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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

HOUSE COMMITTEE ON WAYS AND MEANS

ON WHETHER THE EXISTING TAX DISCLOSURE

STATUTE STRIKES A PROPER BALANCE BETWEEN

PRIVACY RIGHTS AND LAW ENFORCEMENT

INFORMATION NEEDS

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the issue of whether the existing tax disclosure statute strikes a proper balance between privacy rights and law enforcement information needs. Our testimony is based on extensive work we have done at various times over the last few years on the effects of disclosure restrictions on Federal law enforcement activities. This includes work we recently completed on behalf of this Subcommittee to evaluate the operation and effects of the disclosure statute. A detailed discussion of our objectives, scope, and methodology is included in appendix I.

Since its enactment, the disclosure section of the 1976 Tax Reform Act has generated much concern and controversy because it

has affected coordination between IRS and law enforcement agencies. We recognize that changes to the disclosure statute will not suffice to solve all of the problems Federal agencies encounter in seeking to bring criminals, such as narcotics traffickers, to justice. However, changes to the statute would constitute an important step toward resolving coordination problems. We also recognize that, in considering changes to the law, it is essential to strike a proper balance between legitimate privacy concerns and equally legitimate law enforcement information needs.

In this regard, our work in the disclosure area has been guided by two basic principles. First, the Internal Revenue Service (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.

With these principles in mind, I would now like to discuss the (1) purpose of section 6103 of the Internal Revenue Code, the tax disclosure statute, (2) effects of section 6103 on IRS and other law enforcement agencies, and (3) changes that can be made to the existing statute to help resolve coordination problems while still protecting taxpayers' privacy rights.

CONGRESS ENACTED THE DISCLOSURE STATUTE TO SAFEGUARD TAXPAYERS' PRIVACY RIGHTS AND TO PREVENT ABUSES

IRS probably has more information about more people than any other government agency in this country. Consequently, agencies needing information about people have sought to obtain it from IRS. Before the enactment of the Tax Reform Act of 1976, procedures for disclosing tax information had developed in a piecemeal manner. Various statutes, regulations, and executive orders were promulgated without sufficient consideration of a comprehensive approach to the disclosure of such information.

Concern over the uses being made of tax information manifested itself in 1973 after the President issued Executive Order 11697, authorizing the Department of Agriculture to inspect the tax returns of all farmers "for statistical purposes." Following the issuance of that order, two subcommittees of the House of Representatives held hearings on the Department of Agriculture's need for such access to tax data. During those hearings, strong sentiments against the order were voiced and Department of Justice officials expressed concern that the order would be a prototype for future orders which would open more tax returns to inspection by other agencies. Responding to the adverse sentiment expressed in the two hearings, the President revoked the order on March 21, 1974.

Concern over tax return confidentiality surfaced again in 1974 during hearings by the Senate Select Committee on Presidential Campaign Activities (Watergate Committee) and the House Judiciary Committee investigating the possible impeachment of

the President. The Senate Committee's hearings revealed that the White House had sought and obtained tax information from IRS, including political information concerning individuals included on the so-called "enemies list." One of the Articles of Impeachment proposed by the House Committee alleged that the President had endeavored to obtain from IRS, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law.

Congressional interest in tax return confidentiality was further underscored when the Congress enacted the Privacy Act of 1974. Among other things, that act established an independent Privacy Protection Study Commission and required it to report to the President and the Congress on whether IRS should be prohibited from transferring individually identifiable data to other Federal agencies and to agencies of State governments.

After conducting public hearings and reviewing policies, procedures, and practices regarding Federal tax return confidentiality, the Commission issued a report to the President and to the Congress in June 1976 with the following recommendations.

--IRS should be prohibited from disclosing individually identifiable data unless specifically authorized by the concerned individual or by Federal statute.

--Congress should specify by statute the categories of tax information IRS can disclose and the purposes for which disclosure can be made.

--IRS should be prohibited from disclosing any more individually identifiable taxpayer information than is necessary to accomplish the purpose for which the disclosure has been authorized.

--Recipients of tax information should be prohibited from redisclosing it without the concerned taxpayer's consent or specific statutory authorization.

In developing its recommendations, the Commission sought to take into account the relationship between tax return confidentiality and voluntary compliance. While noting that no one had sought to measure that relationship, the Commission stated its belief that the effectiveness of our Nation's tax system depends on the confidentiality of tax returns and related information. It further stated the belief that widespread use of tax information for non-tax purposes could not help but diminish taxpayers' desire to cooperate with IRS.

The Congress considered the Commission's recommendations, extensively debated the issues, and with the record of alleged and actual abuses of tax information still fresh in mind, enacted the Tax Reform Act of 1976. The disclosure section of that act, which became effective on January 1, 1977, set forth all of the permissible uses of tax information and specifically prohibited all other uses.

THE DISCLOSURE STATUTE HAS REDUCED COORDINATION BETWEEN IRS AND OTHER LAW ENFORCEMENT AGENCIES AND NEEDS TO BE AMENDED

In enacting the disclosure statute, the Congress clearly signaled its intent that IRS should concern itself primarily with its basic mission--encouraging and achieving the highest possible degree of voluntary compliance with the tax laws. On the other hand, the Congress did not intend to put a halt to appropriate use of tax information in non-tax criminal investigations and

prosecutions. Rather, it sought to place tight controls on uses of that information in an effort to prevent infringements on taxpayers' privacy rights. Unfortunately, however, the disclosure statute has adversely affected cooperation and coordination between IRS and other law enforcement agencies in four major ways. Specifically, since the statute's enactment,

--IRS' ability to coordinate effectively with Justice Department attorneys and other law enforcement agencies has been reduced;

--Justice attorneys and other law enforcment officials have been discouraged from seeking tax information to the point that little use has been made of such information for non-tax criminal investigative and prosecutive purposes;

--IRS has been precluded from informing law enforcement officials about certain information it possesses concerning non-tax crimes, even under emergency circumstances; and

--Justice attorneys have been prevented from using certain tax information, obtained during criminal investigations, in related non-tax civil proceedings.

I would now like to discuss each of these four problems in some detail.

IRS cannot effectively coordinate its investigations with the Justice Department and other law enforcement agencies

Coordination between IRS and the Department of Justice is essential to efficient Federal law enforcement. U.S. attorneys, for example, are responsible for prosecuting individuals charged with Federal violations, including criminal tax violations. To effectively carry out their responsibilities, U.S. attorneys have to be aware of the investigative efforts of numerous agencies. This enables the attorneys to coordinate Federal law enforcement

efforts, help prevent duplicative investigations, provide investigative guidance, and otherwise assist Federal law enforcement officials in developing successful cases. Likewise, Strike Force attorneys are responsible for coordinating the efforts of various Federal law enforcement agencies against organized crime.

Under the disclosure statute, however, U.S. attorneys and Strike Force attorneys often cannot coordinate IRS' criminal tax investigations with the non-tax investigations conducted by other Federal agencies. This is because the disclosure statute, as interpreted by IRS, generally prohibits the Service from discussing the specifics of contemplated or ongoing investigations with Justice attorneys. Such discussions cannot take place until the cases are referred to Justice for prosecution. Thus, because Justice attorneys often do not know the identity of taxpayers under investigation by IRS for possible criminal violations of the tax laws, they cannot fully carry out their prescribed duties.

Documenting the frequency and severity of coordination problems is a difficult, and sometimes impossible, task. One would very much like to know how many investigations and prosecutions were foregone for lack of tax information. But, such empirical data cannot be gathered because investigators and prosecutors cannot specify what would have resulted from work they never initiated or never carried to a conclusion. Even so, there is sufficient information available in the form of specific examples, limited statistics, and statements from IRS and law enforcement officials to confirm that coordination problems exist.

IRS, for example, has been able to provide some statistics and specific case examples where inability to coordinate with Justice attorneys has resulted in unsuccessful criminal tax cases. In this regard, Justice attorneys have prosecuted individuals on non-tax criminal charges without knowing about ongoing tax investigations of the same individuals. In such instances, the attorneys lose the added advantage that the tax violations might have brought to their cases. In addition, prosecutions on non-tax charges can render IRS investigations meaningless because Justice's "dual" and "successive" prosecution policies generally require that all offenses arising from a single transaction, such as narcotics trafficking and evading taxes on the ensuing profits, be tried together. Those policies recognize the difficulties a Justice attorney would face in seeking to secure a second conviction on the basis of essentially the same set of facts. This is not to say, however, that Justice would not consider the feasibility of bringing a second prosecution on separate charges in cases where the initial prosecution results in an acquittal.

In fiscal years 1976 through 1981, IRS discontinued 507 criminal tax investigations because the investigative targets were being prosecuted by another agency or had been incarcerated. Another 185 completed investigations did not result in prosecutions on criminal tax charges for the same reasons. If IRS had the authority to discuss specific investigative targets with Justice attorneys, some of these cases could have resulted in prosecutions on tax charges in lieu of other charges, or multiple-count prosecutions composed of both tax and non-tax criminal

charges. In addition, if Justice attorneys deemed the non-tax charges more viable, IRS could have saved resources by discontinuing some cases at an earlier date. The following examples illustrate the problem.

--An individual who had failed to report at least $150,000 during a 2-year period was sentenced to 1 year in prison on a narcotics misdemeanor. IRS attorneys did not forward the criminal tax case to Justice for review because the individual already had been incarcerated. If IRS had been able to discuss its ongoing investigation with Justice, the affected attorney could have considered bringing a prosecution on tax and/or narcotics charges. Instead, IRS' criminal case was rendered meaningless.

--In another case, the Department of Justice declined to prosecute a Drug Enforcement Administration class I narcotics violator on criminal tax charges because he pled guilty to a felony indictment count carrying a maximum sentence of 5 years in prison. Subsequently, the individual was sentenced to 5 years probation. IRS' investigation thus proved useless from a criminal tax standpoint. If IRS had been able to discuss this case with Justice during its early investigative stages, the Service would have quickly determined that its case had little prosecutive potential. Accordingly, the criminal tax investigation could have been immediately discontinued, thus saving IRS resources.

The disclosure statute also appears to be responsible in part for a decline in IRS' participation in strike force cases and a recent increase in reliance on the grand jury investigative process. At the end of fiscal year 1976, IRS had 616 strike force cases in inventory. The disclosure statute was signed into law in October 1976 and became effective on January 1, 1977. According to Justice and IRS officials, their resulting inability to discuss potential targets and ongoing investigations resulted in a decline in IRS' participation in the program. By the end of fiscal year 1977, IRS' inventory of strike force cases had declined by 46 percent to 335 cases. Significantly, IRS' strike

force case inventory has never since approached pre-1977 levels. For example, at the end of fiscal year 1981, IRS had 316 active strike force cases.

Although IRS' inventory of strike force cases has declined, its involvement in grand jury cases has increased significantly. Soon after enactment of the disclosure statute, Justice attorneys apparently decided that the most effective way to coordinate with IRS special agents throughout an investigation was to get one or more IRS employees assigned as agents of a grand jury. As a grand jury agent, an IRS employee may develop tax information and discuss applicable cases with the responsible Justice attorney. Thus, problems with front-end and continuing coordination largely are resolved under this investigative approach.

Despite the utility of the grand jury investigative process as it relates to coordination and cooperation with IRS, Justice attorneys did not begin making extensive use of it until recently. This is because Justice attorneys had to contend with a time-consuming, multi-tiered IRS/Justice administrative review process in order to get approval for IRS participation in a grand jury investigation. This matter was explored in hearings before the Senate Subcommittee on Treasury, Postal Service, and General Government in April 1980.

In June 1980, IRS streamlined the grand jury approval process by eliminating some levels of review and placing time limits on others. Subsequently, its inventory of grand jury cases climbed by 62 percent, from 765 in September 1980 to 1,233 in August 1981. Of those 1,233 cases, 1,080, or 88 percent, were

directed at individuals who derive their income from illegal activities. Moreover, of the 316 strike force cases in IRS' inventory at the close of fiscal year 1981, 247, or 78 percent, were being carried out through the grand jury investigative process; few strike force investigations were being carried out under IRS' normal administrative processes. Although comparable statistics for prior years were unavailable, the Director of IRS' Criminal Investigation Division told us that relatively few cases were carried out under grand jury auspices in the past.

Thus, the disclosure statute may have inadvertently encouraged use of the grand jury investigative process--a process under which disclosure of certain information by witnesses is compulsory--and reduced reliance on the normal administrative process for investigations. This is not to say that the grand jury process is being abused. We have no way of knowing the extent to which disclosure problems enter into decisions to establish a grand jury because we do not have access to grand jury case files. Moreover, increased use of the grand jury process also is attributable to recent changes in IRS policies which encourage joint investigations with other agencies. Further, prosecutors seem to have become more sophisticated in recent years in terms of the types of crimes they investigate and the techniques they use in carrying out investigations. And, the grand jury process is a key investigative technique. Still, on the basis of limited discussions with IRS and Justice officials, it is apparent that disclosure restrictions also enter into the grand jury decision process in some fashion.

Finally, our discussions with IRS, the Drug Enforcement Administration (DEA), and U.S. Customs Service officials, both at headquarters and in the field, further illustrate some of the problems these agencies face in terms of coordinating their investigations. Customs officials stated that, with the exception of a few key projects, they generally do not seek to coordinate their investigations with IRS due to the disclosure statute. IRS and DEA officials cited various disclosure-related problems they have encountered in actively seeking to coordinate their investigative efforts. For example,

--DEA routinely provides IRS with names and background information on high level drug traffickers. If IRS decides to initiate a tax investigation of a DEA target, it cannot inform DEA because of the disclosure statute. However, IRS can legally seek further information about the specific individual from DEA. By doing so, IRS presumably alerts DEA to the existence of its investigation. DEA can then seek court-ordered disclosure of tax information on the individual or may file a written request for tax information. Through this "routine," DEA and IRS sometimes learn that the agencies are conducting concurrent investigations. However, there is no guarantee that DEA will pick up the "signal" in such instances; nor is there any guarantee that DEA will have sufficient information on which to base a court order or written request. Thus, current law does not insure effective coordination in every instance.

--IRS has at times detailed some special agents to work as consultants to DEA Central Tactical teams. The IRS agent's role under such conditions involves helping DEA analyze financial information. Because of the disclosure statute, however, the agent has no access to tax information.

--IRS special agents often are given access to DEA files for the purpose of looking for leads. If IRS follows up on any leads it identifies, the aforementioned "routine" may ensue and effective coordination may or may not result.

--In a few cities, IRS agents have been assigned to DEA offices for two purposes. First, they function as consultants to DEA but have no access to tax returns or tax information. Second, they can feed leads to IRS but cannot work the leads as IRS cases. Instead, other IRS agents, not assigned to DEA, work the leads but in doing so they cannot discuss the cases with the IRS agents working with DEA. Thus, there is no direct communication between DEA and the IRS investigator who has access to tax information.

Clearly, DEA and IRS have sought to establish coordination mechanisms to the extent feasible under existing law. These efforts were prompted in part by congressional oversight activities. Still, despite the agencies' efforts, problems persist. In the final analysis, the agencies cannot directly coordinate their activities. And, as previously discussed, Justice attorneys have been unable to fill the coordination gap for the two agencies due to disclosure restrictions.

In sum, the disclosure statute prevents IRS from efficiently and effectively coordinating its efforts with Justice attorneys and other law enforcement agencies. Clearly, if IRS is to become a full partner in Federal efforts to combat crime, legislative changes are needed.

Existing mechanisms for obtaining access to tax information are not used extensively

The second adverse effect of the disclosure law is that little use has been made of tax information for non-tax criminal investigative and prosecutive purposes.

In this regard, certain Federal agencies have a bonafide need for tax information in pursuing non-tax criminal investigations and prosecutions. The Congress recognized this need and

authorized two means through which Federal agencies, such as the Justice Department, could gain access to tax information. To obtain information supplied to IRS by a taxpayer, an agency head must obtain a court order. To obtain information supplied to IRS by third parties, an agency head must file a written request for the information with IRS.

Since January 1977, we have monitored the utility of these two access mechanisms. The Congress thought that U.S. attorneys and Strike Force attorneys would be the prime users of tax information for non-tax criminal purposes. From the outset, however, the attorneys perceived that it would be difficult to meet the criteria to obtain a court order and that the administrative process would be burdensome and time-consuming. As a result, many Justice attorneys decided that they would carry out their duties as well as they could without tax information.

When the disclosure law became effective, both IRS and Justice centralized their controls over the two authorized access mechanisms, requiring that requests for tax information be channeled through their respective headquarters offices. IRS' decision to centralize its controls stemmed from concern that the complexity of the law would cause confusion and result in criminal and civil court actions against employees for unauthorized disclosures. Justice, on the other hand, had no choice but to centralize its controls because the authority to request tax information is vested by law with only a few top-level agency officials.

Centralization of controls by IRS and Justice confirmed the perceptions of many Justice attorneys. To obtain a court order, the attorneys not only had to meet certain stiff legal tests but had to deal with a burdensome administrative process as well. The process required an attorney to get Justice headquarters approval for seeking a court order; to obtain the court's approval for the order; and to send the order, if obtained, to IRS headquarters. Then, the attorney had to wait while IRS (1) sent the order to its appropriate field office, (2) gathered the requested information in the field office, (3) reviewed the information gathered, and (4) transmitted the information to Justice. A similar, if only slightly less burdensome, process had to be followed to obtain third-party information from IRS.

As a result, requests for tax information declined precipitously. Justice reported, for example, that its attorneys had made 1,816 requests for tax information in 1975. In contrast, IRS statistics indicate that, on average, Justice attorneys made 274 requests annually during calendar years 1977 through 1980--the first 4 years the disclosure statute was in effect.

Then, in March 1980, the Department of Justice completed a survey of the views of Departmental personnel on the utility and workability of the access mechanisms. The survey results indicated that Justice attorneys considered the mechanisms too cumbersome and time-consuming to justify usage. Our discussions with Justice attorneys in March and April 1980 confirmed the results of the survey. We also determined, however, that the disclosure process could be streamlined under existing law.

Accordingly, in testimony before the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, in April 1980, we recommended that IRS decentralize its disclosure process. Such action seemed feasible because, by that time, IRS had given its employees disclosure training and had assigned one or more disclosure specialists to each IRS field office. IRS implemented our recommendation in June 1980.

Justice, in consultation with IRS, then prepared and issued supplemental disclosure guidance for use by U.S. attorneys and Strike Force attorneys. The guidance proved particularly valuable in that it formalized an advance notification process. Under that process, Justice attorneys alert IRS to the fact that they plan to seek a court order or obtain a written request for tax information from Justice headquarters. IRS then can immediately begin trying to locate the needed information, although the information cannot be supplied to Justice until IRS actually receives a validated order or request.

In response to this Subcommittee's request, we recently sought to determine whether the cited administrative changes had achieved the desired effects. We found that the disclosure process had in fact become more timely and less burdensome.

In this regard, we obtained information on all court orders and written requests filed with five IRS district offices--Boston, Dallas, Jacksonville, Los Angeles, and Manhattan--during June 1, 1980, through September 30, 1981. The Boston district had received 9 requests and processed them in an average of 47 calendar days. In Dallas, 3 requests were processed in an average of 33

days. Jacksonville needed 20 days on average to process 28 requests, while Los Angeles averaged 37 days in processing 15 requests. In Manhattan, 22 requests were processed in an average of 29 calendar days. In contrast, prior to decentralization, 4 IRS district offices we visited early in calendar year 1980--Jacksonville, Los Angeles, Manhattan, and Philadelphia--needed from 50 to 80 days, on average, to process court-ordered disclosures, and from 68 to 88 days, on average, to process written requests.

Justice headquarters officials informed us that, despite the aforementioned administrative efforts to streamline the disclosure processes under current law, attorneys still are not making as much use of the access mechanisms as they could. The officials cited two reasons for this. First, attorneys perceive that it is difficult to meet the criteria the law sets forth for approvals of court orders and written requests. Specifically, before obtaining a tax return, an attorney must demonstrate that it is "probative" and that the information cannot reasonably be obtained from another source. With respect to written requests, an attorney must specify why the third-party information is "material" to an investigation. These are perceived as "catch 22" situations. Second, the attorneys perceive both the court-ordered and written request disclosure processes to be time-consuming and overly burdensome.

Our discussions with U.S. attorneys in Boston, Dallas, Jacksonville, Los Angeles, and Manhattan supported the validity of the headquarters' officials statements. In general, the attorneys

informed us that, despite the administrative efforts made to streamline the processes, they still consider existing disclosure mechanisms to be time-consuming, burdensome, and otherwise unworkable. The attorneys stated that tax information can be of great value for investigative and prosecutive purposes in a variety of cases but that problems with existing access mechanisms prevent them from getting needed tax information in all but a few cases. The attorneys further stated that the disclosure statute has seriously impaired coordination between Justice and IRS.

For example, the U.S. attorney in Manhattan told us that his office's relationship with IRS is poor, primarily because of the cumbersome and time-consuming processes associated with the disclosure statute in Justice and IRS. In Boston, the U.S. attorney told us that coordination with IRS simply does not take place except through the grand jury investigative process. He further stated that his office generally seeks to develop cases without using IRS and does not pursue many cases which require tax information for successful prosecution.

Likewise, the U.S. attorney in Jacksonville stated that he has very little contact with IRS as a result of the disclosure restrictions. In Los Angeles, an assistant U.S. attorney, noted for his financial investigative expertise, told us that he has an excellent working relationship with IRS, primarily because he relies on the grand jury investigative process. He said he had long ago decided not to rely on the cumbersome, time-consuming access mechanisms authorized under the disclosure statute. The

U.S. attorney in Dallas told us that he has a good relationship with IRS despite the fact that it takes about a month to get tax information under existing procedures.

We also discussed these issues with Strike Force attorneys in Boston, Kansas City, Los Angeles, Miami, and New York. The attorneys consistently described existing access mechanisms as cumbersome, time-consuming, and otherwise unworkable. These attorneys indicated that they had made few or no requests for tax information, preferring instead to rely on the grand jury investigative process.

Besides problems with Justice attorneys' perceptions regarding the utility of existing access mechanisms, the utility of the mechanisms has been limited by misunderstandings and differences over legal interpretations. Perhaps the best examples of such problems can be found in debates and discussions over the meanings of section 6103 definitions of a "return," "return information," and "taxpayer return information." For example, agencies have filed written requests for tax information with IRS and subsequently been advised that the information they seek can be released only via court order. In this regard, only "return information" can be disclosed via written request. A "return" and/or "taxpayer return information" can be disclosed only via court order. In such instances, IRS is merely complying with the law. Unfortunately, under such circumstances, requesting agencies tend to perceive that getting information from IRS is a difficult task.

The complex definitions contained in current law constitute the underlying cause of many of the problems encountered by IRS

and other agencies. In fact, many of the extreme case examples of coordination problems, cited in various congressional hearings, stem from misunderstandings or differences over legal interpretations of the definitions. In one such instance, IRS classified the contents of a taxpayer's trash can as taxpayer return information and refused to turn over the information it had gathered without a court order. The Department of Justice did not agree with IRS' interpretation in this particular instance.

Despite all of these problems, some Justice attorneys have been successful in obtaining needed tax information from IRS under current procedures. For example, during calendar years 1977 through 1980, Justice attorneys sought and obtained 447 court-ordered disclosures--an average of about one approved order per U.S. attorney and Strike Force attorney per year. Similarly, the attorneys sought and obtained IRS approval of written requests 600 times during the same 4-year period--an average of about 1.3 such requests per attorney per year.

These statistics, however, are subject to varying interpretation. Proponents of current law, for example, could cite these statistics as evidence that existing access mechanisms would be viable but for the lack of a good faith effort on the part of Justice attorneys. On the other hand, proponents of revisions to current law could point out that the statistics measure only those cases which reached the courts and IRS, but ignore instances in which tax information was not sought when needed due to difficulties in meeting the criteria, excessive administrative burden, or lack of timeliness in disclosure processes.

In our view, each argument has merit. On the one hand, it seems clear that Justice attorneys could have obtained access to more tax information in past years had they sought to work more effectively within the constraints of current law. On the other hand, it is also clear that Justice and IRS have sought to facilitate administrative processes under current law and succeeded in some respects. Nevertheless, Justice attorneys still seem reluctant to seek access to tax information due to a variety of problems with current law.

In this regard, the five U.S. attorney offices we recently visited had sought tax information, via court order or written request, only 58 times during the 16-month period ending September 30, 1981. Significantly, this was the time period during which IRS' decentralized disclosure process was in effect and Justice attorneys were operating under the supplemental guidance afforded them by the Department. Thus, despite the administrative changes, the attorneys still perceived that it would be difficult to meet certain criteria and that existing processes are time-consuming, burdensome, and otherwise unworkable. Those are the reasons they cited for not seeking access to tax information in numerous other instances in which tax data could have been of value to them from an investigative or prosecutive standpoint.

Given all of the above, we see a need for several legislative changes, as well as an administrative action. Some relatively minor revisions to the law can make certain criteria more reasonable and improve timeliness. However, it will also be

necessary for Justice to further encourage its attorneys to work within the disclosure constraints which still will exist. The Attorney General can do so by issuing a directive on this matter to affected Department personnel and by subsequently monitoring Department compliance with his directive.

IRS cannot disclose certain information about non-tax crimes, even under emergency circumstances

A third adverse effect of the disclosure statute relates to IRS' authority to release information concerning non-tax crimes.

In conducting their daily activities, IRS employees sometimes obtain information indicating that a particular taxpayer has committed a crime outside IRS' jurisdiction. If such information is obtained by IRS from a third party, IRS can take the initiative in disclosing the information to the head of the appropriate Federal agency including the Attorney General. However, if that information is obtained from a taxpayer, his records, or his representative, IRS cannot legally alert the Attorney General or other Federal agency head regardless of the crime's seriousness. Furthermore, the disclosure statute generally prohibits IRS from revealing any evidence of non-tax violations to State and local authorities regardless of whether the information is obtained from the taxpayer or from a third party.

The following are examples of situations in which IRS was able to disclose information because it was obtained from a third party and involved a Federal crime.

--A special agent received a telephone call from an unidentified informant who alleged that a particular employee of

another Federal law enforcement agency was providing advance information on bookmaking enforcement operations to a criminal who might have been affected by such operations.

--While reviewing and discussing a third party's records as part of a criminal tax investigation, a special agent was informed by that individual that the taxpayer's ongoing trial for fraudulent loan practices would result in an acquittal because a "deal" had been made with the judge.

--During a criminal tax investigation, a witness told a special agent that the subject taxpayer had stated that a particular United States Customs agent would assist in smuggling drugs into the country.

In contrast, IRS was unable to notify Justice of the following situations because the information was obtained from the subject taxpayer, his return, or his representative.

--A taxpayer blatantly listed "narcotics" as his occupation on his tax return and, over a 2-year period, reported well over $200,000 in revenues from the "sale of controlled substances." Because the information was reported on a tax return, IRS could not refer the matter to the Justice Department.

--Books and records provided by a taxpayer to a revenue agent during an examination indicated that the taxpayer was involved in check kiting, with several million dollars of fictitious deposits made to 7 banks over a 1-year period. This information could not be disclosed to the Justice Department because it had been provided by the taxpayer.

--During an interview with an IRS special agent, a taxpayer revealed having made kickbacks to a government official in return for the award of certain contracts. The public official's alleged misconduct could not be reported to Justice by IRS because it was obtained from the taxpayer who shared involvement.

--A secretary employed by a corporation which was being audited by IRS alleged to the revenue agent that the corporation's president had disposed of some firearms in a manner which violated the law. Because she was acting as a representative of the taxpayer at the time of the allegation, the information could not be passed on to the Justice Department.

These examples illustrate situations in which IRS is precluded from turning over non-tax criminal information to Justice.

The rules governing such disclosures apply regardless of the seriousness of an offense, the type of law violated, or whether emergency circumstances are involved. Thus, the statute as presently written would preclude IRS from disclosing information obtained from a taxpayer, or his or her representative, even if it related to the passing of national security information to a foreign country for a fee, the potential assassination of a public official, or a State criminal offense, like murder.

We find it difficult to justify the cited restriction on IRS' authority to disclose information concerning non-tax crimes. In our view, the law needs to be amended to remedy this situation.

Justice attorneys cannot use certain tax information in related civil proceedings

A fourth adverse effect of the disclosure statute relates to the use of tax information in civil proceedings arising from a criminal investigation.

Current law authorizes Justice attorneys, through court order or written request, to obtain tax information for use in non-tax criminal cases. However, information the attorneys obtain from IRS through these processes cannot be used in civil proceedings directly related to the criminal investigation.

For example, under Title 21, Section 881 of the U.S. Code, Justice attorneys may seek civil forfeiture of vehicles, equipment, and other items used to facilitate narcotics transactions. In addition, since November 1978, this statute also provides for civil forfeiture of money or other property used in exchange for a controlled substance. In some instances, a Justice attorney

investigating a drug trafficker for criminal violations will seek tax information from IRS. If, however, the attorney subsequently decides to concurrently pursue the trafficker under Section 881, he cannot use the tax information obtained from IRS as part of the civil case.

This is but one example of a situation in which tax information, obtained legitimately by a Justice attorney for criminal prosecutive purposes, may not be used in a related civil proceeding. Similar situations can arise under the civil rights, antitrust, fraud, and organized crime statutes. In our view, the disclosure statute needs to be amended to permit use of tax information under such circumstances.

NEED FOR REVISIONS TO THE DISCLOSURE STATUTE

After almost 5 years of experience with the disclosure provisions, it is apparent that coordination and cooperation between IRS and law enforcement agencies have been adversely affected. While some administrative actions have been taken to enhance law enforcement efforts, legislative changes also are needed. However, there is no need to completely revamp existing law; instead, refinements can be made to resolve coordination problems while still protecting important privacy rights. Specifically, we suggest the following:

--Clear tax information categories are needed. The manner in which tax information is categorized and defined is extremely important because the law affords various levels of protection to different kinds of information. Present law defines and affords certain levels of protection to a "return," "return information," and "taxpayer return information." However, as experience with the Tax Reform

Act demonstrates, these definitions have proven confusing to IRS employees, Justice Department officials, and other Federal agencies. Thus, existing categories and definitions of tax information need to be simplified. This can be accomplished without changing the levels of protection presently afforded to the various categories of tax information.

--The authority to seek access to tax information, via court order or written request, needs to be extended to U.S. attorneys and Strike Force attorneys. Currently, these attorneys must obtain the written approval of an assistant attorney general in every instance in which they seek access to tax information. Decentralizing authority to the attorneys themselves would improve the timeliness of the existing disclosure process and help alter the negative perceptions Federal prosecutors now have of the current system.

--The criteria that Justice attorneys must meet to obtain a court order should be amended. Presently, attorneys must show, based on reliable information, that there is reasonable cause to believe a crime has been committed and there is reason to believe that the information sought from IRS is probative. Under a strict interpretation of the law, this creates a "catch 22" situation--attorneys must show that tax information, which they haven't yet seen, constitutes probative evidence that a crime has been committed. A less burdensome standard could be substituted without jeopardizing taxpayers' rights.

--IRS needs to be authorized, with accompanying safeguards, to disclose information concerning non-tax crimes it obtains from taxpayers while carrying out its normal tax administration functions. To prevent abuse, we recommend that such disclosures be subject to advance approval by a court.

--Likewise, IRS needs to be authorized to disclose certain information concerning non-tax crimes under emergency circumstances. These circumstances could be defined in part and controlled by keying such an authorization to IRS' inability to timely obtain court approval before making the disclosure.

--Justice attorneys need authority to use tax information, which has been properly obtained for use in non-tax criminal proceedings, in related civil proceedings. Increasingly, prosecutors have recognized the utility of financial investigations and forfeitures as weapons against criminals. Tax information can be very useful to prosecutors who seek both criminal and civil action against suspects.

--IRS needs to be authorized to discuss ongoing criminal tax investigations with Justice, as necessary, prior to formally referring the cases to Justice for prosecution. Under current law, as interpreted by IRS, front-end and continuing coordination of tax investigations is generally prohibited. This prevents Justice attorneys from fully carrying out their prescribed duties and can cause significant inefficiencies. It has affected IRS participation in strike force activities and may have promoted use of the grand jury investigative process. Further, it has limited coordination between IRS and other law enforcement agencies. At a minimum, there is a need for the Congress to clarify its intent as to whether IRS can coordinate ongoing investigations with Justice.

Problems with the current disclosure statute have been discussed and debated in extensive hearings before various subcommittees. In December 1979, the Senate Permanent Subcommittee on Investigations explored these disclosure issues in detail, through 5 days of hearings. As a direct result of those hearings, several Senators jointly sponsored a bill--S.2402--which, if enacted, would have substantially revised the disclosure statute.

We analyzed S.2402 in detail and issued a report (GGD-80-76, June 17, 1980) recommending a series of revisions to the proposed bill. We also testified on S.2402 before the Senate Finance Subcommittee on Oversight of the Internal Revenue Service on June 20, 1980. Many of our suggestions were adopted in a revised version of the bill--S.732--which was introduced in the Senate this year. The same bill was introduced in the House this year as H.R. 1502.

H.R. 1502 would resolve many of the problems discussed earlier in my statement. However, it needs further modification to strike a better balance between privacy concerns and law enforcement information needs. Appendix II to my statement discusses ur suggested modifications in detail and provides suggested

Recently, the Administration proposed a bill to revise the disclosure statute. It was recently introduced in the Senate as S.1891. The proposal closely tracks H.R. 1502 although it does contain some differences. Like H.R. 1502, the Administration's proposal needs further refinement. The legal analysis contained in appendix II also specifies our views on how that proposal ought to be modified.

In summary, the disclosure statute has afforded taxpayers increased privacy over information they provide IRS. It has also affected coordination between IRS and other agencies and thus has had an adverse effect on law enforcement efforts. The extent of that effect is difficult to measure and, in fact, may not be measurable. However, one fact is clear--despite administrative actions aimed at facilitating coordination and cooperation under existing law, problems persist. Thus, to help improve the effectiveness of Federal law enforcement efforts, legislative changes are needed to facilitate cooperation between IRS and other agencies. The Congress could accommodate this need and still maintain essential privacy controls by enacting a modified version of either H.R. 1502 or the Administration's proposal.

THE DISCLOSURE STATUTE LIMITS GAO'S ABILITY TO CARRY OUT ITS CONGRESSIONALLY MANDATED RESPONSIBILITIES

Mr. Chairman, we would also like to briefly discuss problems we have encountered with the disclosure statute while seeking to fulfill our congressionally mandated responsibilities.

Although our authority for gaining access to tax data for purposes of evaluating tax administration activities is generally sufficient, we have insufficient access authority with respect to non-tax administration Government activities. Specifically, we have experienced access-to-records problems when seeking tax return information to evaluate and assess certain Federal programs involving retirement, disability, food stamps, housing, and welfare.

For example, earnings information permeates Social Security Administration files and IRS considers that data to be tax return information. As a result, we almost had to stop our evaluations of Social Security Administration operations. So that we could continue our work, the Chairman of the House Ways and Means Committee designated us an agent of the Committee. In designating GAO as the Committee's agent, the Chairman recognized the detrimental impact of IRS' interpretation on our ability to assist the Congress, extended our access to other non-tax administration agencies, and stated that "this is intended to be a temporary resolution of GAO's status under the Code's disclosure provision until a legislative solution can be effected."

Although that arrangement temporarily solved the immediate problem, we agree with the Chairman that it is not a satisfactory permanent solution. A temporary authorization does not provide GAO with the continuous access it needs to effectively carry out its role and responsibilities. Without such access, we lack a sufficient basis for committing the resources necessary for the

long-range planning and subsequent audit work necessary to independently and objectively reach valid conclusions and make meaningful recommendations for improving the operations of major Federal programs.

Thus, in our view, there is a need for a legislative change to provide GAO the authority it needs to gain access to tax information for use in evaluating the programs of non-tax administration agencies. The need for this change is most visible in the case of those programs that dispense financial aid or some other form of benefit. Such authority would, of course, be subject to the safeguards contained in current law. In this regard, GAO has demonstrated over an extended period its ability to safeguard the sensitive tax information that comes into its possession.

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

OBJECTIVES, SCOPE, AND METHODOLOGY

This testimony is based on past and recent work GAO has done at the request of various congressional committees and subcommittees.

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, Mar. 12, 1979). In that report, we pointed out that the disclosure provisions had afforded taxpayers increased privacy over information they provide IRS but had adversely affected IRS' ability to coordinate with other members of the law enforcement community. In December 1979 hearings before the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs, on IRS' efforts to combat narcotics traffickers, we testified that changes to the disclosure provisions were needed.

In April 1980 hearings 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. We also reemphasized the need for legislative changes. In June 1980, we issued a report to that same Senate Appropriations Subcommittee entitled "Disclosure And Summons Provisions of 1976 Tax Reform Act--An Analysis of Proposed Legislative Changes" (GGD-80-76, June 17, 1980). We also testified on those proposed legislative changes in June 1980 before the

Subcommittee on Oversight of the IRS, Senate Committee on Finance. In November 1981, we testified before the same Senate Subcommittee on S.732--a bill which would amend the disclosure provisions.

The overall objective of the review we recently carried out for the House Ways and Means Oversight Subcommittee was to assess the operation and effects of the disclosure statute as it relates to taxpayer privacy and law enforcement. To accomplish our objective, we reviewed

- --existing law, and the various legislative changes which have been proposed;
- --the regulations, policies, and procedures followed by IRS and various law enforcement agencies concerning the disclosure of tax information;
- --IRS' files which show the type of information which is and is not disclosed under current law, and the length of time it takes for information to be disclosed;
- --statistics provided by IRS and other Federal agencies on disclosures made both before and since 1977 and on IRS' participation in Federal law enforcement efforts.

We interviewed various IRS national, regional, and district level officials responsible for controlling disclosures of tax information and for IRS participation in criminal investigations. We also interviewed Customs Service, Federal Bureau of Investigation, and DEA officials in headquarters and field offices; Department of Justice Strike Force attorneys in five cities--Boston, Kansas City, Los Angeles, Manhattan, and Miami; and U.S. attorneys in five districts--Boston, Dallas, Jacksonville, Los Angeles, and Manhattan. In addition, we had discussions with officials of two Inspector General Offices, three States' Attorney General

offices, and the Central Intelligence Agency; and with representatives of the American Civil Liberties Union and the American Bar Association.

To determine the effects of the disclosure provisions on Federal law enforcement efforts, we compared the frequency with which IRS disclosed tax information prior to 1977 with the experience since the disclosure provisions took effect. Furthermore, for disclosures made pursuant to a Federal agency's request, we reviewed case files to assess the timeliness of the processes followed by IRS and the Department of Justice. We reviewed 100 percent of the requests on file at five IRS district offices. The time required for fulfillment of a request was determined by computing the number of calendar days which elapsed between the date IRS first became aware of a potential request (referred to by IRS as the prenotification date) and the date the disclosure actually was made.

We also reviewed use of the legal provision which allows IRS to initiate disclosure of certain types of information it possesses when that information indicates a Federal non-tax crime has been committed. To do this for the 16 months ended September 30, 1981, we reviewed all of IRS' national office case files, as well as all files in five IRS district offices pertaining to such disclosures. In doing so, we reviewed both the disclosures IRS made to the Department of Justice pursuant to this provision, and any information which IRS could not legally disclose to Justice.

In addition, we evaluated statistics provided to us by IRS concerning the participation of its agents in joint Federal investigative efforts. By so doing, we sought to determine the effect current tax disclosure provisions have had on IRS' involvement in those activities.

APPENDIX II

COMPARATIVE ANALYSIS OF 26 U.S.C. §§6103, 7213, and 7217

WITH

H.R. 1502 AND THE ADMINISTRATION'S PROPOSAL

TAX DISCLOSURE PROVISIONS: COMPARISON OF 26 U.S.C. §6103, H.R. 1502 AND THE ADMINISTRATION'S PROPOSAL (note a)

CATEGORIES OF TAX INFORMATION

26 U.S.C. §6103

Existing law divides information into three categories: return, return information, and taxpayer return information.

(b) Definitions

(1) Return--any document the taxpayer is required by law to file, including information returns, declarations of estimated tax, claims for refund, and any schedules and attachments.

(2) Return information--(a) all information on the return; (b) all information IRS has concerning the return, (e.g., whether the return is being audited); (c) all data received or collected by IRS relating to the return and determination of tax liability; and (d) any background or written document on the determination not open for public inspection.

By definition, return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(3) Taxpayer return information--return information (as in (2)) which is filed with or furnished to IRS by or on behalf of the taxpayer.

a/This analysis is limited to the impact of the major provisions of H.R. 1502 and the Administration's proposal. The Administration's proposal was recently introduced in the Senate as S.1891. H.R. 1502's counterpart in the Senate is S.732.

APPENDIX II

H.R. 1502	ADMINISTRATION'S PROPOSAL
Proposal, by definition, divides information into return information and nonreturn information, eliminating the category of taxpayer return information.	Proposal divides information into two categories, investigative return information and investigative nonreturn information, for the purpose of disclosure under section 6103(i), disclosure to law enforcement officials. These definitions parallel the definitions of return information and nonreturn information in H.R. 1502. The definitions of return and return information in current law would govern disclosure for all other subsections of §6103, and the category of taxpayer return information is eliminated.
(b) Definitions	(b) Definitions
(1) Return information--(a) all documents within existing category of "return" and (b) any information provided to IRS by or on behalf of an individual taxpayer.	(1) Return--any document the taxpayer is required by law to file, including information returns, declarations of estimated tax, claims for refund, and any schedules and attachments.
(2) Nonreturn information--all other information IRS has relating to the return and tax liability.	(2) Return information--(a) all information on the return; (b) all information IRS has concerning the return, (e.g., whether the return is being audited); (c) all data received or collected by IRS relating to the return and determination of tax liability; and (d) any background or written document on the determination not open for public inspection.
Proposal adds a new definition:	By definition, return information does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.
(3) Individual taxpayer--includes any individual taxpayer and small corporation, partnership, association, union or other entity with no more than two members.	(3)(A) Investigative return information 1/--(a) all documents within existing category of "return" and (b) any information provided to IRS by or on behalf of an individual taxpayer.
	(B) Investigative nonreturn information--all other information IRS has relating to the return and tax liability.
	Proposal adds a new definition:
	(C) Individual taxpayer--includes any individual taxpayer and small corporation, partnership, association, union or other entity with no more than two members.

1/The definitions in the Administration's proposed section 6103(b)(3), investigative return information and investigative nonreturn information, apply only to subsection (i), governing disclosure to law enforcement officials.

APPENDIX II

GAO Comments

Under present law, information supplied to IRS by a taxpayer, or anyone acting on his behalf, generally is disclosed only pursuant to court order. This court order requirement applies to information supplied by corporate as well as individual taxpayers. Under H.R. 1502 and the Administration's proposal, the category of protected tax information would include: (1) all tax returns, and (2) any information supplied to IRS by, or on behalf of, individual taxpayers and one or two-person corporations, partnerships, or similar business entities. Information supplied to IRS by any business entity composed of more than two persons could be disclosed upon the written request of certain Government officials. We believe that information supplied to IRS by business entities, regardless of size, should remain on the same footing as information supplied by individual taxpayers. We would recommend, therefore, that any amendments to §6103 not draw a distinction between individual taxpayers and corporations, partnerships, associations, unions, or similar business entities.

Several factors underlie the rationale for this recommendation. First, the basis for distinguishing between two and three-person business entities has not been established. Second, recent court opinions, including those of the Supreme Court, do not support the proposition that corporations, unlike individuals, do not enjoy constitutional protections. And third, information supplied to IRS by persons in support of a corporate return may disclose information about individual taxpayers. This is true regardless of the size of the business entity involved. Finally, the matter of access to tax information in general should be placed in perspective. H.R. 1502 and the Administration's proposed amendments to section 6103 would facilitate access to all tax information. This would be accomplished primarily by lessening the standards for obtaining court orders and decentralizing the authority to request tax information. Corporate records could be disclosed under these mechanisms as readily as individual records.

The importance of the definitional section cannot be overstated since the definitional categories ultimately determine the degree of privacy afforded the taxpayer. Under present law, the statutory definitions are somewhat ambiguous and need clarification--a point recognized by both H.R. 1502 and the Administration's proposal. One alternative way to clarify the categories of tax information and at the same time provide comparable protection to corporate and individual taxpayers, would be to amend section 6103 to provide for only two categories of tax information: (1) return--to include all tax returns and information supplied to IRS by all taxpayers or anyone acting on their behalf, and (2) return information--to include all other information IRS has with respect to the taxpayer. From a technical standpoint, we note that use of the terms "return" and "return information," in lieu of H.R. 1502's terms "return information" and "nonreturn information," would minimize the need to make conforming amendments to those provisions in section 6103 which are unrelated to disclosure for law enforcement purposes, such as disclosure to the Census Bureau. In fact, it is for this reason that the Administration adopts separate definitions for disclosure to law enforcement officials under section 6103(i). We believe, however, that using a definitional category for §6103(i) different from the definitions governing the other subsections of §6103 may add to, rather than resolve, confusion.

APPENDIX II

GAO Suggested Statutory Language

Paragraph (1) of subsection (b), section 6103 of title 26, United States Code, should be amended to read as follows:

(1) Return The term "return" means:
(A) Any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed, and
(B) Any information provided by or on behalf of the taxpayer to whom such information relates, including
(i) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, and
(ii) any part of any written determination, or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110.
But such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

Paragraph (2) of subsection (b), section 6103 of title 26, United States Code, should be amended to read as follows:

(2) Return information The term "return information" means any information which the Secretary collects, obtains, or receives (including whether a return was filed and whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing), or any part of any written determination or any background file document relating to such written determination which is not a return as defined in paragraph (1).
But such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

Paragraph (3) of subsection (b), section 6103 of title 26, United States Code, the category "taxpayer return information," should be repealed.

APPENDIX II

COURT-ORDERED DISCLOSURES

26 U.S.C. §6103

(i) Disclosure for Administration of Federal Laws Not Relating to Tax Administration

(1) Non-tax criminal investigation:

(A) Requires ex parte court order for disclosure of return or taxpayer return information to law enforcement agencies.

(B) Application for order by head of Federal agency involved in law enforcement or in the case of the Department of Justice, the Attorney General, Deputy Attorney General, or Assistant Attorney General.

Ex parte order may be issued if

(i) on the basis of reliable information, there is reasonable cause to believe a crime has been committed;

(ii) there is reason to believe that the return is probative; and

(iii) information cannot reasonably be obtained from another source.

APPENDIX II

H.R. 1502

(i) Disclosure for Administration of Federal Laws Not Relating to Tax Administration

(1) Non-tax criminal investigation:

(A) Requires ex parte order for disclosure of "return information."

(B) Application for order by Attorney General, Deputy Attorney General, Assistant Attorney General, U.S. Attorney, or Attorney in charge of organized crime strike force.

Ex parte order may be issued if

(i) on the basis of reliable information, there is reasonable cause to believe a crime has been, or is being, committed;

(ii) information is sought exclusively for use in Federal criminal investigation; and there is

(iii) reasonable cause to believe information sought is relevant.

ADMINISTRATION'S PROPOSAL

(i) Disclosure for Administration of Federal Laws Not Relating to Tax Administration

(1) Non-tax criminal investigation:

(A) Requires ex parte order for disclosure of "investigative return information."

(B) Application for order by Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General, U.S. Attorney, or Attorney in charge of organized crime stike force.

Ex parte order may be issued if

(i)(I) on the basis of reliable information, there is reasonable cause to believe a crime has been, is being, or will be committed.

(II) information is sought exclusively for use in Federal criminal investigation; and there is

(III) reasonable cause to believe information sought is relevant; or

(ii)(I) arrest warrant has been issued for an individual who is a fugitive from justice;

(II) information is sought exclusively for use in locating such individual; and there is

(III) reasonable cause to believe information sought is relevant.

APPENDIX II

GAO Comments

Under existing law, "return" and "taxpayer return information" can be disclosed only by court order, applied for by the heads of Federal law enforcement agencies. Taxpayer return information includes any information concerning the return supplied to IRS by either the taxpayer or anyone acting on the taxpayer's behalf. Under this provision, for example, an accountant's work papers provided to IRS during an audit can be disclosed for non-tax purposes only by court order.

Under H.R. 1502, ex parte orders would be required for disclosure of "return information." Under the Administration's proposal, ex parte orders would be required for the same information, referred to as "investigative return information." As a general proposition, all other information, including the records of business entities comprised of three or more persons would be disclosed on the request of certain Government officials. In our view, information supplied to IRS by any taxpayer or his agents should be disclosed only pursuant to a court order. (See p. II-3).

H.R. 1502 and the Administration's proposal would amend the criteria for obtaining a court order. According to Justice officials, under the existing criteria, law enforcement agencies are caught in a "catch-22" position. To obtain the order, they must show that there is reason to believe that the information sought from IRS is probative. The Department of Justice has testified to considerable difficulty in meeting this standard in that often it cannot show that the information is probative until it actually has the requested tax information. The proposals respond to this by amending section 6103(i)(1) to require the Justice Department to show instead that the information sought from IRS is relevant to a matter relating to the commission of the crime being investigated. While we recognize that the standard of "relevancy" is intended to be less demanding than the "probative" test of present law, we would recommend the Committee provide interpretive guidance about how the proposed criteria would differ in application from the requirements of current law.

Under the Administration's proposal, "investigative return information" can also be disclosed, pursuant to court order, for the purpose of locating a fugitive from justice. Existing law, as interpreted by the Justice Department, does not authorize such disclosure. We understand the need for this authorization. If adopted, however, we suggest amending the language to more clearly reflect that tax information obtained under this provision will be used only by Federal officials in locating fugitives.

Both proposals do away with the requirement that, to obtain a court order, the agency seeking disclosure from IRS first ascertain that the information is not available from another source. In recognition of IRS' primary responsibility to administer the tax laws and collect the revenue, the Committee could consider refining the amendments to recognize that if the law enforcement agency can obtain the information from another source in a timely manner, and without prejudicing enforcement, there is no persuasive reason why judicial process should be invoked to compel disclosure by IRS.

APPENDIX II

Under existing law, the authority to request tax information for law enforcement purposes, either by court order or written request, generally lies with the head of any Federal agency that enforces Federal criminal laws not involving tax administration. H.R. 1502 and the Administration's proposal would vest the authority to request a court order in a limited number of Government attorneys within the Department of Justice. The heads of Federal investigative agencies could no longer independently request tax information. We agree with this proposal. Restricting this authority to Justice officials would promote the coordination between IRS and Justice which is essential to efficient Federal law enforcement. In this manner, Justice could help prevent duplicative investigations, provide investigative guidance, and otherwise assist Federal law enforcement officials in developing successful cases. And, by placing this authority in Justice, a mechanism is provided to ensure that requests made under both sections 6103(i)(1) and (i)(2) meet the applicable statutory requirements. It should be made clear, however, that after obtaining tax information, Justice officials are authorized to redisclose tax information to other agencies necessarily involved in the criminal investigation. (See p. II-12).

Also, when information obtained under §6103(i)(1) is disclosed, we see no need for the requirement that Justice submit a written request for disclosure of less protected "return information" under §6103(i)(2). This is because in obtaining §6103(i)(1) information, Justice has already met more stringent criteria than that contained in §6103(i)(2).

APPENDIX II

DISCLOSING NONRETURN INFORMATION

26 U.S.C. §6103

(i)(2) Disclosure of return information other than taxpayer return information by written request of agency heads directly engaged in criminal law enforcement.

Such request shall include
- (i) name and address of the taxpayer,
- (ii) relevant taxable periods,
- (iii) statutory authority for the investigation or proceeding, and
- (iv) specific reason or reasons why such disclosure is or may be material to the proceeding or investigation.

Name and address of taxpayer disclosed pursuant to written request.

APPENDIX II

DISCLOSING NONRETURN INFORMATION

H.R. 1502	ADMINISTRATION'S PROPOSAL
(i)(2) Disclosure of nonreturn information on written request of agency heads and Inspectors General, and in the case of the Department of Justice, the Attorney General or his designee.	(i)(2) Disclosure of investigative nonreturn information on written request of agency heads and Inspectors General, and in the case of the Department of Justice, Attorney General, Deputy Attorney General, Associate Attorney General, Assistant Attorney General, U.S. Attorney, Attorney in charge of organized crime strike force, or a supervisory-level attorney designated by the Attorney General.
Such request shall include (i) name and address of the taxpayer, (ii) relevant taxable periods, (iii) statutory authority for the investigation or proceeding, and (iv) allegations of criminal conduct giving rise to the proceeding or investigation.	Such request shall include (i) name and address of the taxpayer, (ii) relevant taxable periods, (iii) statutory authority for the investigation or proceeding, and (iv) allegations of criminal conduct giving rise to the proceeding or investigation.
Name, address, social security number of taxpayer, whether a taxpayer filed a return, and whether there is or has been a criminal investigation of taxpayer disclosed pursuant to written request.	

APPENDIX II

GAO Comments

Under existing law, information which can be disclosed on written request of an agency head is limited to information which is not considered taxpayer return information. H.R. 1502 would allow all "nonreturn information" to be disclosed upon written request of certain Government officials. The Administration's proposal would allow the same information, referred to as "investigative nonreturn information," to be disclosed upon written request. As discussed on page II-3, the category of protected information under both proposals seems too narrow. The proposals would allow Government officials to gain access by written request to some categories of information that, in our opinion, should be protected and disclosed only via court order.

Under present law, the written request must state the specific reason why disclosure is or may be material to the criminal investigation. Both proposals amend this to simply require an allegation of criminal conduct giving rise to the proceeding or investigation. This amendment should alleviate the so-called "catch-22" situation, discussed on page II-7, in the case of written requests.

We do not agree with the provision in both H.R. 1502 and the Administration's proposal to allow all agency heads and Inspectors General to gain access to tax information by written request. This authority should be restricted to Justice officials to ensure effective coordination between IRS, Justice, and other Federal agencies. (See p. II-7). Justice officials, however, should be clearly authorized to redisclose tax information to other agency heads and Inspectors General when necessary. (See p. II-12.) We agree with the provision in H.R. 1502 which would allow the Attorney General to delegate this authority to those officials who need access to tax information by written request. Under this proposal, the Attorney General could authorize U.S. attorneys and heads of organized crime strike forces to gain access via written request. Conversely, the Attorney General could subsequently withdraw that authorization as necessary. The Administration's proposal would allow all Justice officials authorized to apply for a court order, as well as supervisory-level attorneys designated by the Attorney General, to submit written requests for tax information.

Under H.R. 1502, Government officials could also find out, by written request, whether a taxpayer filed a return and whether there is or has been a criminal investigation of a taxpayer. This is a needed amendment to section 6103. In the interest of efficiency and economy, law enforcement officials should first know if IRS has potentially useful information on the taxpayer before seeking a court order.

APPENDIX II

REDISCLOSURE OF TAX INFORMATION

26 U.S.C. §6103

Tax information obtained under (i)(1) and (i)(2) may be redisclosed to any Federal employee directly engaged in the criminal proceeding.

H.R. 1502

Explicitly authorizes a Government official to redisclose return and nonreturn information obtained either under (i)(1) or (i)(2) to such other Federal government personnel, or witness, he deems necessary to assist him during the criminal proceeding.

ADMINISTRATION'S PROPOSAL

Explicitly authorizes a Government official to redisclose investigative return information or investigative nonreturn information obtained under (i)(1), (i)(2) or (i)(3) to such other Federal government personnel, or witness, he deems necessary to assist him during the criminal proceeding.

GAO Comments

The proposed amendments to §6103 would make clear that Government officials are authorized to redisclose tax information to those necessarily involved in the criminal investigation, including prosecutive witnesses. We agree with this proposal. For example, it is sometimes necessary for prosecutors to disclose evidence to a witness during an investigation or in preparation for a criminal proceeding. However, we have recommended that the authority to make written requests for tax information be limited to the Justice Department. (See p. II-11). If that recommendation is accepted, this redisclosure provision may have to be modified to specifically authorize Justice to redisclose tax information to agencies on whose behalf the Department makes written requests. Also, in our view, the law should require an accounting for all redisclosures made under this provision.

APPENDIX II

IRS-INITIATED DISCLOSURE OF NON-TAX CRIMINAL INFORMATION

26 U.S.C. §6103

(i)(3) IRS may disclose information other than taxpayer return information to agency heads where there is evidence that a Federal crime has been committed. Name and address of taxpayer can be disclosed under this provision if return information is available.

H.R. 1502

(i)(3)(A) Places legal duty on IRS to disclose nonreturn information where there is evidence of a Federal crime. Name and address of taxpayer can also be disclosed under this provision.

(B) When IRS makes a prosecutive recommendation to Justice involving a Federal tax crime, any return or nonreturn information evidencing a non-tax Federal crime must also be disclosed.

IRS may decline to disclose any information under the above paragraphs if disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

ADMINISTRATION'S PROPOSAL

(i)(3)(A) Places legal duty on IRS to disclose investigative nonreturn information where there is evidence of a Federal crime. For purposes of this provision, where disclosure would involve information supplied by or on behalf of a corporation, partnership, association, trust, estate or other legal entity, there must be reasonable cause to believe such entity was formed, or is being operated or maintained, for the purpose of facilitating or engaging in Federal criminal activity. Name and address of taxpayer can also be disclosed under this provision.

(B) When IRS makes a prosecutive recommendation to Justice involving a Federal tax crime, any investigative return information or investigative nonreturn information evidencing a non-tax Federal crime must also be disclosed.

IRS may decline to disclose any information under the above paragraphs if disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

APPENDIX II

GAO Comments

H.R. 1502 and the Administration's proposal place an affirmative legal duty on IRS to provide law enforcement agencies information that "may constitute evidence of a violation of Federal criminal laws." The scope of this duty needs clarification. As presently drafted, the proposals could contemplate a responsibility, even in the absence of a request, for IRS to regularly review its files for non-tax criminal evidence. Recognizing that IRS' primary responsibility is tax administration, we believe IRS' disclosure obligation should only extend to non-tax criminal information it becomes aware of during the normal course of administering the tax laws.

The Administration's proposal would distinguish between information supplied by or on behalf of legitimate businesses and information supplied by or on behalf of businesses engaged in "illegal" activities. Under the proposal, IRS must disclose criminal information supplied the Service by or on behalf of any business entity "formed, . . . operated or maintained with a purpose of facilitating or engaging in Federal criminal activity." Investigative nonreturn information supplied by a legitimate business, primarily its books and records, could not be unilaterally disclosed to the Justice Department. We disagree with this proposal for several reasons. First, in our view, information supplied to IRS by any taxpayer or his agents should be disclosed only pursuant to a court order. (See p. II-3). Second, under the proposal, information supplied to IRS by an "illegal" business comprised of one or two persons could not be disclosed, whereas similar information supplied by a larger "illegal" business must be disclosed. We see no rationale for this distinction. Third, §6103 is made confusing by incorporating a distinction between legal and illegal business entities solely for purposes of this subsection. Fourth, it is unclear how IRS would be able to effectively distinguish between legal and illegal businesses. And finally, if IRS were authorized to apply for a court order to disclose protected information, as we recommend below, such a distinction may be unnecessary.

H.R. 1502 and the Administration's proposal would also require IRS to disclose criminal evidence on non-tax matters to Justice when making prosecutive recommendations in a tax case. This would allow necessary coordination within the Department, providing Justice officials with the needed flexibility to decide how to proceed against a certain individual, and helping to avoid problems stemming from the Department's dual prosecution policy.

We recognize the need expressed in both proposals to enable IRS to provide assistance to law enforcement agencies. Under present law, when IRS uncovers criminal evidence based on taxpayer return information, it lacks authority to report it to the appropriate law enforcement agency. The proposed amendments to section 6103 do not resolve this problem. Under H.R. 1502, IRS would not be authorized to unilaterally inform law enforcement officials when it had criminal evidence based on return information. And, under the Administration's proposal, IRS could not unilaterally disclose investigative return information. We suggest, therefore, that the Congress authorize IRS to apply for a court order to disclose protected information. Such a provision would ensure that a neutral third party--the judiciary--decides on the disclosure of such information.

APPENDIX II

GAO Suggested Statutory Language

Paragraph (3) of subsection (i), section 6103 of title 26, United States Code, should be amended to read as follows:

(3) Disclosure of information concerning possible criminal activities.

(A) Information from taxpayer: Upon application by the Secretary, a U.S. District Court may, by ex parte order, direct that a return (as defined in section 6103(b)(1)) be disclosed to the head of the appropriate Federal investigative agency if, in the opinion of the court, such information is material and relevant to a violation of Federal criminal law.

(B) Application for order: The application for an ex parte court order shall set forth the name of the taxpayer involved; the time period to which the request relates; and the reasons why, in the opinion of the Secretary, the information is material and relevant to a violation of Federal criminal law.

(C) Procedures: A U.S. District Court shall act upon any application for an ex parte order within 5 days of the receipt thereof. In the event that the district court denies the application

(i) a motion for reconsideration shall be acted upon not later than 5 days after the receipt of such motion, and

(ii) an appeal shall be disposed of as soon as practicable but not later than 30 days after receipt of appeal.

(D) Duty of the Secretary: The Secretary or his designee shall disclose, to the head of the appropriate Federal investigative agency, information ordered disclosed pursuant to this subsection.

(E) Further Disclosure: The head of the Federal investigative agency may further disclose any information, which has been disclosed to him pursuant to an ex parte order, to such other Government personnel or witness as he deems necessary to assist him during or in preparation for any administrative, judicial, or grand jury proceeding or in a criminal investigation which may result in such a proceeding.

(F) Return Information: The Secretary may disclose in writing return information which may constitute evidence of a violation of Federal criminal laws to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility for enforcing such laws. For purposes of this subsection, the name and address of the taxpayer shall not be treated as a return if there is return information which may constitute evidence of a violation of a Federal criminal law.

APPENDIX II

USE OF TAX INFORMATION IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

26 U.S.C. §6103

(i)(4) Any information obtained under (i)(2) or (i)(3) may be entered into evidence in any administrative or judicial proceeding involving a non-tax Federal crime. Information obtained under (i)(1) may be entered into evidence upon the court's finding that the information is probative.

H.R. 1502

(i)(4) Any information obtained under (i)(1), (i)(2) or **(i)(3) may be entered into evidence in any administrative, judicial, or grand jury proceeding involving a non-tax Federal crime or any ancillary civil proceeding by order of the court.**

ADMINISTRATION'S PROPOSAL

(i)(4) Any information obtained under **(i)(1), (i)(2) or** (i)(3) may be entered into evidence in any **administrative** or judicial proceeding involving a non-tax Federal crime, or any ancillary civil proceeding, unless the Secretary determines, and the court agrees, that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation.

GAO Comments

H.R. 1502 and the Administration's proposal provide a needed authorization for redisclosure of tax information in connection with civil actions initiated under civil rights, antitrust, fraud, and organized crime statutes. It also could be invoked for other civil statutes that have a criminal counterpart. It should be recognized, however, that the authorization may not apply to organized crime and antitrust cases where the Government elected to proceed solely on a civil basis, as in a civil forfeiture action under 21 U.S.C.§881. This is because the provision provides no mechanism to transfer tax related information where the judicial action is exclusively civil, and there is no ancillary criminal proceeding or criminal investigation. The Congress may want to consider the desirability of such an authorization.

APPENDIX II

DISCLOSURE UNDER EMERGENCY CIRCUMSTANCES

26 U.S.C. §6103	H.R. 1502 and ADMINISTRATION'S PROPOSAL
No comparable provision.	Adds a new paragraph (5) to subsection (i) Emergency circumstances: Under emergency circumstances involving an imminent danger of physical injury to any person, serious physical damage to property, or flight from prosecution, IRS may disclose any necessary information to the appropriate Federal agency. IRS must then notify Justice, and Justice must notify the District Court after such disclosure has been made.

GAO Comments

We support the intent of this provision, which provides the Secretary discretionary authority to disclose information in emergency circumstances. We would, however, include the threat to national security in the emergency circumstances identified in the proposal. On the other hand, this provision could be more narrowly drawn and still achieve its intent. As discussed on page II-14, the Secretary should, in our view, be given the authority to seek court-ordered disclosure when IRS uncovers criminal evidence based on a return. In light of this, we suggest that the emergency circumstance disclosure authority be explicitly keyed to the Secretary's inability to obtain a court order in sufficient time to prevent physical harm to persons, physical damage to property, harm to national security, or flight from prosecution. We also would suggest expanding this authority to allow disclosure of criminal evidence to appropriate State authorities since some emergency circumstances, such as murder, would involve State crimes.

APPENDIX II

GAO Suggested Statutory Language

Subsection (i), section 6103 of title 26, United States Code, should be amended to add a new paragraph:

Emergency Circumstances

(A) Under emergency circumstances, the Secretary or his designee may disclose such information, including returns, as is necessary to apprise the appropriate Federal or State authorities having jurisdiction over the offense or matter to which such information relates.

(i) "Emergency circumstances" means circumstances involving an imminent threat of harm to persons, property, or national security, or flight from prosecution, and in which, in the judgment of the Secretary, time is insufficient to obtain an ex parte order authorizing disclosure of the information involved.

(B) The Secretary shall maintain standardized records or accountings of all disclosures made under this paragraph.

APPENDIX II

ASSISTANCE OF IRS IN JOINT TAX/NON-TAX INVESTIGATIONS

26 U.S.C. §6103	H.R. 1502 and ADMINISTRATION'S PROPOSAL
No comparable provision.	Adds a new paragraph (6) to subsection (i) No portion of §6103 precludes or prevents IRS from assisting Federal agencies in joint tax/non-tax criminal investigations.

GAO Comments

We anticipate that IRS and Justice will encounter considerable difficulty administering this provision, and recommend the intended operation of this section be clarified. The precise purpose of the authorization, and the uses to which it may be put, should be defined with greater descriptive clarity. Although the proposal states that nothing in section 6103 shall be construed to preclude or prevent IRS' assistance in joint tax/non-tax criminal investigations, it is not clear what type of IRS "assistance" is envisioned, what might qualify as a "joint tax/non-tax" investigation, or whether the authorization is intended to override the disclosure restrictions set forth elsewhere in section 6103. Assuming the existence of a joint investigation, for example, would IRS still be obliged to await a court order or written request to disclose evidence of non-tax offenses in its files? On the other hand, this authorization may be intended simply to encourage IRS' participation in joint investigations but only within the framework of the disclosure restrictions prescribed by section 6103. This could be viewed as consistent with other provisions of the proposals which, among other matters, modify present law to explicitly authorize IRS to disclose non-tax criminal information to Justice when making a tax case.

In addition, the Congress may want to consider two problems under existing law which are not specifically addressed in either H.R. 1502 or the Administration's proposal. Under §6103(h)(2), which authorizes disclosures to Justice for tax administration purposes, IRS can disclose tax information to Justice when referring a tax case for prosecution. IRS has interpreted this provision as precluding the disclosure of tax information, either in a tax or a joint tax/non-tax criminal case, prior to case referral. Prereferral disclosure in tax cases is essential, however, to ensure effective coordination between IRS and Justice in prosecuting criminal tax matters, and to obtain such advice as may be necessary to develop the tax case. In addition, §6103 should be clear in authorizing such disclosure to both U.S. attorneys and strike force attorneys.

APPENDIX II

DISCLOSURE TO STATE OFFICIALS

26 U.S.C. §6103

No comparable provision.

H.R. 1502

Adds a new paragraph (7) to subsection (i)

Provides authorized officials with authority to obtain an ex parte court order authorizing the redisclosure of tax information which evidences a violation of a State felony statute. Under this provision, a court can authorize redisclosure to a State attorney general or a district attorney upon finding that
(A) on the basis of reliable information, there is reasonable cause to believe a State felony has or is occurring; and
(B) there is reasonable cause to believe that the information is relevant.

ADMINISTRATION'S PROPOSAL

Adds a new paragraph (7) to subsection (i)

Provides authorized officials with authority to obtain an ex parte court order authorizing the redisclosure of tax information which evidences a violation of a State felony statute. Under this provision, a court can authorize redisclosure to a State attorney general or a district attorney upon finding that
(A) on the basis of reliable information, there is reasonable cause to believe a State felony has, is, or will occur; and
(B) there is reasonable cause to believe that the information is relevant; and
(C) information will be disclosed exclusively for use in a state criminal investigation or proceeding.

The court shall not order disclosure if the Secretary determines and certifies to the court, and the court agrees, that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

GAO Comments

Present law does not authorize the redisclosure of tax information concerning non-tax State crimes. H.R. 1502 and the Administration's proposal would authorize certain Federal officials to obtain an ex parte court order authorizing redisclosure when the information relates to State felony violations. Although there is a need for this redisclosure authorization, we would suggest a modification to this section to accommodate privacy concerns. Redisclosure should be made only to State attorneys general. The attorneys general would, of course, be authorized to further redisclose the information as necessary to carry out their specific criminal enforcement responsibilities. Also, IRS should be notified of redisclosures to State attorneys general, as well as any redisclosures made by these State law enforcement officials.

APPENDIX II

DISCLOSURE TO COMPETENT AUTHORITY UNDER INTERNATIONAL CONVENTIONS AND TREATIES

26 U.S.C. §6103

(k)(4) Disclosure of tax information to foreign governments to extent authorized under tax conventions.

H.R. 1502

(k)(4) Adds an authorization for the disclosure of tax information to extent authorized under mutual assistance treaties. Requires ex parte court order for disclosure of information involving non-tax criminal matters under mutual assistance treaties, based on finding that
(A) there is reasonable cause to believe that information is relevant to the commission of a specific criminal act that has been or is being committed against laws of the foreign country; and
(B) information is sought exclusively for use in a foreign country's criminal investigation or proceeding concerning such criminal act.

ADMINISTRATION'S PROPOSAL

Adds a new paragraph (8) to subsection (i), authorizing the disclosure of tax information to extent authorized under mutual assistance treaties. Requires ex parte court order for disclosure of information involving non-tax criminal matters under mutual assistance treaties, based on finding that
(A) there is reasonable cause to believe that information sought may be relevant to the commission of a specific criminal act that has been or is being committed against non-tax laws of the foreign country; and
(B) information is sought exclusively for use in a foreign country's investigation or proceeding concerning such criminal act.

Court shall not disclose any information under this provision if Secretary determines, and certifies to the court, that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

GAO Comments

The proposals provide a needed mechanism to allow the Government to perform according to mutual assistance treaties it has entered into with foreign governments to exchange criminal evidence. Under these provisions, a court order is required for all disclosures, which we believe adequately accommodates privacy concerns. Also, it should be noted that under mutual assistance treaties generally, evidence exchanged with foreign governments must relate to criminal acts which are considered crimes in both countries involved, and there is considerable discretion provided in the treaties not to disclose any information which would be contrary to the public interest of the governments involved. These safeguards should protect against abusive disclosures.

APPENDIX II

FOREIGN INTELLIGENCE ACCESS

26 U.S.C. §6103 and H.R. 1502	ADMINISTRATION'S PROPOSAL
No comparable provision.	Adds a new paragraph (9) to subsection (i) Investigative return and investigative nonreturn information may be disclosed to the Attorney General and may be redisclosed to personnel of a Federal intelligence agency upon the personal certification of the Attorney General that the information is sought exclusively for use in foreign intelligence collection or a foreign counter-intelligence investigation and that there is reasonable cause to believe, based upon information believed to be reliable, that the subject of the information is, or may be-- (A) engaged in espionage, sabotage, clandestine intelligence activities, or international terrorism pursuant to the direction of a foreign power; (B) the actual target of an active effort by a foreign intelligence service or international terrorist organization involving positive steps to accomplish recruitment; or (C) furnishing or about to furnish national defense information, sensitive economic or technological information or materials, or foreign policy information to a representative of a foreign power or foreign intelligence service.

GAO Comments

The Administration's proposal would allow for disclosure of tax information to the Attorney General for use in foreign intelligence collection or foreign counter-intelligence investigations. Disclosure is authorized on the personal certification of the Attorney General that the criteria listed above is met. The Attorney General would be further authorized to redisclose such tax information to Federal intelligence agencies.

The need for this disclosure authorization should be closely scrutinized by the Congress for several reasons. First, under both current law and the Administration's proposal, the Attorney General can gain access to tax data for non-tax criminal investigative purposes via court order or written request. Thus, the Attorney General already has the authority to seek disclosure of tax information to assist in investigations involving espionage, sabotage, international terrorism, and other crimes. Second, another portion of the Administration's proposal which we support would authorize disclosures of tax information under emergency circumstances. We have suggested that threats to national security be included under that provision. By adopting that suggestion, the Congress would further alleviate the need for a separate intelligence-related disclosure authorization. Finally, we question whether adequate privacy safeguards have been built into this particular proposal. While the Attorney General would be required to certify a need for the tax information, no neutral third-party--such as a court--would be involved.

APPENDIX II

CRIMINAL PENALTY PROVISION: COMPARISON OF 26 U.S.C. §7213, H.R. 1502 AND THE ADMINISTRATION'S PROPOSAL

26 U.S.C. §7213	H.R. 1502 and ADMINISTRATION'S PROPOSAL
Provides criminal penalties for unauthorized disclosure of tax information.	Adds an affirmative defense to a prosecution under this section: i.e., that the disclosure resulted from a good faith but erroneous interpretation of the law.

GAO Comments

Enactment of the proposed amendment would make clear that criminal sanctions attach only in the case of intentional violations of the disclosure provisions.

APPENDIX II

CIVIL PENALTY PROVISION: COMPARISON OF 26 U.S.C. §7217, H.R. 1502 AND THE ADMINISTRATION'S PROPOSAL

26 U.S.C. §7217	H.R. 1502 and ADMINISTRATION'S PROPOSAL
Authorizes the payment of civil damages to a taxpayer by the individual responsible for unauthorized disclosures of tax information.	When unauthorized disclosure is made by Federal employee, the Government, rather than the individual employee, is responsible for payment of civil damages.

GAO Comments

The Government would be civilly liable under the proposed amendment for all unauthorized disclosures made by Federal employees, including those made intentionally and with knowledge of the disclosure restrictions. However, this would not affect the Government's ability to proceed criminally against employees who intentionally violate section 6103.

APPENDIX II