

**TAX RETURN CONFIDENTIALITY**

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## ISSUE DEFINITION

The confidentiality of the individual income tax return, and the personal and financial information it contains, is considered by many to be critical to the vitality of our self-assessment system of tax collection. Without public confidence in the privacy of the tax return, information might be withheld, precluding efficient tax collection. Consequently, Congress has become concerned over tax return confidentiality.

## BACKGROUND AND POLICY ANALYSIS

While the history of the issue of tax return confidentiality may be traced to the Civil War Income Tax Act of 1862 (12 Stat. 473), when tax return information was posted on court house doors and published in local newspapers to promote surveillance of one taxpayer by another, the recent history of the controversy may be directly traced to Executive Orders 11697 and 11709, issued by former President Richard M. Nixon. These orders authorized the Department of Agriculture to inspect the income tax returns of all farmers "for statistical purposes."

Responding to concern about these orders, two House subcommittees held hearings into the need for farm tax return confidentiality. Department of Justice officials testified that the Executive orders in question were prototypes for future orders opening the returns of other groups to inspection by nontax Federal agencies. Responding to these hearings and press articles, the President rescinded the two orders on Mar. 21, 1974. However, the issue of tax return confidentiality continued to gain momentum, spurred by revelations of the Senate Select Committee on Presidential Campaign Activities (Watergate Committee) and the House Judiciary Committee's inquiry into possible impeachment of the President. The White House demanded and, in some cases, received confidential tax information from the Internal Revenue Service.

It had long been the law that tax returns were public documents, their disclosure regulated by the statute (section 6103 of the Internal Revenue Code), regulations of the Department of the Treasury, and Executive orders of the President. The statute permitted access to tax returns and tax information by State executive officials, State tax commissions, the tax-writing committees of Congress and other congressional bodies authorized by resolution or Executive order. The regulations expanded the scope of permitted receipt to include the Department of Health, Education, and Welfare; the Securities and Exchange Commission; the Advisory Commission on Intergovernmental Relations; the Department of Commerce; the Renegotiation Board; the Federal Trade Commission; the Federal Reserve Board; the Department of the Treasury; and the Department of Justice, for both tax and nontax matters. The Executive orders opened tax returns to inspection by numerous other Governmental entities.

The issue of tax return confidentiality spread from farmers' returns to a general inquiry into the privacy of the individual income tax return. Congressional concern was manifested in a request that the Privacy Protection Study Commission, established as part of the Privacy Act of 1974, investigate and report to the Congress on tax return confidentiality (P.L. 93-579, sec. 5 (c) (2) (B) (ii)). The Commission issued its report on June 9, 1976, and

suggested major changes in the law, including limitations on distribution of tax data to the Departments of Justice and Treasury, to the States and local governments, and to other executive agencies and the Congress, as well as increasing the penalties for wrongful disclosure.

The Congress took specific action in 1976, with section 1202 of the Tax Reform Act of 1976 (P.L. 94-455). This section entirely revised the law respecting tax return confidentiality, limiting the availability of returns and tax information. The major provisions of the new law provide:

(1) Tax returns are now confidential records, open to inspection as provided by statute, rather than "public records" from disclosure only as provided by law.

(2) The availability of tax returns or return information is governed by statute, rather than regulations and Executive orders.

(3) Tax-writing committees of the Congress may have tax returns and tax data upon written request of their chairpersons. Nontax committees may receive tax information only in executive session, after committee action requesting the information, after a House or Senate resolution authorizing committee inspection of tax data, and a written request by the committee chairperson. The Chief of Staff of the Joint Committee on Taxation may have tax data upon written request.

(4) The President and certain White House officers may have tax data upon written request of the President, signed by him or her personally. The President or authorized officer or the head of any executive agency may request a tax check on an individual considered for appointment. The check is limited to whether that individual has filed a tax return in the past 3 years, whether any civil or criminal fraud or civil negligence penalty was assessed, whether the taxpayer failed to pay tax within 10 days of demand for payment, whether there has been any criminal tax investigation of the individual and the results of the investigation. The taxpayer is notified within 3 days of the Internal Revenue Service's receipt of the request for tax check, and the requesting body must file a quarterly, confidential report with the Joint Committee on Taxation giving the reasons for the request. The White House does not have to report to the Joint Committee on Taxation as to requests for individuals then serving in the executive branch of the Federal Government.

(5) United States Attorneys and Department of Justice attorneys can no longer receive tax information for tax investigations merely upon oral request. Requests must now be in writing and, unless the return is that of the individual under investigation, the return must relate to a transaction with the taxpayer under investigation or be relevant to the resolution of an issue relating to that taxpayer's case.

(6) United States Attorneys and Department of Justice attorneys can no longer obtain tax returns and data for nontax criminal cases merely by showing the information "necessary in the performance of his official duties" and presenting a written request signed by the United States Attorney, the Attorney General, and the Deputy or Assistant Attorney General. Under the new law, the Department of Justice attorney or United States Attorney seeking tax information for a nontax criminal investigation must first obtain an order from a United States District Court upon a showing that there is reasonable cause to believe that a specific criminal act has been committed, that the return or tax data is probative evidence of the act, and that the

information either cannot reasonably be obtained from any other source or that it constitutes that most probative evidence of the act.

(7) No agency may obtain tax information in nontax civil litigation unless the United States is a defendant in a contract action brought after Renegotiation Board determination.

(8) States may receive tax data only upon written request of the highest State tax officer, using the information solely for tax administration, and upon showing of adequate safeguards as to the confidentiality of the Federal data.

(9) The penalty for wrongful disclosure of the tax data by a Governmental official or other is increased from a misdemeanor to a felony, and the penalty increased from a fine of \$1,000 and imprisonment of up to one year, or both, to a fine of up to \$5,000 and imprisonment up to 5 years, or both.

The new statute is effective as of Jan. 1, 1977.

The Department of Justice has evidenced dissatisfaction with the provisions of the new law as they relate to the activities of that agency. Hearings were held before the House Committee on Ways and Means, Subcommittee on Oversight of the Internal Revenue Service, on Feb. 24, 1977. The Attorney General, Mr. Griffin Bell, testified against the operation of the new restrictions.

#### LEGISLATION

Since the enactment of the Tax Reform Act's new restrictions on tax return disclosure, two bills have been introduced to change the law on this subject in the 95th Congress:

H.R. 525 (Lloyd of Tennessee), H.R. 2784 (Carney)

Entirely revises section 6103 of the Internal Revenue Code, with particularly noteworthy provisions opening tax returns to White House inspection as necessary for the performance of the Presidential duties and upon written request, without the limitation contained in the present law respecting tax checks; no disclosure to congressional committees other than the Joint Committee on Taxation; disclosure permitted to the head of any Federal agency only of statistical information; no disclosure of tax information to the Department of Justice in nontax cases; and maximum fine for unauthorized disclosure of tax information is made \$10,000 and/or 5 years imprisonment, with a similar penalty for unauthorized receipt of tax data. H.R. 525 was introduced on Jan. 4, 1977. H.R. 2784 was introduced on Feb. 1, 1977. The two measures were referred to the House Ways and Means Committee.

#### HEARINGS

U.S. Congress. House. Committee on Agriculture. Subcommittee on Department Operations. Inspection of farmers' Federal income tax returns by the U.S. Department of Agriculture. Hearings, 93d Congress, 1st session. Mar. 12 (and) 18, 1975. Washington, U.S. Govt. Print. Off., 1973. 90 p.

U.S. Congress. House. Committee on Government Operations. Executive Orders 11697 and 11709, permitting inspection by the

Department of Agriculture of farmers' income tax returns. Hearings, 93d Congress, 1st session. May 9 (and) Aug. 3, 1973. Washington, U.S. Govt. Print. Off., 1973. 167 p.

- U.S. Congress. House. Committee on the Judiciary. Pursuant to H.Res. 603, a resolution authorizing and directing the Committee on the Judiciary to investigate whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. Hearings, 93d Congress, 2d session. May-June 1974. Book VIII. Washington, U.S. Govt. Print. Off., 1974. 440 p.
- U.S. Congress. House. Committee on Ways and Means. Tax reform hearings -- statements of public witnesses on the subjects of administrative provisions (tax return preparers, disclosure of tax return information, declaratory judgements, private ruling letters, condominiums), tax simplification (moving expenses, child care, alimony payments) and general subjects. July 11, 1975. Washington, U.S. Govt. Print. Off., 1975. 203 p.  
At head of title: 94th Congress, 1st session. Committee print.
- U.S. Congress. House. Committee on Ways and Means. Subcommittee on Oversight. IRS operations and taxpayer assistance. Hearings, 94th Congress, 1st session. Feb. 27 and Apr. 24, 1975. Washington, U.S. Govt. Print. Off., 1975. 209 p.
- U.S. Congress. Joint Committee on Internal Revenue Taxation. Confidentiality of tax returns; staff report. Washington, 1975. 44 p.
- U.S. Congress. Senate. Committee on Finance. Subcommittee on Administration of the Internal Revenue Code. Federal tax return privacy. Hearings, 94th Congress, 2d session. Apr. 21, 28, 1975, and Jan. 23, 1976. Washington, U.S. Govt. Print. Off., 1976.
- U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Administrative Practice and Procedure. IRS disclosure. Hearings, 93d Congress, 1st session. Apr. 1 and July 21, 1974. Washington, U.S. Govt. Print. Off., 1974. 294 p.
- U.S. Congress. Senate. Select Committee on Presidential Campaign Activities of 1972. Senate Resolution 60. Hearings, 93d Congress, 1st session. Books 20-24. Washington, U.S. Govt. Print. Off., 1973. 2372 p.  
Hearings held July 25; Sept. 11-13; Dec. 4, 14, 18, 19, 1973; May 2, 5, 7, 10, 13, 15, 17, 22, 28, 29; and June 6, 10-12, 14, 1975.

#### REPORTS AND CONGRESSIONAL DOCUMENTS

- U.S. Congress. Senate. Committee on Finance. Tax Reform Act of 1976; report on H.R. 10612. [Washington, U.S. Govt. Print. Off.] June 10, 1976. 606 p. (94th Congress. Senate. Report no. 94-938)

- U.S. Congress. House. Tax Reform Act of 1976; conference report on H.R. 10612. Washington, U.S. Govt. Print. Off., Sept. 14, 1976. 646 p. (94th Congress, 2d session. House. Report no. 1515)
- U.S. Congress. Joint Committee on Taxation. General explanation of the Tax Reform Act of 1976. [Washington, U.S. Govt. Print. Off.] 1976. p. 313-345.
- U.S. Congress. Senate. Report on administrative procedures of the Internal Revenue Service to the Administrative Conference of the United States. [Washington] October 1975. p. 832-1136. (94th Congress, 1st session. Senate. Document no. 94-266)  
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### CHRONOLOGY OF EVENTS

- 02/24/77 -- Hearings were held before the Oversight Subcommittee of the House Committee on Ways and Means on possible revision of the Tax Reform Act provisions on tax return confidentiality.
- 01/01/77 -- Effective date of the Tax Reform Act of 1976 revision in section 6103, Internal Revenue Code, on tax return confidentiality.
- 10/04/76 -- President Ford signed the Tax Reform Act of 1976.
- 09/23/76 -- H.R. 10612, the Tax Reform Act of 1976, was sent to the President for signature after passage by both House and Senate.
- 06/10/76 -- The Senate Committee on Finance reported H.R. 10612 with its amendment providing for reforms of the law on tax return confidentiality.
- 06/09/76 -- The Privacy Protection Study Commission issued its report on the confidentiality of tax returns.
- 12/01/75 -- Administration proposals on revision of sec. 6103 on tax return confidentiality were introduced in the House by Mr. Schneebeli, by request, as H.R. 11090.
- 10/11/74 -- President Ford withdrew support from Treasury-proposed bill on tax return confidentiality (S. 4116, 93d Congress, 2d session) and supported Weicker-Litton bill (S. 199/H.R. 608 in 94th Congress).
- 10/10/74 -- Senator Bennett, at the request of the Department of the Treasury, introduced S. 4116, the Administration's Tax return confidentiality bill.
- 09/20/74 -- President Ford issued Executive Order 11805, voluntarily limiting White House access to tax returns.
- 07/29/74 -- The House Judiciary Committee approved Article of Impeachment II, citing as one count of abuse of power

the unauthorized acquisition of confidential tax information from the IRS.

- 05/14/74 — Senate Watergate Committee hearings discussed the obtaining of tax information by the White House on the Rebozo and Hughes investigations.
- 03/21/74 — President Nixon issued Executive Order 11786, rescinding the two prior Executive orders that had opened farmer's tax returns to inspection by the Department of Agriculture.
- 08/03/73 — A subcommittee of the House Committee on Government Operations finished hearings on Executive Orders 11697 and 11709, opening farmers' tax returns to inspection by the Department of Agriculture.
- 03/28/73 — The Subcommittee on Department Operations of the House Committee on Agriculture finished hearings on Executive Order 11697, opening farmers' tax returns to inspection by the Department of Agriculture for "statistical purposes."
- 03/27/73 — President Nixon issued Executive Order 11709, limiting the inspections of farmers' tax returns by the Department of Agriculture under Executive Order 11697 to comport with procedural rules set up by the Treasury after issuance of the earlier order.

#### ADDITIONAL REFERENCE SOURCES

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- Seitel, Nelson. Tax returns and the "privacy" myth. New York law journal, Oct. 7, 1974. p. 1.
- Privacy Protection Study Commission. Federal tax return confidentiality. Washington, June 6, 1976.
- U.S. Library of Congress. Congressional Research Service. Legislative history of tax return confidentiality: Section 6103 of the Internal Revenue Code of 1954 and its predecessors [by] Howard M. Zaritsky. [Washington] 1974. 235 p.  
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