial advertising. And the agency has been awarded another contract under which the state is expected to buy another million dollars in advertising in the current two-year budget period.

— Roy E. Wilder Jr. of Raleigh. Wilder, an account executive with Crone Associates, is a long-time personal and political friend of the

U.S. Attorney Ousted Over Tax Leak

By Sanford J. Ungar
Washington Post Staff Writer

MYRTLE BEACH, S.C., Sept. 22—A U.S. attorney for North Carolina was forced to resign by Attorney General Richard G. Kleindienst earlier this month after admitting to FBI agents he had leaked information from the personal federal income tax returns of

leak on the North Carolina tax inquiry.

He added, however, that "I don't like or approve of persons in the Department of Justice giving out such information. To let the integrity of these files (be compromised) can be harmful."

The Attorney General, reiterating his statement in a let-

by an unnamed "federal official" included the names of the 13 persons under investigation and some of the amounts involved.

In his role as U.S. attorney, Coolidge was expected to prosecute the case.

Scott contended at the time of the leak that it was politically motivated and had jeopardized the rights of people

The action against Coolidge was much stronger, however, than the reprimand given U.S. Attorney Harry Steward of San Diego in 1971, when he allegedly interfered with a probe of contributions by prominent California Republicans to President Nixon's 1968 campaign.

Steward, who became an issue in last spring's marathon

Commissioner

To DEPUTY SECRETARY GARDNER Date 9/19/74

More re U. S. Attorney.

This is a particularly flagrant example of improper action.

/s/ Don Alexander

Donald C. Alexander

memorandum

to: Commissioner Alexander

from: Assistant Commissioner (Inspection)

---

subject: Disclosure Concerning Governor DAVID HALL of Oklahoma

We have completed two separate investigations concerning the leak of tax information in the case of Governor HALL. The first of these was based on two newspaper articles appearing in The Daily Oklahoman and in the Oklahoma City Times on May 8, 1974. The articles were written by Reporter JACK TAYLOR and contained detailed financial information reportedly from the 1971 and 1972 Federal Income Tax Returns of Governor HALL. The newspaper reporter refused to furnish any information concerning his sources to Inspection. Our inquiries did not disclose the source of information reported by JACK TAYLOR. U. S. Attorney WILLIAM R. BURKETT released Federal Grand Jury evidence, including copies of the Governor's tax returns, to Oklahoma Attorney General LARRY DERRYBERRY, pursuant to a Court Order signed by Federal Judge FRED DAUGHERTY. Several members of Mr. DERRYBERRY's staff, as well as several State Representatives, had access to copies of the Federal Grand Jury information.

The second investigation was based upon an article by Reporter TAYLOR in the Daily Oklahoman on August 22, 1974. This article contained verbatim excerpts from an Intelligence Division Memorandum of Interview regarding Governor HALL. Our investigation disclosed that the Memorandum of Interview from which the excerpts were taken was contained in the files of the State Attorney General's office and was received by that office from the U. S. Attorney's office. U. S. Attorney BURKETT said that he had intended to furnish a copy of the memorandum to the State Attorney General but decided not to do so upon instructions of Mr. KEENEY of the Department of Justice. However, someone in his office apparently proceeded to do so, unaware of his decision, although no record was kept of what material was released. The Attorney General's file, in which the memorandum was contained, was made available to several members and committees of the Oklahoma legislature.

Internal Revenue Service

Commissioner Alexander

Our extensive inquiries disclosed no improprieties on the part of Internal Revenue Service employees in either of these cases. Last week, Reporter TAYLOR appeared before a Federal Grand Jury at Oklahoma City. He declined to identify his source of information in the Governor HALL tax matters citing his rights as a reporter under the First Amendment.

F. Geibel

THE WHITE HOUSE
WASHINGTON

10/25/74

To: Mr. Buchen

From: Eva

I have sent copies
to Timmons and Shepard;
also Doug Metz.

Shall we send a copy to
Albrecht ~~or assume~~ Yes
~~Gooff will send~~?

Silberman?

Yes
Out after you find
out if Gres
has sent letter.

Mr. Buchen's copy

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Inspection of Tax Returns

Attached are the letters which I have prepared as a follow-up to your meeting with Senator Weicker and Representative Litton.

These should serve to clear up any ambiguity as to your position, as well as give the affected agencies appropriate guidance in the subject matter.

Treasury and Justice jointly drafted the letter. Ash, Cole, Timmons and I all recommend that you sign the letters.

Attachments

THE WHITE HOUSE

WASHINGTON

Dear Lowell:

I appreciated the opportunity to discuss with you and Congressman Litton our mutual interest in legislation to restrict inspection of tax returns and disclosure of tax return information. I share your commitment to assuring that such documents and information are properly protected.

One area of concern to you is the access of the President and White House staff to tax returns. As you know, I have recently addressed this concern in Executive Order 11805, which regulates and voluntarily restricts White House access to tax returns and return information. I believe that the terms of my Executive Order are compatible with the approach embodied in your bill, and I have asked the Treasury Department to redraft the legislative proposal submitted by Secretary Simon to include in the bill the operative provisions of my Executive Order. In the meantime, White House access will be strictly limited as provided by my Executive Order until legislation is enacted.

You have also expressed concern regarding the availability of tax returns for general law enforcement purposes and for statistical compilations by organizations other than the Internal Revenue Service. Your proposals in these areas have serious implications with respect to effective criminal enforcement and efficient development of necessary economic and statistical information. In my view, the consequences of restrictive legislation in these areas must be carefully weighed before proceeding. I have, therefore, requested that the Department of Justice and the Department of Commerce prepare and transmit on my behalf, before Congress reconvenes, a report containing our views on each of these matters. I trust that these reports will be helpful in defining the issues, and I earnestly hope that the Congress will hold early hearings to air fully all of the issues.

I am certain you will do your best to see that this important subject receives the careful and thoughtful legislative attention that you and I agree it deserves.

Sincerely yours,

Honorable Lowell P. Weicker
United States Senate
Washington, D. C. 20510

THE WHITE HOUSE

WASHINGTON

Dear Jerry:

I appreciated the opportunity to discuss with you and Senator Weicker our mutual interest in legislation to restrict inspection of tax returns and disclosure of tax return information. I share your commitment to assuring that such documents and information are properly protected.

One area of concern to you is the access of the President and White House staff to tax returns. As you know, I have recently addressed this concern in Executive Order 11805, which regulates and voluntarily restricts White House access to tax returns and return information. I believe that the terms of my Executive Order are compatible with the approach embodied in your bill, and I have asked the Treasury Department to redraft the legislative proposal submitted by Secretary Simon to include in the bill the operative provisions of my Executive Order. In the meantime, White House access will be strictly limited as provided by my Executive Order until legislation is enacted.

You have also expressed concern regarding the availability of tax returns for general law enforcement purposes and for statistical compilations by organizations other than the Internal Revenue Service. Your proposals in these areas have serious implications with respect to effective criminal enforcement and efficient development of necessary economic and statistical information. In my view, the consequences of restrictive legislation in these areas must be carefully weighed before proceeding. I have, therefore, requested that the Department of Justice and the Department of Commerce prepare and transmit on my behalf, before Congress reconvenes, a report containing our views on each of these matters. I trust that these reports will be helpful in defining the issues, and I earnestly hope that the Congress will hold early hearings to air fully all of the issues.

I am certain you will do your best to see that this important subject receives the careful and thoughtful legislative attention that you and I agree it deserves.

Sincerely yours,

Honorable Jerry Lon Litton
United States House of Representatives
Washington, D. C. 20510

Thursday 10/24/74

2:05 Geoff Shepard dropped this by. If O. K. with you, he'll run it by OMB -- and then they'll have it typed final.

Phil OK.
- please advise
Geoff

10/24/74
3:50
notified
Shepard's
office

THE WHITE HOUSE

WASHINGTON

10/24

TO: PHIL BUCHEN

FROM: GEOFF SHEPARD GS

FYI _____

COMMENT _____

The attached is the joint Justice-Treasury draft. I think the changes I made are important. Could I have your response back as soon as convenient?

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

October 23, 1974

Dear Jeff:

Pursuant to our discussions at the meeting in Mr. Buchen's office last Friday, I am enclosing a draft of a letter that could be sent by the President to Senator Weicker and Representative Litton. The enclosed draft has been reviewed by Larry Silberman and has his concurrence.

Please call me concerning any changes you believe should be made in the letter. We would appreciate receiving a copy of any letter that is sent to Weicker and Litton on this subject.

Sincerely yours,

Dick

Richard R. Albrecht

Mr. Geoffrey Shepard
Associate Director
Domestic Council Committee
on the Right of Privacy
The White House
Washington, D.C. 20500

Enclosure

Dear Senator Weicker:

I appreciated the opportunity to discuss with you and Congressman Litton our mutual interest in legislation to restrict inspection of tax returns and disclosure of tax return information. I share your commitment to assuring that such documents and information are properly protected.

One area of concern to you is the access of the President and White House staff to tax returns. As you know, I have recently addressed this concern in Executive Order 11805, which regulates and voluntarily restricts White House access to tax returns and return information. I believe that the terms of my Executive Order are compatible with the approach embodied in your bill, and I have requested that the Administration's legislative proposal be redrafted to include in the bill the operative provisions of my Executive Order. In the meantime, White House access will be strictly limited as provided by my Executive Order until legislation is enacted.

You have also expressed concern regarding the availability of tax returns for general law enforcement purposes and for statistical compilations by organizations other than the Internal Revenue Service. Your proposals in these areas have ~~important~~ serious implications with respect to effective criminal enforcement and efficient development of necessary economic and statistical information. In my view, the consequences of restrictive legislation in these areas must be carefully ~~considered~~ weighed before proceeding. I have, therefore, requested that the Department of Justice and the Department of Commerce prepare

and transmit on my behalf, before Congress reconvenes, a report containing our views on each of these matters. I trust that these reports will be helpful in defining the issues, and I earnestly hope that the Congress will hold early hearings to air fully all of the issues.

I sincerely hope that this important subject will receive the careful and thoughtful legislative attention that you and I agree it deserves.

Sincerely yours,

Gerald R. Ford

October 30, 1974

To: Jerry Jones' office

From: Eva Daughtrey

I have sent copies of the attached to:

Central Files
Douglas Metz (Privacy Committee)
Larry Silberman (Justice)
Dick Albrecht (Treasury)
Bill Timmons
Geoff Shepard
Roy Ash
Ken Cole

THE WHITE HOUSE

WASHINGTON

October 30, 1974

Dear Jerry:

I appreciated the opportunity to discuss with you and Senator Weicker our mutual interest in legislation to restrict inspection of tax returns and disclosure of tax return information. I share your commitment to assuring that such documents and information are properly protected.

One area of concern to you is the access of the President and White House staff to tax returns. As you know, I have recently addressed this concern in Executive Order 11805, which regulates and voluntarily restricts White House access to tax returns and return information. I believe that the terms of my Executive Order are compatible with the approach embodied in your bill, and I have asked the Treasury Department to redraft the legislative proposal submitted by Secretary Simon to include in the bill the operative provisions of my Executive Order. In the meantime, White House access will be strictly limited as provided by my Executive Order until legislation is enacted.

You have also expressed concern regarding the availability of tax returns for general law enforcement purposes and for statistical compilations by organizations other than the Internal Revenue Service. Your proposals in these areas have serious implications with respect to effective criminal enforcement and efficient development of necessary economic and statistical information. In my view, the consequences of restrictive legislation in these areas must be carefully weighed before proceeding. I have, therefore, requested that the Department of Justice and the Department of Commerce prepare and transmit on my behalf, before Congress reconvenes, a report containing our views on each of these matters. I trust that these reports will be helpful in defining the issues, and I earnestly hope that the Congress will hold early hearings to air fully all of the issues.

I am certain you will do your best to see that this important subject receives the careful and thoughtful legislative attention that you and I agree it deserves.

Sincerely yours,

Gerald R. Ford

Honorable Jerry Lon Litton
United States House of Representatives
Washington, D. C. 20510

THE WHITE HOUSE

WASHINGTON

October 30, 1974

Dear Lowell:

I appreciated the opportunity to discuss with you and Congressman Litton our mutual interest in legislation to restrict inspection of tax returns and disclosure of tax return information. I share your commitment to assuring that such documents and information are properly protected.

One area of concern to you is the access of the President and White House staff to tax returns. As you know, I have recently addressed this concern in Executive Order 11805, which regulates and voluntarily restricts White House access to tax returns and return information. I believe that the terms of my Executive Order are compatible with the approach embodied in your bill, and I have asked the Treasury Department to redraft the legislative proposal submitted by Secretary Simon to include in the bill the operative provisions of my Executive Order. In the meantime, White House access will be strictly limited as provided by my Executive Order until legislation is enacted.

You have also expressed concern regarding the availability of tax returns for general law enforcement purposes and for statistical compilations by organizations other than the Internal Revenue Service. Your proposals in these areas have serious implications with respect to effective criminal enforcement and efficient development of necessary economic and statistical information. In my view, the consequences of restrictive legislation in these areas must be carefully weighed before proceeding. I have, therefore, requested that the Department of Justice and the Department of Commerce prepare and transmit on my behalf, before Congress reconvenes, a report containing our views on each of these matters. I trust that these reports will be helpful in defining the issues, and I earnestly hope that the Congress will hold early hearings to air fully all of the issues.

I am certain you will do your best to see that this important subject receives the careful and thoughtful legislative attention that you and I agree it deserves.

Sincerely yours,

Gerald R. Ford

Honorable Lowell P. Weicker
United States Senate
Washington, D. C. 20510

THE WHITE HOUSE

WASHINGTON

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: PHIL BUCHEN P.W.B.

SUBJECT: Inspection of Tax Returns

Attached are the letters which I have prepared as a follow-up to your meeting with Senator Weicker and Representative Litton.

These should serve to clear up any ambiguity as to your position, as well as give the affected agencies appropriate guidance in the subject matter.

Treasury and Justice jointly drafted the letter. Ash, Cole, Timmons and I all recommend that you sign the letters.

Attachments

1/20/75

THE WHITE HOUSE

WASHINGTON

Jerry Litton
Saxbe

Dec 3
-30-40 pages

Monday 1/20/75

11:55 Checked with Jay Brenneman in OMB to see if they have an IRS Privacy bill in the mill for resubmission to Congress and where it stands. 4874

Mr. Brenneman said he understands there is one, but they haven't gotten it yet. From the last Congress there was a communication between the administration and Weicker. Brenneman's understanding is that Treasury would submit a bill, but he will check on it and let us know.

Monday 1/20/75

1:25 Mr. Brenneman talked to the Associate Tax Counsel at Treasury (Dale Collinson) and he indicates they are working on an IRS Privacy bill; he has already seen a draft it, and from the way it looks, he feels they are amost ready to send it over for clearance. Mr. Brenneman will keep us advised.

IRS

Monday 1/20/75

1:25 Mr. Brenneman talked to the Associate Tax Counsel at Treasury (Dale Collinson) and he indicates they are working on an IRS Privacy bill; he has already seen a draft it, and from the way it looks, he feels they are amost ready to send it over for clearance. Mr. Brenneman will keep us advised.

IRS Privacy Bill

Monday 1/20/75

11:55 Checked with Jay Brenneman in OMB 4874
to see if they have an IRS Privacy bill in the mill for resubmission to Congress and where it stands.

Mr. Brenneman said he understands there is one, but they haven't gotten it yet. From the last Congress there was a communication between the administration and Weicker. Brenneman's understanding is that Treasury would submit a bill, but he will check on it and let us know.

Originally called Rommel's office;
they referred me to Martha Ramey 4812,
who in turn referred me to Jay Brenneman.

THE WHITE HOUSE
WASHINGTON

For return to regular "Privacy" file.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 West 44th Street, New York, N.Y. 10036

The Privacy of Federal Income Tax Returns

By THE COMMITTEE ON CIVIL RIGHTS

INTRODUCTION

The assumption that the confidential information sent by taxpayers to the Internal Revenue Service (IRS) is used solely for the purpose of collecting taxes has been seriously challenged in recent years. In two Executive Orders, E.O. 11697 and E.O. 11709, President Nixon attempted to require the Treasury Department to turn over the tax returns of 3,000,000 farmers to the Department of Agriculture, allegedly for statistical purposes. Government officials acknowledged that the orders were prototypes for future orders directed against other occupational groups.[1] The orders were later rescinded—after more than 100 members of Congress co-sponsored bills to revoke them and the Domestic Council on Privacy[2] and then Vice President Ford made similar recommendations.[3] Other Presidents have by Executive Order made tax returns available to the Federal Trade Commission, the Department of Health, Education and Welfare, the Department of Commerce, and other agencies.[4]

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

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

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

I. THE PRESENT LAW

A. *The Internal Revenue Code*

The startling fact is that the current internal revenue statutes and regulations do not prohibit, or discourage, Government employees from rummag-

Federal Legislation Report No. 75–2 (April 15, 1975)

ing through tax returns *en masse* or on a particularized basis. Under the Internal Revenue Code, 26 U.S.C. §6103, income tax returns are "public records" open to inspection "upon order of the President and under rules and regulations prescribed by the Secretary [of the Treasury] or his delegate and approved by the President." The returns can also be furnished to tax officials of the states, to the Joint Committee on Internal Revenue Taxation, and to other congressional committees. 26 U.S.C. §6103(b), (d). Since 1957 there have been more than 70 Executive Orders allowing inspection of tax returns by various agencies of the Government.[6] From the 72nd Congress to date, Congress has passed at least 47 resolutions authorizing committees to obtain and inspect tax returns.[7]

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

B. *Judicial Decisions on the Use of Tax Information*

The courts have not, in general, tried to prevent the Government from using or divulging income tax information. The discussion of a few cases will illustrate the point. In *United States* v. *Sapp*, 371 F.Supp. 532 (S.D. Fla. 1974), the Government attached taxpayers' returns to a memorandum of law filed in support of a motion to obtain a ledger of the taxpayers' financial transactions. The court characterized the Government's conduct as "a shocking and high-handed treatment of taxpayers and a complete evasion of Congressional purpose in 26 U.S.C. §7213," but refused to abate the Government's investigation of the taxpayers. The court said that if the Attorney General declined to prosecute the officials responsible for the violation but "adequately explain[ed] such action to the court," the court would permit the Government to have the ledger for use in its investigation. Subsequently the court said it had received a satisfactory explanation from the Attorney General.

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

It is clear that the applicable statutes, regulations, and Executive Orders provide virtually no restriction upon the power of the Executive Branch to obtain and use information contained in income tax returns. As long as the

Executive Branch follows the terms of its own orders and the treasury regulations approved by the President, there is no meaningful limit upon the use or misuse of confidential income tax information.

C. *Executive Order 11805*

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

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

D. *The Relevant Constitutional Principles*

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

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

Information contained in a tax return will often reveal the taxpayer's membership in, or contributions to, political, social or other private organizations. In *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958), and again in *Bates* v. *Little Rock*, 361 U.S. 516, 523 (1960), the Court held that preservation of the freedom of association guaranteed by the First Amendment may often depend upon "inviolability of privacy in group association."

The inter-relationship between the right of privacy and the privilege against self-incrimination guaranteed by the Fifth Amendment has also been emphasized in a number of Supreme Court opinions. Mr. Justice Stewart,

writing for the Court in *Tehan* v. *Shott*, 382 U.S. 406, 416 (1966), observed that the privilege against self-incrimination "stands as a protection of . . . values reflecting the concern of our society for the right of each individual to be left alone." And in *Bellis* v. *United States*, 417 U.S. 85, 88 (1974), the Court said that the constitutional privilege protects certain business records and "personal documents containing more intimate information about the individual's private life."

E. *The Privacy Act of 1974*

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

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

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

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

the bill S. 3982 relating to tax returns. The amendment passed the Senate but was deleted in the House-Senate conference (CONG. REC., Nov. 21, 1974, S19851).

II. PROPOSED LEGISLATION

A. *The Provisions of S. 199*

After the Privacy Act was passed, the Weicker-Litton bill was re-introduced in virtually identical form in the 94th Congress on January 17, 1975. The bill, known as S. 199 in the new Congress, now has a total of 35 co-sponsors in the Senate.[11] A subcommittee of the Senate Finance Committee will hold hearings on the bill in April and perhaps again in May, 1975. If the bill is amended in consonance with the suggestions developed later in this report and is enacted, misuse of tax-return information will be effectively curtailed.

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

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

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

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

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

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

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

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

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

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

B. *Analysis of the Bill*

S. 199 is a significant step in the right direction. The Government's access to income tax information is sharply restricted. The Government officials who are allowed access to tax returns (other than officials engaged in tax investigations originating with IRS) will know that their actions are subject to review by the respected Joint Committee on Internal Revenue Taxation. The President, too, can be held accountable, although it is doubtful that there is a remedy under the bill if he obtains a tax return for illegal purposes.[13] The bill would certainly prevent the *random* examination of returns for questionable purposes.[14] If the Justice Department or the White House want access to tax information, the Attorney General or the President must "specifically name" the taxpayers whose returns are needed.

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

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

Congress recognized, when it adopted the Privacy Act in December, 1974, that criminal sanctions cannot assure compliance with a statute if most violations are likely to be committed by Government officials. The Privacy Act imposes criminal penalties for illegal revelation or receipt of personal information, but it also creates a right of action in any aggrieved individual to enforce the provisions of the Act in a federal civil suit. The federal courts are authorized by the Privacy Act to grant injunctive relief in appropriate cases and to impose costs and attorneys' fees against the Government if the complainant should prevail. 5 U.S.C. §552a(g).

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

The bill in its present form requires IRS to furnish tax information to the Social Security Administration and the Railroad Retirement Board, as under present law. It is submitted that the bill should also require IRS to furnish a return to another federal agency, solely for the purpose of verifying representations made by the taxpayer when applying for federal employment, insurance, scholarship aid, or some other federal benefit, if the agency informs the taxpayer-applicant in writing, at the time of the application, that (1) the agency may wish to verify the applicant's representations by inspecting his or her federal income tax returns, (2) the applicant is free to consent or refuse to consent to such inspection, and (3) if consent is refused or withdrawn, the agency may not deny the application for that reason unless it can show that it was not able to verify the applicant's representations by other reasonable means.

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

CONCLUSION

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

FOOTNOTES

1 CONG. REC., Sept. 11, 1974, S16308, 16310; Jan. 17, 1975, S376.

2 The Domestic Council on Privacy, established by President Nixon, was chaired by the Vice President.

3 CONG. REC., Sept. 11, 1974, S16308; Jan. 17, 1975, S376.

4 *Id.* at S16309, S377.

5 *Id.* at E5739.

6 See Title 26, United States Code Annotated §1603, p. 484 and 1975 Supp., p.135.

7 CONG. REC., Sept. 11, 1974, S16309; Jan. 17, 1975, S377.

8 39 Fed. Reg. 34261.

9 *The New York Times*, Sept. 11, 1974.

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

The Administration opposed many provisions of the Privacy Act. CONG. REC., Nov. 21, 1974, S19833–34.

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

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

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

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

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

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

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

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

Areeda
Chapman

THE WHITE HOUSE

WASHINGTON

March 4, 1975

MEMORANDUM FOR: BILL NICHOLS

FROM: PHIL BUCHEN

SUBJECT: Request of Senate Permanent Subcommittee on Investigations for Access to Files of the Internal Revenue Service

Attached to this memorandum is a request by the Chairman of the Senate Permanent Subcommittee on Investigations for the issuance of a new Executive Order providing access of the kind authorized in E. O. 11711 of April 13, 1973. I understand that both executive and legislative actions since E. O. 11711 was issued have tightened restrictions on access to income tax records for the purpose of protecting individual privacy. Your memorandum to Dudley Chapman of March 4, 1975, also notes that, at a minimum, some changes in the form of E. O. 11711 would be necessary to comply with the Privacy Act of 1974. In addition, you should consult with IRS to determine if additional restrictions consonant with E. O. 11805 would be appropriate.

Would you, therefore, please initiate, on an expedited basis, the preparation of a new Executive Order that will (a) satisfy the requirements of the Privacy Act of 1974, and (b) be consistent with the spirit of Executive Order 11805.

United States Senate

COMMITTEE ON
GOVERNMENT OPERATIONS
SENATE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS
(PURSUANT TO SEC. 4, S. RES. [illegible], 93D CONGRESS)
WASHINGTON, D.C. 20510

February 4, 1975

My dear Mr. President:

The Senate Permanent Subcommittee on Investigations of the Committee on Government Operations has been established for the purpose of making investigations into and studying matters affecting the efficiency and economy of the executive departments of the Government. In order to fulfill adequately its investigative responsibilities, the Subcommittee is of the opinion that it would be most helpful to have access to Federal income tax returns and other related documents in the files of the Internal Revenue Service. During the 93rd Congress this Subcommittee had access to these records under the authority contained in Executive Order 11711, signed April 13, 1973.

The Subcommittee, therefore, respectfully requests that you issue an appropriate Executive Order pursuant to the provisions of the Internal Revenue Act, ordering that any income, excess profits, capital stock, estate or gift tax returns and related documents for the years 1950 to 1975, inclusive, shall be open to inspection by the Senate Committee on Government Operations or the duly authorized Subcommittee thereof, namely, the Senate Permanent Subcommittee on Investigations during the 94th Congress. This Subcommittee has been established pursuant to and operates under paragraph (1)(j)(2)(B) of Rule XXV of the Standing Rules of the Senate.

I would appreciate your favorable consideration of this request soon in order to avoid delay in certain important and pending work of this Subcommittee.

Sincerely yours,

Abraham Ribicoff
Chairman

The President
of the United States

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

March 4, 1975

MEMORANDUM FOR: PHIL BUCHEN

FROM: DOUG METZ DWM

SUBJECT: Treasury Taxpayer Privacy Legislation

The current situation in respect to the above-referenced legislation is reflected in my attached memorandum to Dick Albrecht, Treasury. We are coordinating with OMB, which shares our view on the issues needing resolution before presenting final recommendations to you -- hopefully by the end of next week.

DWM/fme

Attachment

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

March 3, 1975

MEMORANDUM FOR: RICHARD R. ALBRECHT

FROM: DOUGLAS W. METZ

SUBJECT: Treasury Proposed Legislation on Privacy of Tax Returns

Pursuant to our telephone conversation, I am noting below some questions we have concerning the tax return privacy bill currently in the OMB clearance process.

Our basic concern is the adequacy of the justification for an approach which supersedes the Privacy Act of 1974; thus opening the door for other agencies to seek similar legislation. The Treasury bill appears to be inconsistent with P. L. 93-579 in the following respects:

(1) It treats all of Treasury as a single agency so that any officer or employee of the Department could have "need to know" access to tax returns and tax return information;

(2) It has no public notice requirement and no requirement to inform taxpayers of the uses that may be made of the information they are required to provide;

(3) It does not require an accounting of disclosures made (a) to anyone within the Treasury Department, (b) to the Justice Department for tax administration purposes, (c) at the discretion of the Secretary (i.e., to recipients other than those expressly authorized in the bill), (d) for non-tax purposes, and (e) in responses to requests for taxpayer identification information.

(4) It, in effect, forbids taxpayer access to the limited accounting that is required to be made of disclosures of return and return information;

(5) It permits the withholding of return information from the taxpayer to whom it pertains at the discretion of the Secretary or his delegate, rather than requiring the Secretary to go through an exemption by rule-making procedure like that provided in subsection (k) (2) of P. L. 93-579;

(6) It says that determinations to withhold return information shall not be subject to judicial review;

(7) It seeks to regulate the behavior of contractors through regulations whose content shall be decided at the discretion of the Secretary;

(8) It establishes the IRS as a whereabouts "locator" service for Federal and State agencies;

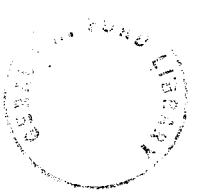
(9) It would exempt IRS and other units of the Treasury Department from the requirement in P. L. 93-579 to report to OMB, the Congress, and the Privacy Commission on new systems and changes in systems that contain tax returns and return information;

(10) It would naysay a recent court decision on public access under the FoIA to so-called "private tax rulings"; and

(11) Its provision allowing disclosures to correct misstatements of fact in the press has no readily recognized precedent.

As agreed, we should meet after you have reacted to the above points. In summary, our current thinking leans toward a legislative proposal governing third-party access, i. e., leaving the individual access, correction, and challenge provisions of P. L. 93-579 intact but tightening the "conditions of disclosure" as they would apply to IRS records on individuals.

cc: Robert P. Bedell



cc: Mr. Buchen

DOMESTIC COUNCIL COMMITTEE ON THE RIGHT OF PRIVACY

WASHINGTON, D.C. 20504

April 17, 1975

MEMORANDUM FOR: DICK ALBRECHT

FROM: DOUG METZ

SUBJECT: Treasury Taxpayer Privacy Legislation

At today's meeting of Treasury and IRS officials with representatives of the Domestic Council, OMB, Vice President and Privacy Committee, it was decided that Treasury should develop several issues and options papers as vehicles for early resolution of questions concerning needed additional confidentiality safeguards for tax returns and tax information to be implemented by way of either administrative or legislative action.

Among the questions identified as candidates for individual papers were:

(1) The utilization of the Privacy Act for collateral attacks on determinations of individual tax liability.

(2) The appropriateness of having Congress alone determine the conditions of 3rd party access to tax returns and tax return information.

(3) The appropriateness of circumscribing taxpayer access to IRS records pertaining to him in a way that narrows the provisions of the Privacy Act, the IRS Code and existing Executive orders and regulations.

(4) The appropriateness of single or separate standards of confidentiality protection for individual and non-individual tax returns and tax return information.

(5) The adequacy of the Privacy Act's "routine use" exception as a vehicle for providing third-party access to income tax returns and return information.

(6) The adequacy of the Privacy Act's criminal penalties and civil sanctions on improper disclosures by agencies which obtain individual tax returns and tax return information from IRS.

(7) Any specific limitations deemed desirable by Treasury on current access by third parties to tax returns and tax return information.

This list should be supplemented by you to assure that all issues of concern to the Treasury and IRS are raised and evaluated.

We can talk further about the list on Monday at 5:00 pm in your office.

As discussed at the meeting we should target receipt of the issue papers by this office by c. o. b. May 1.

DWM/crs

GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE
Washington, D.C. 20230

May 12, 1975

Honorable Calvin J. Collier
General Counsel
Office of Management and Budget
Washington, D. C. 20503

Dear Cal:

As you recall, last fall Senator Weicker and others were vigorously pursuing an amendment to pending "privacy" legislation that would, for all practical purposes, have limited access to and use of Federal income tax data to the IRS alone. At President Ford's request, Commerce prepared a full white paper on the historic and essential use of selected tax information in the census and economic analysis work of SESA, for use in discussions with the Congress.

Notwithstanding the President's concern and our efforts, Senator Weicker prevailed in the form of an undebated, last-minute floor amendment of the privacy legislation which would have cut off this essential and ancillary use of tax information.

While the amendment was deleted from the final enactment, new bills, S. 199, H. R. 616 and duplicate House bills, which seek again to cut off even legitimate statistical use of tax information, now enjoy a total of 247 sponsors. As one approach to meeting this threat, Secretary Morton has sent to these sponsors an abbreviated version of the white paper, per enclosure.

A further essential step is early agreement upon and introduction of Treasury's omnibus measure on use of tax information which is now pending in OMB. Commissioner Alexander recently testified against the "meat-axe" approach of S. 199 and the companion House bills, urging, instead, the Treasury bill as the right place to start. Assistant Secretary for Economic Affairs Jim Pate, together with Jim Ravlin of my office,

are available at any time to assist in resolving whatever differences may be holding up transmittal of that important bill to the Hill. I understand that Phil Buchen is also interested in moving that legislation along.

Sincerely,

Karl E. Bakke

Karl E. Bakke
General Counsel

Enclosure

Copy to:

Philip W. Buchen, Executive Director, Privacy Committee
Richard C. Albrecht, General Counsel, Department of Treasury
Meade Whitaker, General Counsel, Internal Revenue Service
Harold R. Tyler, Jr., Deputy Attorney General
Douglas Metz, Deputy Executive Director, Privacy Committee

USE OF TAX DATA IN THE STRUCTURING OF BASIC ECONOMIC TOOLS

The Job of the Bureaus of Census and Economic Analysis

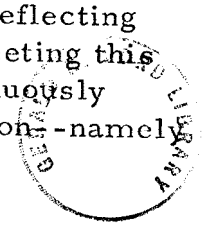
The Bureaus of the Census and Economic Analysis, comprising the Social and Economic Statistical Administration of the Department of Commerce, necessarily use selected tax return information, principally corporate, in structuring such basic and complex economic tools as the

- Quinquennial Economic and Agricultural Censuses,
- the critical National Economic Accounts, including the "GNP" and Balance-of-Payments Accounts and related key economic indices,
- the several essential Industrial, Wholesale and Trade Censuses,
- the Current Economic Indicators in both the industrial and distributive areas, and
- revenue sharing data which now control the distribution of over $5 billion in Federal funds annually.

This highly confidential and strictly statistical ancillary use of tax information dates back over a quarter of a century. It is subject to tight statutory controls (13 U.S.C. 9 and 15 U.S.C. 176(a)) geared expressly to these strictly statistical and economic analyses mandated by Congress. Neither Bureau is involved in direct determinations about either individual people or individual businesses. Neither has fiscal, regulatory, promotional, or revenue authority. This emphasis upon, and restriction to, statistical and analytical function is unique in the Government; and the 25-year long record of confidential use of tax information is spotless.

Together, Census and BEA are the Government's centralized statistical source. They serve the Joint Economic Committee--the Joint Committee on Internal Revenue Taxation--the Senate Committees on Banking, Housing, and Urban Affairs; Finance; Foreign Relations; and Public Works--the House Committees on Ways and Means, International Relations, Labor and Education, and Public Works--the President--the Council of Economic Advisers--the Federal Reserve Board--the Domestic Council--and the Treasury, Labor, and other Departments--as well as industry, agriculture, and labor. There is no broader constituency.

The sole mandate and mission of Census/BEA is to produce statistical tools of ever finer precision, on ever accelerated schedules, reflecting critical movements in our ever more complex economy. In meeting this requirement, two additional Congressional conditions are assiduously observed--also largely through the limited use of tax information--namely



- The reporting burden on all respondents is to be minimized by cutting out needless duplication of Governmental information solicitation--particularly in the small business area.

- The spiralling costs and wide errors which characterize the direct canvass of information in many sectors of the economy are also to cut to the minimum.

The need for both precision and timeliness was never greater than in today's troubled and contradictory domestic economy, amidst wide and deep international change. Yet both quality and worth are now seriously threatened by legislative proposals which would cut off the essential nucleus of tax information on which these economic tools now absolutely depend.

Denial of Tax Information Will Deteriorate Economic Intelligence

A few deplorable insensitivities and abuses in the use of tax return information have led to such stringent, far-reaching legislative proposals as S. 199 and H. R. 616. While the Census/BEA record is inviolate, these backlash measures would nonetheless incisively cut off the highly confidential and selective use of tax information in the structuring of these basic economic tools. They would--in today's economic adversity--turn the calendar back to the much cruder tools of years past.

Yet there has been no single instance--over decades--in which these solely statistical uses of tax data violated the privacy of any individual or the confidentiality of any tax return information. With no abuse to remedy, the wide sweep of these measures, as applied to Census/BEA, would nonetheless

- seriously deteriorate the quality of both the Economic and Agricultural Censuses,
- materially impair the reliability of such critical economic tools as the "GNP" and Balance of Payments Accounts,
- significantly delay the availability of essential economic data,
- force discontinuation of some of the Current Economic Indicators,
- necessitate devising new revenue sharing mechanisms,
- render "before" and "after" economic data non-comparable, destroying vital trend information,
- substantially increase the cost of inferior statistical and economic products, and
- impose burdensome multiplicity of reporting on the full spectrum of the business community.

The heart of the Federal statistical system is truly at stake--and for no reason at all. All identifiable information which is provided to Census/BEA, the government's economic toolmaker, whether through direct canvass or from such other sources as IRS and the Social Security Administration, is protected by strict and specific legal safeguards against either improper use or disclosure. They date back to 1879--long predating either the income tax or Social Security. These special statutory safeguards are unique.

Both the long-standing record of fidelity and quality of statistics and the imperative need for continuing access to tax return information for statistical purposes were affirmed by the Congress only weeks ago in the transfer exemption included in enacting the Privacy Act of 1974. It expressly and specifically permits the transfer of information about individuals to Census for statistical purposes. The recognition of, and provision for, this need is unique.

Census is authorized by law to solicit directly the same information now derived from tax returns. Years ago Census used direct canvass methods. But that duplication today would be costly, less accurate, and needlessly burdensome on respondents, particularly upon small business. Cutting off the IRS source would, however, abrogate neither the need for, nor the use of, the information in question.

The narrow statistical and analytical role of Census/BEA is unique. The service role to the entire Government--all levels--is unique. The special long-standing safeguards for data obtained either directly or from other agencies are unique, as is the continuous record of unbroken trust. The new Privacy Act exception is unique. None of the privacy, political, or proliferation concerns which gave rise to the pending legislative proposals is involved. The case is sui generis.

Integrated Analytical Responsibilities Cannot Be Splintered

S. 199, H.R. 6167, and related bills incorrectly assume that the IRS could meet the requirements of Census and BEA simply by providing tabulations or aggregations of data. That simply would not be a workable substitute for direct access by Census/BEA to selected identifiable tax information.

The use of tax data is an organic part of a whole mix of information (which includes confidential Census data that, by law, are not available to IRS), of specialized technical and analytical skills, and of resources fully dedicated specifically to these statistical and analytical requirements. Only serious deterioration of these basic statistical and economic products could result from endeavoring to fragmentize what has always been an integrated responsibility.

The Economic and Agricultural Censuses

Tax lists accurately define the population for the Economic and Agricultural Censuses. No other source can approach either their accuracy or the timeliness for this purpose. Only these lists accurately reflect business and agricultural entries and quits. They enable Census readily and scientifically to select and apply efficient sampling procedures. They permit automatic elimination of millions of businesses thus determined not to be within the scope of a particular census. They eliminate need for cumbersome enumeration by direct canvass. The Agricultural Census, for example, is now handled, on the basis of tax lists and other information, entirely by mail.

Census needs neither hard copy tax returns nor reproductions of returns on tape or disc. Subject to an exception to be noted, Census does not require figures on corporate net income, tax liability, costs, investment, depreciation, borrowing, net worth, and so on. Census is advised by IRS simply of the business type and size codes, gross receipts, dollar payroll and number of employees. This limited information enables Census to extrapolate from its own samplings to the universe. This is not tax information, and there are no voices from either business or agriculture which object to the efficiency of this integration of economic data.

Data Essential to Structuring the "GNP"

Census needs more detailed financial data on the 100,000 or so corporations covered by the IRS publication "Statistics of Income." Again, this data does not and cannot involve Census access to, or probing of, taxpayer data of its own selection. The reason Census needs this selective data is somewhat complex, but nonetheless very important. IRS data is based on a "legal entity" or taxpayer concept. Thus, a conglomerate in many lines of business with many plants and outlets is one taxpayer to IRS. But Census, for many reasons, reports on an "establishment" basis--and establishment data and data refined as to type of business are essential to "GNP" and other basic economic analyses. Again, a mix of confidential data is involved.

The availability of identifiable data behind the "Statistics of Income" publication also enables Census to create a critical "link" which permits translation by economists between "legal entity" and "establishment" data. This is not an esoteric exercise; on the contrary, it is indispensable to the creation and use of basic economic indicators.

Bureau of Economic Analysis

BEA's professional economists and statisticians draw on many sources for essential information for the National Economic Accounts, but their primary sources are Census and, in a limited but important way, IRS. BEA requires and has access to full tax information on less than 1,000 corporations. There is no other way the "GNP" and other critical accounts could be accurately structured.

These data are also needed by BEA for necessary adjustments when significant changes in tax accounting practice and tax law interpretation distort the reflection of underlying economic facts and impair comparability of data over time. Access to these data enables BEA to construct extrapolators to move rapidly from sample to universe without duplicative reporting burden on the corporate community. Both Census and tax data are also essential to fixing critical benchmarks for economic analysis work. Limited IRS information is also essential in the conduct of statutorily mandated surveys of U.S. foreign investment and foreign investment in the U.S.

Some of this very basic product would come to a standstill if BEA were to be deprived of access to corporate tax data, and other elements of the product would be seriously degraded.

Use of Tax Information about Individuals

Finally, Census (but not BEA) uses personal income tax data in three ways. First, minute samplings of individual returns are used in evaluation of Decennial Censuses and various statistical surveys. To effect this essential evaluation, the data necessarily include Social Security numbers and addresses, but not taxpayer names. Second, the same low level of sample is used for Current Population Surveys, which include per capita income data and serve periodically to update the Decennial Census. Being only partial data, as to a very small number of taxpayers, selected by random methods, the information is not amenable to political or other abuse. Given the usefulness of, and need for, both functions, either this miniscule access to partial tax data on individuals must be available to Census or the law must be changed to permit full disclosure of confidential Census data to IRS. IRS would then have to be staffed to handle these Census functions.

The third use of individual tax data is made in preparing and updating revenue-sharing bases keyed to population, per capita income by areas, and other fixed factors. While this statutory function necessarily covers

the full spectrum of the population (hence all individual taxpayers, rather than a sample), this use involves only selected information. Use of Social Security numbers is necessary to determine migration patterns and volume. The resulting revenue-sharing data are, of course, important to and used by Federal, State and local governments. Perfection of the techniques involved is evolutionary, and again a meld of confidential information is involved.

Conclusion

The Department of Commerce agrees unqualifiedly that misuse of tax information, personal or corporate, is reprehensible and that any such invasions of privacy and violations of trust should be subject to severe statutory sanctions.

The Privacy Act is a long step forward in this direction, and the strict administrative safeguards contained in Executive Order 11805 pertaining to Presidential access is open to codification if Congress wishes.

Congress long since put a strong statutory band around all confidential information used by Census and BEA, regardless of source. There has not been a single instance of abuse by either Census or BEA, and there is abundant evidence that the data compiled by these agencies are indispensable and that the accuracy and completeness of such data are of direct concern across the entire spectrum of Federal, State, and local government economic analysis, planning, and action.

Finally, there is simply no way to bifurcate the highly specialized and technical economic analyses of Census and BEA. Seeking surgically to sever parts of integrated procedures and to graft them onto the IRS, the Social Security Administration, or any other agency will not work. Nor is there either abuse or complaint to be addressed.

This case is not made on account of particular bureaus--rather, it is an urgent pleading on behalf of the Nation's economy.

The United States Department of Commerce
May 2, 1975

June 3, 1975

To: George Trubow

From: Phil Buchen

FYI

(Hi from Eva)

May 29, 1975

Dear Tom:

Thank you for your May 20 letter to the President expressing your concern over provisions of Executive Order 11859, providing for the inspection of income, estate, and gift tax returns by the Senate Committee on Government Operations.

Please be assured that your letter will be called to the attention of the President and the appropriate members of the staff. You will hear further as soon as possible.

With kindest regards,

Sincerely,

Vernon C. Loen
Deputy Assistant
to the President

The Honorable Thomas N. Kindness
House of Representatives
Washington, D.C. 20515

bcc: w/incoming to Fred Webber, Dept. of the Treasury, for DRAFT REPLY
bcc: w/incoming to Philip Buchen - FYI

VCL:EF:VO:kt

THOMAS N. KINDNESS
8TH DISTRICT, OHIO

WASHINGTON OFFICE:
1440 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-6205

JAMES T. CHRISTY
ADMINISTRATIVE ASSISTANT

ROGER W. GILLESPIE
DISTRICT ASSISTANT

Congress of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEES:
JUDICIARY
SMALL BUSINESS

DISTRICT OFFICES:
801 HIGH STREET
HAMILTON, OHIO 45011
(513) 895-5656

234 EAST MAIN STREET
GREENVILLE, OHIO 45331
(513) 548-8817

May 20, 1975

The Honorable Gerald R. Ford
President
The United States of America
Washington, D.C. 20500

Dear Mr. President:

I am greatly concerned that criticism will be justly aimed at Executive Order 11859 of May 7, 1975, published in the Federal Register, Volume 40, No. 91, at page 20265, on May 9, 1975.

As a citizen, I am offended by the concept of such a broad and sweeping Executive Order dealing with private matters. As a Representative of over 460,000 constituents in the Eighth Congressional District of Ohio, I feel that a protest must be stated.

The scope of the Executive Order in question seems very broad and inclusive, in that it covers all income, estate and gift tax returns for a twenty year period of time, and the purposes to be served by this sweeping authority are not clearly stated in the Executive Order. In fact, upon inquiry, I have discovered that the purposes of this disclosure that are sought to be served differ quite sharply from the statement contained in the Executive Order.

Although the Executive Order is based upon the authority contained in Section 6103 (a) of the Internal Revenue Code of 1954, it would seem proper that it should be limited by provisions similar to those contained in Section 6103 (d), which would require a resolution by the Senate authorizing such a study by the Senate Committee on Government Operations.

Under this Executive Order a Subcommittee of the Senate could furnish a written statement specifying the purpose of the inspection, and all that would then be required is that the Commissioner of Internal Revenue establishes that the inspection relates to a matter within the jurisdiction of that Subcommittee.

The alternative is that the Commissioner has received the written consent of the taxpayer; and I would submit that this alternative would seldom be employed. I believe that this alternative should be employed in every case. That is, the consent of the taxpayer should be obtained in every single incident of the use of the authority in Executive Order 11859.

Please reconsider the content of Executive Order 11859. I believe, along with many others, that the American public is entitled to a far greater degree of protection of its privacy that is provided for in Executive Order 11859. Income tax returns, as well as estate and gift tax returns, are submitted by U.S. citizens with the understanding that the returns and their contents are not to be disclosed except in certain ways expressly provided by law. Regrettably, the ways provided by law may not be adequate to properly protect their rights and interests.

I stand ready to be of such service as you may deem appropriate in this matter.

Respectfully yours,

Tom Kindness

THOMAS N. KINDNESS
Member of Congress

TNK/ns

September 15, 1975

TO: Mr. David Martin
Research Director
Administrative Conference
of the United States
Suite 500
2120 L Street, N. W.
Washington, D. C. 20037

FROM: Eva Daughtrey

Sorry to be so long in getting this to you.

Say hello to Carole for me, please!

E.O. 11805 (?)

9/20/74

FOR IMMEDIATE RELEASE SEPTEMBER 20, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

On Executive order entitled "Inspection by President and Certain Designated Employees of the White House Office of Tax Returns Made Under the Internal Revenue Code of 1954"

An Executive order limiting White House access to tax returns was issued by the President today. The order was issued under authority vested in him by the Constitution.

In the past, regulations issued by the Treasury Department and approved by the President pursuant to Section 6103 of the Internal Revenue Code have placed strict limitations upon agency and public access to tax return information. However, there have been no explicit legal restrictions upon White House access.

The Executive order sets forth strict and legally binding procedures by which the President's access will be governed as well as access by members of his staff. Under this Order, the President must personally specify in writing the returns desired and must personally designate in writing the member of his staff who is authorized to see the returns on his behalf.

On September 11, 1974, the Secretary of the Treasury submitted to Congress proposed legislation to limit generally access to tax returns and related information. The Order issued today complements this proposal, but is effective immediately.

# # # # #

FOR IMMEDIATE RELEASE September 20, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

EXECUTIVE ORDER

- - - - - - -

INSPECTION BY PRESIDENT AND CERTAIN DESIGNATED EMPLOYEES OF THE WHITE HOUSE OFFICE OF TAX RETURNS MADE UNDER THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me as President of the United States, and in the interest of protecting the right of taxpayers to privacy and confidentiality regarding their tax affairs consistent with proper internal management of the Government, and in the further interest of maintaining the integrity of the self-assessment system of Federal taxation, it is hereby ordered that any return, as defined in Section 301.6103(a)-1 of the Treasury Regulations on Procedure and Administration (26 CFR Part 301) as amended from time to time, made by a taxpayer in respect of any tax described in Section 301.6103(a)-1(a)(2) of such regulations shall be delivered to or open to inspection by the President only upon written request signed by the President personally.

Any such request for delivery or inspection shall be addressed to the Secretary of the Treasury or his delegate and shall state: (i) the name and address of the taxpayer whose return is to be inspected, (ii) the kind of return or returns which are to be inspected, and (iii) the taxable period or periods covered by such return or returns.

In any such request for delivery or inspection, the President may designate by name an employee or employees of the White House Office who are authorized on behalf of the President to receive any such return or make such inspection, provided that the President will not so designate an employee unless such employee is the holder of a Presidential commission whose annual rate of basic pay equals or exceeds the annual rate of basic pay prescribed by 5 U.S.C. 5316. No disclosure of such return, or any data contained therein or derived therefrom shall be made by such employee except to the President, without the written direction of the President.

All persons obtaining access to such return, or any data contained therein or derived therefrom shall in all respects be subject to the provisions of 26 U.S.C. 6103, as amended.

GERALD R. FORD

THE WHITE HOUSE,
September 20, 1974

# # # #