112606

UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C.

FOR RELEASE ON DELIVERY
EXPECTED AT 9:30 a.m. EDT
FRIDAY, JUNE 20, 1980

STATEMENT OF

WILLIAM J. ANDERSON, DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE

INTERNAL REVENUE SERVICE

SENATE COMMITTEE ON FINANCE

ON PROPOSED LEGISLATIVE CHANGES TO ~~THE~~

DISCLOSURE AND ADMINISTRATIVE SUMMONS

PROVISIONS OF ~~THE~~ INTERNAL REVENUE CODE

Mr. Chairman and Members of the Subcommittee:

Our testimony today deals with four legislative proposals--Senate bills 2402, 2403, 2404, and 2405--currently under consideration by the Subcommittee. The bills, if enacted, would substantially revise the disclosure and administrative summons provisions of the Internal Revenue Code.

At the request of the Chairman of the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, we analyzed the Senate bills in detail and issued a report (GGD-80-76) on June 17, 1980.

With your permission, we would like to submit our report for the record and highlight our major points.

Our analysis of the proposed legislative changes to the disclosure and summons provisions of the 1976 Tax Reform Act is based on past audit work aimed at assessing their effects on Federal law enforcement efforts. In March 1979, we issued a report to the Joint Committee on Taxation entitled "Disclosure and Summons Provisions of 1976 Tax Reform Act--Privacy Gains With Unknown Law Enforcement Effects" (GGD-78-110). In that report, we pointed out that the disclosure provisions had afforded taxpayers increased privacy over information they provide the Internal Revenue Service (IRS), but had adversely impacted on IRS' ability to coordinate with other members of the law enforcement community. We also pointed out that although the summons provisions had afforded taxpayers additional rights, they possibly tended to benefit those engaged in illegal activities. Again, with your permission, we would like to submit our earlier report for the record.

In December 1979, we testified before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, on IRS' efforts to combat narcotics traffickers. We identified the disclosure/summons provisions as factors limiting IRS' involvement. We stated that changes were

needed to the disclosure provisions, particularly with respect to IRS' authority to initiate disclosure of information about non-tax crimes. We also recommended that the summons provisions be revised by adopting procedures similar to those contained in the Right to Financial Privacy Act of 1978.

This past April, we testified before the Senate Appropriations Subcommittee on Treasury, Postal Service, and General Government on changes needed to strengthen Federal efforts to combat narcotics traffickers. We proposed various administrative actions that IRS could take to expedite authorized disclosures of tax information to other agencies. However, we reemphasized the need for legislative changes to the disclosure and summons provisions of the 1976 Tax Reform Act.

Although we support the need for revisions to the disclosure and summons provisions, we have maintained that such revisions alone would not resolve the problems Federal law enforcement agencies encounter in investigating illegal activities, such as narcotics trafficking, white collar crime, and other organized criminal activities. Rather, such legislative revisions would simply enhance the Federal Government's ability to deal with these problems.

We have also maintained that, in revising the disclosure and summons provisions, it is essential to maintain a proper

balance between legitimate privacy concerns and equally legitimate law enforcement information needs. In this regard, our past work in the disclosure/summons areas, as well as our analysis of the proposed Senate bills, has been guided by two basic principles. First, IRS is not primarily a criminal law enforcement agency. Rather, its primary mission is to collect taxes and to encourage and achieve the highest possible degree of voluntary compliance with the tax laws. Second, taxpayers who supply information to IRS have a basic right to privacy with respect to that information. Such information should be subject to disclosure for non-tax purposes only when society has a compelling interest which outweighs individual privacy concerns.

I would now like to discuss the four Senate bills which seek to strike a better balance than presently exists between privacy concerns and law enforcement information needs. We support the overall thrust of the bills. However, S. 2402 could be modified to authorize a more effective disclosure mechanism and provide more balance. Appendix II of our report contains a detailed discussion of all our proposed modifications together with suggested statutory language where appropriate. I will now summarize our major suggested modifications.

SUGGESTED MODIFICATIONS TO
SENATE BILL 2402

Our first modification centers on changes S. 2402 would make to categories of tax information. Present law defines three categories of tax information--a "return," "return information," and "taxpayer return information." These categories have proven confusing and need to be simplified. S. 2402 would accomplish that objective by dividing tax information into two mutually exclusive categories--a "return" and "non-return information."

Although we support the concept of simplified tax information categories, S. 2402's definition of a "return" seems too narrow in that certain kinds of tax information could receive less protection than under present law. In our view, any information taxpayers supply IRS about their returns ought to be included within S. 2402's "return" category and should be afforded the protection that category warrants. (Subsequent references to the term "return" in my statement pertain to our proposed definition.)

Second, S. 2402 would expand the definition of "taxpayer identity information" to include any information which reveals whether a taxpayer filed a tax return for any given year. We support the intent of this provision--to enable Justice attorneys to determine that a return exists before seeking court-ordered access. However, we do not believe that IRS ought to be able to disclose "any information" to

achieve that goal. In our view, S. 2402 could achieve its intent by dropping the reference to "any information" and defining taxpayer identity to include the taxpayer's name, address, and identifying number, and a statement as to whether protected information relating to the taxpayer exists for any particular tax year.

Third, S. 2402 would vest the authority to seek access to tax information within a defined category of "Attorney[s] for the Government," all within the Justice Department. Under S. 2402, unlike present law, other Federal investigative agency heads could no longer independently request tax information.

We agree with the thrust of this proposal. Restricting this authority to Justice attorneys would enhance the coordination between IRS and Justice that is essential to efficient Federal law enforcement. Also, giving Justice attorneys sole authority to request tax information could better insure that such requests meet applicable statutory requirements.

To achieve a better balance between privacy and law enforcement concerns, however, we would limit the authority to request tax information to fewer Justice attorneys. These are the Attorney General, the Deputy Attorney General, the Assistant Attorneys General, and, when designated on an individual basis by the Attorney General, U.S. attorneys and attorneys in charge of Organized Crime Strike Forces.

Fourth, S, 2402 would require IRS to justify to a court its decision to deny Justice access to tax information when such access would, in IRS' view, identify a confidential informant or impair a tax investigation. Justice then would be able to contest IRS' decision in court. Present law authorizes IRS to make such determinations without court review. This procedure has provoked little controversy since it went into effect on January 1, 1977, because the two agencies have clearly demonstrated the ability to negotiate mutually agreeable solutions to access request problems. Thus, while we do not object to court review of IRS determinations, in this instance it seems unnecessary.

Fifth, present law authorizes IRS to disclose information concerning non-tax crimes it obtains from third parties. S. 2402 would legally obligate, rather than authorize, IRS to disclose third-party information, as well as certain information provided by the taxpayer, to other Federal law enforcement agencies. If interpreted as requiring IRS to regularly search its files for evidence of non-tax crimes, this provision could cause IRS to become deeply involved in intelligence gathering to the detriment of its basic responsibilities. The scope of IRS' responsibilities under this provision thus needs clarification.

On a related matter, present law does not authorize IRS to unilaterally disclose information concerning non-tax crimes obtained from a taxpayer. S. 2402 would not fully

resolve this problem. Therefore, we suggest that Congress authorize IRS to apply for an ex parte court order to disclose such protected information.

Sixth, present law provides no specific authorization for disclosures under "exigent circumstances." S. 2402 seeks to resolve this problem by requiring IRS to disclose to other Federal agencies, without a court order, necessary information concerning a threat to persons, property, or national security. We support the intent of this provision. As presently drafted, however, it seems to us to be unnecessarily broad in scope.

The exigent circumstances provision of S. 2402 could be more narrowly drawn by keying it to IRS' inability to obtain a court order, as we suggested earlier, in sufficient time to prevent harm to persons, property, or national security.

SENATE BILLS 2403, 2404, AND 2405

I would now like to briefly discuss Senate bills 2403, 2404, and 2405.

Under existing law, a taxpayer can prevent third-party recordkeepers from complying with an IRS summons simply by serving notice on them not to comply. The Government then must bring a court action to enforce the summons. The taxpayer can, but is not required to, participate in the court action. S. 2403 would require that a taxpayer file a motion to quash the summons in the local district court. Thus, a

taxpayer no longer would be able to delay an IRS investigation simply by serving a notice on the third-party recordkeeper.

The procedure contemplated under S. 2403, which already is contained in the Right to Financial Privacy Act, is reasonable. It also coincides with a recommendation we made in our March 1979 report and in recent testimony.

Senate bills 2404 and 2405 would amend existing provisions of the Internal Revenue Code which provide criminal and civil penalties for unauthorized disclosures. S. 2404 provides Federal employees an affirmative defense against criminal prosecution for disclosures made erroneously, but in good faith. S. 2405 would hold the Government, rather than the affected employee, liable for civil damages for similar erroneous disclosures.

- - - - - -

In summary, we support the overall thrust of the four Senate bills. Enactment of S. 2402, with the modifications discussed, would provide law enforcement officials with needed access to tax information while protecting individuals' privacy rights. Senate bills 2403, 2404, and 2405, as presently drafted, would effect desirable changes to the summons and disclosure penalty provisions of the Internal Revenue Code.

However, I would like to point out that although the Senate bills and our report address the diclosure and summons

provisions' effects on criminal law enforcement efforts, neither addresses a second important issue--restrictions on the use of tax data for exclusively civil and administrative purposes. The Congress may want to address this issue in considering amendments to the Tax Reform Act.

This concludes my prepared statement. We would be pleased to respond to any questions.