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UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF

ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES,

Before the

SUBCOMMITTEE ON COMMERCE, CONSUMER AND MONETARY AFFAIRS
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

H1501

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity of appearing before you today to discuss the problems we have in obtaining access to the records of the Internal Revenue Service for the purpose of conducting independent reviews of IRS' operations. 4

The longstanding refusal by the Internal Revenue Service to permit the General Accounting Office to review administration of the Internal Revenue laws has been the subject of discussion and correspondence between our Office and IRS for a number of years. It has also been the subject of hearings before the Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations in 1972 and 1973.

The Internal Revenue Service has consistently interpreted the Internal Revenue Code as prohibiting the Commissioner of Internal Revenue from making any documents or records on the administration of the Internal Revenue Code available to GAO, and the Service questions the authority of GAO to make management reviews of IRS. GAO on the other hand believes that the sections of the Internal Revenue Code relied on by the Internal Revenue Service do not

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preclude the Service from making records available to GAO for audit purposes and that GAO does have authority to make management audits of IRS.

Under 26 U.S.C. 6103, tax returns are open to inspection only on order of the President and under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President. Existing regulations applicable to the General Accounting Office provide that the inspection of a return "in connection with some matter officially before" the head of an establishment of the Federal Government may be permitted in the discretion of the Secretary or Commissioner upon written application of the head of the establishment.

It is the position of IRS that no matter involving the administration of the Internal Revenue laws, as distinguished from general housekeeping details and individual tax information related to an audit or investigation of activities of another department, can be "officially before" the General Accounting Office because:

1. The administration and enforcement of tax laws have been placed by law in the IRS and, citing 26 U.S.C. 6406, the findings of fact and the decisions of the Secretary or his delegate on the merits of any claim presented under the Internal Revenue laws or interest on credits or refunds shall not be subject to review by any other administrative or accounting officer, employee or agent of the Government;
2. The Congress, citing 26 U.S.C. 8022, has given to the Joint Committee on Internal Revenue Taxation rather than the General Accounting Office the supervisory review of the administration of the revenue laws; and,
3. The General Accounting Office does not have authority to analyze management discretion in the collection of revenue.

We agree that under 26 U.S.C. 6406, we have no authority to review individual tax matters for the purpose of substituting our judgment for that of IRS.

In conducting audits of IRS we would not be concerned with the settlement of individual tax matters. Our authority to audit, as distinguished from our authority to settle claims and accounts, is clearly set forth in the law. Section 312(a) of the Budget and Accounting Act, 1921, provides that the Comptroller General shall investigate all matters relating to the receipt, disbursement, and application of public funds, and that he shall make recommendations to the Congress looking to greater economy or efficiency in public expenditures. Section 117a of the Budget and Accounting Procedures Act of 1950 reaffirms this authority with the added authority for the Comptroller General to determine the principles and procedures to be used in conducting such audits.

I should point out that the language of section 117(a) provides that "except as otherwise specifically provided by law" the financial transactions of the agencies shall be audited by GAO in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General. The only specific exception provided by law which applies to IRS, 26 U.S.C. 6406, is a narrow one which makes the findings of fact and decisions on claims under revenue laws exempt from GAO review.

We audit and report to Congress on many Government activities, notwithstanding the fact that final settlement authority is lodged with the agency being audited. Examples include certain activities of the Veterans Administration, the Department of Health, Education, and Welfare, the Railroad Retirement Board, and the Government corporations. The primary purpose of auditing by GAO is to provide independent and objective evaluations of how well agencies are carrying out their responsibilities, to make recommendations for improvements if needed, and to provide other information for the Congress to use in carrying out its legislative and oversight responsibilities.

In performing an audit of IRS, we would not be concerned with the identity of individual taxpayers, nor, as stated above, would we impose our judgment upon that of IRS in individual tax cases. We would examine individual transactions on a sample basis and only for the purpose of evaluating the effectiveness of IRS' operations and activities.

The argument is made by IRS that the Congress has given the Joint Committee on Internal Revenue Taxation rather than GAO the supervisory review of the administration of the revenue laws. The Joint Committee was established by the Revenue Act of 1926, 26 U.S.C. 8001-8023, and its statutory functions include the investigation of the administration of taxes by IRS and the investigation of measures and methods looking forward toward simplification of the tax law. We see no basis for the argument that the establishment of the Joint Committee preempted the field in the review of IRS. Certainly the law does not specifically indicate such preemption and parenthetically it has never been argued that the legislative oversight of the departments by the standing committees of the Congress precludes GAO review of the activities of such departments.

It is also argued that GAO does not have the authority to analyze the exercise of management discretion in the collection of revenue, based on premise that when enacted section 206 of the Legislative Reorganization Act of 1946, 31 U.S.C. 60, provided for a GAO "expenditure analysis" rather than an "administration management analysis" that was provided for in the Senate-passed version of the bill. It is clear that the language enacted was designed to broaden GAO review and it does not in any manner preclude GAO audit of IRS. In fact section 312(a) of the Budget and Accounting Act of 1921, mentioned earlier, contemplates management type audits when it speaks of application of public funds, and economy or efficiency of public expenditures. The legislative

history of the 1921 Act clearly supports this interpretation.

In addition section 204(a) of the Legislative Reorganization Act of 1970, as amended by the Congressional Budget and Impoundment Control Act of 1974, provides that the Comptroller General shall review and evaluate the results of Government programs carried on under existing law. Without access to necessary records and a recognition by IRS of our right to make management-type audits GAO cannot review and evaluate the IRS administration of operations involving billions of dollars in annual revenue collections (about \$268.9 billion in fiscal year 1974). Such reviews we believe would assist the various committees of the Congress--including the Government Operations Committee--in exercising their oversight responsibilities and would be a deterrent to improper administrative practices within IRS. I should make it clear that tax administration activities, as interpreted by IRS, encompass all IRS activities except housekeeping activities such as payrolls, travel and procurement.

The importance of independent reviews of IRS' operations has been emphasized by recent public disclosures as well as by the reports of complaints raised by taxpayers and taxpayer advocates claiming improper procedures by IRS. These disclosures and complaints have suggested that there may be weaknesses in the administration by IRS of the tax laws. Independent reviews of IRS' operations by GAO would serve as a means of ascertaining whether alleged abuses and weaknesses do exist and of identifying other problems concerning the administration of the tax laws.

During all the years of this impasse between GAO and IRS, there have not been, to my knowledge, any questions raised by IRS as to the prospects of unlawful

disclosure of tax data if GAO employees were granted access. In fact, it should be noted that existing sanctions in the Internal Revenue Code relative to the unauthorized disclosure of information from income tax returns apply to GAO employees as well as to IRS employees. The Internal Revenue Code provides that:

"*** any person committing an offense against the foregoing provision [unauthorized disclosure of information from tax returns] shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment."

In the overall consideration of access to records at IRS we should note that at the present time, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Joint Committee on Internal Revenue Taxation have authority to obtain tax data and inspect returns either directly or through designated agents. In fact, we are presently making a number of reviews at the request of, and as agents of, the Joint Committee on Internal Revenue Taxation. In carrying out this work we have had the complete cooperation of IRS. In addition, as Secretary Simon mentioned in his testimony before your Committee on May 14, we are presently working with IRS on efforts to design a new ADP system for tax administration. However, this latter work does not involve access to individual tax returns.

While our arrangement with the Joint Committee is working satisfactorily, we do not regard it as a substitute for independent audits by GAO. Unlike our self-initiated work, the areas to be audited and the reporting of results are controlled because under the guidelines the Joint Committee makes the final decision as to the areas to be reviewed and controls the release of the reports made by us. Consequently, there is no assurance that we will always be able to address what we

believe to be the most important problem areas or to have our findings reported to Congress as a whole. And, of course, our ability to respond fully and directly to specific requests from other Congressional committees remains impaired.

For example, in June 1971, the Chairman of the Legal and Monetary Affairs Subcommittee of this Committee requested GAO to review IRS' effectiveness in collecting the Federal highway use tax. When we attempted to comply with this request, an IRS official advised us that the opinion of the Chief Counsel held that IRS was barred from allowing GAO to review any documents that pertained to the administration of the Internal Revenue laws. He advised us also that the Chief Counsel's opinion held that the Internal Revenue Code limited the right to review IRS' administration of the tax laws to the Joint Committee on Internal Revenue Taxation.

IRS did agree, however, to make available to GAO summary data relating to its highway use tax compliance studies and programs. Our review at IRS was therefore limited to an analysis of the summary data provided and to discussions with officials responsible for administering the law pertaining to the highway use tax.

The summary data provided included information on a 1969 study conducted by IRS which indicated a highway use tax dollar delinquency rate ranging from about 3.7 percent to 6.1 percent and a dollar delinquency associated with these percentages ranging from about \$3.8 million to \$6.4 million. The summary data

also included information that limited compliance work by IRS district offices in fiscal years 1970 and 1971 resulted in the collection of taxes totaling \$1.1 million and \$1.5 million, respectively.

While our report to the subcommittee in May 1972 did not contain a specific recommendation, we were able to conclude that on a national basis significant amounts of highway use taxes were not being collected and an improved method of enforcing collection of the tax was warranted. In response to our report, IRS conducted a nationwide highway use tax collection program using State truck registration data. As a result during July 1972 through September 1973, IRS secured almost 200,000 delinquent highway use tax returns and assessed an additional \$40.7 million in taxes of which an estimated \$17.9 million will be recurring annually.

Another example of our inability to perform independent reviews in response to requests from congressional committees involved a March 1973 request from the Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Committee on Merchant Marine and Fisheries. The Chairman asked that we perform an audit of the collection of excise taxes on fishing rods, reels, and so forth. He was particularly interested in the manner in which these excise taxes were reported and wanted us to verify collections for fiscal years 1971 and 1972. In order to emphasize the importance of the Chairman's request for independent verification of the collections, it should be noted that the taxes are earmarked for automatic appropriation to a special fund used for wildlife restoration projects over which the Subcommittee has oversight responsibility.

In a letter dated April 9, 1973, to the Commissioner of Internal Revenue, we requested access to the quarterly Federal excise tax returns and other

documents and records relating to the collection, accounting and reporting on the excise taxes in question.

The Acting Commissioner of IRS responded by letter dated May 18, 1973, and stated that it is the position of IRS that the General Accounting Office is not authorized to independently conduct an audit of the type requested. He also stated that the rules and regulations approved by the President do not authorize IRS to permit general inspection of these returns and related documents and records by the House Committee on Merchant Marine and Fisheries. Accordingly, we notified the Chairman that we were not able to comply with his request.

I would also like to point out that the problem of access to tax administration documents and records applies not only to IRS but also to the Bureau of Alcohol, Tobacco and Firearms (ATF). The Bureau was established effective July 1, 1972, pursuant to a Treasury Department Order which transferred the functions, powers, and duties arising under laws relating to alcohol, tobacco, firearms, and explosives from IRS to the Bureau.

On August 24, 1972, the Director ATF notified his regional directors that ATF's position in regard to disclosure of official matters for review and audit by GAO was under study and formulation. He stated that, until a final determination was made, ATF would adopt the position of IRS that the administration and enforcement of the Revenue Code, in all phases, is not subject to review or audit by GAO.

The Director of ATF by letter dated April 10, 1973, advised us that his August 24, 1972, memorandum accurately reflects ATF's official position with respect to disclosure of official matters to GAO. He stated that the position had been reviewed and concurred in by the General Counsel of the

Treasury. As a result of this determination GAO does not have access to ATF's records for the purpose of performing independent reviews relating to the administration of laws included in the Internal Revenue Code on distilled spirits, tobacco products, and certain firearms.

In summary, Mr. Chairman, we believe that GAO has the right under existing law to review operations of IRS and can be allowed access to IRS' records on tax administration for the purpose of performing independent reviews under our own initiative or at the request of congressional committees or subcommittees. Unfortunately, IRS has not agreed with this position. We believe that GAO's work over the years has produced significant improvements in Government operations and significant savings to the taxpayer--\$562 million in collections and other measurable savings last year. It does not seem reasonable to us that our work to improve the effectiveness of Government activities should be restricted by a limitation on our ability to review the administration of Internal Revenue laws by the IRS. As mentioned in one of our examples, even with only fragmentary information on IRS activities, we were able to contribute to a substantial increase in tax collections.

We will be glad to respond to any questions the Subcommittee may have.

Attachments

1. Excerpts from pertinent laws
2. Statutory Provisions Underlying
Position of IRS on GAO Access to Records

BUDGET AND ACCOUNTING ACT, 1921
Public Law 13, 67th Congress

Investigations and Reports by Comptroller General

SEC. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement and application of public funds as he may think advisable. In such regular report, or in special reports at any time when Congress is in session, he shall make recommendations looking to greater economy or efficiency in public expenditures.

(b) He shall make such investigations and reports as shall be ordered by either House of Congress or by any committees of either House having jurisdiction over revenue, appropriations, or expenditures. The Comptroller General shall also, at the request of any such committee, direct assistants from his office to furnish the committee such aid and information as it may request.

(c) The Comptroller General shall specially report to Congress every expenditure or contract made by any department or establishment in any year in violation of law.

(d) He shall submit to Congress reports upon the adequacy and effectiveness of the administrative examination of accounts and claims in the respective departments and establishments and upon the adequacy and effectiveness of departmental inspection of the offices and accounts of fiscal officers.

(e) He shall furnish such information relating to expenditures and accounting to the Bureau of the Budget as it may request from time to time.

Information Furnished to Comptroller General By
Departments and Establishments

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them: and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purposes of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes.

LEGISLATIVE REORGANIZATION ACT OF 1946
Public Law 601, 79th Congress

Expenditure Analyses By Comptroller General

SEC. 206. The Comptroller General is authorized and directed to make an expenditure analysis of each agency in the executive branch of the Government (including Government corporations) which, in the opinion of the Comptroller General, will enable Congress to determine whether public funds have been economically and efficiently administered and expended. Reports on such analyses shall be submitted by the Comptroller General, from time to time, to the Committees on Government Operations, to the Appropriations Committees, and to the legislative committees having jurisdiction over legislation relating to the operations of the respective agencies, of the two Houses.

BUDGET AND ACCOUNTING PROCEDURES ACT of 1950
Public Law 784, 81st Congress

Accounting and Auditing Policy

SEC. 111(d) The auditing for the Government, conducted by the Comptroller General of the United States as an agent of the Congress be directed at determining the extent to which accounting and related financial reporting fulfill the purposes specified, financial transactions have been consummated in accordance with laws, regulations or other legal requirements, and adequate internal financial control over operations is exercised, and afford an effective basis for the settlement of accounts of accountable officers.

Duty of General Accounting Office--Rules and Regulations
of Comptroller General; Principles and Practices To Be Considered

SEC. 117. (a) Except as otherwise specifically provided by law, the financial transactions of each executive, legislative, and judicial agency, including but not limited to the accounts of accountable officers, shall be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of auditing procedures to be followed and the extent of examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of accounting organizations and systems, internal audit and control, and related administrative practices of the respective agencies.

LEGISLATIVE REORGANIZATION ACT OF 1970
Public Law 510, 91st Congress, as amended by the
Congressional Budget and Impoundment Control Act of 1974,
Public Law 93-344

SEC. 204. (a) The Comptroller General shall review and analyze the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.

STATUTORY PROVISIONS UNDERLYING POSITION OF IRS ON GAO ACCESS TO
RECORDS

§6406. Prohibition of administrative review of decisions

In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

§8022. Duties

It shall be the duty of the Joint Committee--

(1) Investigation.--

(A) Operation and effects of law.--To investigate the operation and effects of the Federal system of internal revenue taxes;

(B) Administration.--To investigate the administration of such taxes by the Internal Revenue Service or any executive department, establishment, or agency charged with their administration; and

(C) Other investigations.--To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary.

(2) Simplification of law.--

(A) Investigation of methods.--To investigate measures and methods for the simplification of such taxes, particularly the income tax; and

(B) Publication of proposals.--To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes.

(3) Reports.--To report, from time to time, to the Committee on Finance and the Committee on Ways and Means, and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable.

(4) Cross reference.--

For duties of the Joint Committee relating to refunds of income and estate taxes, see section 6405. (Emphasis added)