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IRS AND NONTAX RELATED CRIMINAL ENFORCEMENT INVESTIGATION

UNIVERSITY OF UTAH
JUN 20 1980

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT OF THE
INTERNAL REVENUE SERVICE
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-SIXTH CONGRESS
SECOND SESSION
ON
S. 2402, S. 2403, S. 2404, S. 2405

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Senator NUNN. Thank you, Chairman Baucus, Senator Byrd. I appreciate very much the opportunity of being here. And Senator Byrd, I can assure you that I recognize the complete honesty of your tax returns. I am not making any allusion to that. I don't want to start any rumors here. [General laughter.]

Senator BAUCUS. The next witness will be Senator Lowell Weicker.

We very much appreciate your coming, Senator Weicker—

Senator WEICKER. Senator, how are you?

Senator BAUCUS. Fine, thank you. We look forward to your testimony this morning.

**STATEMENT OF HON. LOWELL P. WEICKER, JR., A U.S.
SENATOR FROM THE STATE OF CONNECTICUT**

Senator WEICKER. Senator Baucus, Senator Byrd, it is good to be with you.

I thank you for the opportunity to appear before the Subcommittee to discuss the tax privacy rights of Americans. I must confess to you, I did not think I would be in this forum discussing this matter so soon.

Usually legislation, and principles, last a little longer than 4 years before they are attacked and/or modified. But such is the case and, as I did on the floor of the Senate back on December 11 at about 9 o'clock at night, when I got sandbagged on this issue, I am here to do battle again.

In 1976, Congress reviewed the statutory rules governing the disclosure of tax information for the first time in 40 years. Prior to then, income tax returns and information were deemed to be public records. Federal law enforcement officials were able to obtain tax information simply by stating that in their discretion, it was "necessary in the performance of * * * official duties." The Internal Revenue Service, for all intents and purposes, operated a lending library.

Congress enacted tax privacy safeguards in the Tax Reform Act of 1976 as a result of, one, abuses uncovered during the Watergate investigations which documented the use of the IRS as an intelligence body to derive information harmful to the enemies of the Nixon administration and helpful to its friends. These abuses were summarized by the House Judiciary Committee in article 2, subparagraph 2 of the Articles of Impeachment of President Nixon, and I quote:

He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

Two, violations of Americans' constitutional rights discovered by the Church committee. In its 1976 report, the committee concluded that, and I quote:

The FBI used as a weapon against the taxpayer the very information the taxpayer provided pursuant to his legal obligation to assist in tax cases, and in many cases, on the assumption that access to the information would be restricted to those concerned with revenue collection and used only for tax purposes.

I want to make the statement here, just so that we all understand the ground on which we stand, the IRS is not—underline "not"—a law enforcement agency. It is a revenue collection agency.

Three, disclosures that special powers of the IRS were being misused to collect information for purposes well beyond tax administration but related to other law enforcement activities, which led to a series of congressional hearings on the propriety of various uses of tax information.

In the 93d Congress, the Senate Judiciary Committee held hearings, and numerous hearings were conducted by the Senate Finance Committee and House Ways and Means Committee in the 94th Congress. Law enforcement officials testified at length concerning the need for efficient enforcement procedures, raising a specter similar to that being raised today.

Four, recommendations made by the Privacy Protection Study Commission for more stringent safeguards with respect to disclosures of records made by the IRS. The Commission stated that the taxpayers' disclosures to the IRS:

Cannot be considered voluntary, because the threat of criminal penalties for failure to disclose always exists. The fact that tax collection is essential to Government justifies an extraordinary intrusion of personal privacy by the IRS, but it is also the reason why extraordinary precautions must be taken against misuse of the information the Service collects from and (())about taxpayers.

Mr. Chairman, I have taken the time to review this history because it is important to remember the events surrounding and consideration given, the formulation of the existing standards governing disclosure of tax information. Based upon this substantial record, Congress carefully drafted legislation which balanced the rights of Americans to certain privacy standards with the needs of Government in enforcing the law.

Now, less than 4 years after striking this balance, legislation is introduced which tips the scales in favor of law enforcement at the expense of taxpayers' privacy rights. What is this rationale for this new encroachment upon the rights of Americans?

It is done under the banner of the fight against organized crime, against mobsters and narcotics traffickers. And why? Because one is best able to obfuscate the true issues by arguing in an inflammatory way that a change in law is the only solution to these evils.

One must look behind the rhetoric to ascertain the reason for this legislation, and the reason is expediency. It is not that the Justice Department does not have the means of obtaining evidence other than from tax return information in its fight against crime. The Justice Department, as evidenced by the great number of its successful prosecutions, does. But it is far quicker and more expedient to go directly to the tax return and related information than to other sources.

Jerry Litton, the late Congressman from Missouri, who coauthored the disclosure protections in 26 U.S.C. 6103, succinctly rebutted the expediency rationale. In testimony before the House Ways and Means Committee in January of 1976, he said that, "If we are only looking for expediency, let's wiretap every 1,000 homes, open the mail of every 1,000 citizens, if we are only looking for expediency."

But this country does not look just for expediency when dealing with the rights of citizens. Our heritage is otherwise. Two hundred

years ago our Founding Fathers authored a Constitution premised on the principle that individuals—as human beings—are more important than the conveniences of society. A greater importance was placed on individual liberties than on governmental efficiency. That was the philosophy underlying the Bill of Rights.

The existing tax information disclosure provisions reflect the fact that Americans are compelled to surrender the constitutional rights guaranteed by the fourth and fifth amendments, which are the right “to be secure in their * * * papers, and effects, against unreasonable searches and seizures,” and the right against self-incrimination. In order to facilitate the effective administration of our tax laws, each American voluntarily surrenders certain rights and assumes the duty of self-investigation, factfinding, and reporting.

This barring of private papers and matters is an accommodation by citizens for their government for tax purposes, not for non-tax justice purposes, not for scientific purposes, not as was the instant which brought Jerry Litton into this matter, when he found the IRS was roaming around the tax returns of farmers in his district in Missouri—for agricultural purposes, not for non-tax justice purposes, not for sociological purposes, not for political purposes, and not for statistical purposes.

The method in which taxpayers voluntarily comply with our tax laws and, in most cases, fully report their earnings is the envy of most other nations, where dishonesty is often the rule rather than the exception. If taxpayers become convinced that confidential data they submit each year is being used for other than tax purposes, how long will it be before cheating is commonplace?

Now, let me say to you right now that in those Finance hearings that were held back in 1975, the then IRS Commissioner and all of the past IRS Commissioners testified to a man that the amount of revenues collected was directly related to the degree of confidentiality of the tax returns. All of them, Democratic and Republican administrations alike, said so. That is the business of the IRS, to collect taxes. All of the Commissioners stated that as the confidentiality of the return eroded, the collection of revenues would decline proportionately. The resultant widespread cheating would be beyond the capacity of the IRS to control, and our entire system of voluntary self-assessment would collapse.

Now, if anybody wants to know, why there might be less in the way of compliance with the tax laws after the year 1976 than was the case before, I think I could give you a very good reason. That is, when the highest officer in the land, who is charged with enforcing the law, cheats on his income tax returns, one hell of an example is set for the rest of the country. That is exactly what happened, and that is exactly what the rest of the country found out. In short, distrust of Government and those entrusted with enforcing the laws, bred noncompliance with the laws.

The few years that have transpired since enactment of the Tax Reform Act have not shown that Congress erred in enacting needed tax reform legislation, or that provisions of the law have unfairly or unduly burdened law enforcement efforts.

What time and experience have shown us is not that the law is burdensome or wrong or unfairly restrictive, but that those who have interpreted the law have done so incorrectly.

For example, in testimony in December before the Permanent Subcommittee on Investigations, Peter Bensinger, the Administrator of the Drug Enforcement Administration, commented with respect to the opportunity afforded to IRS to disclose to other law enforcement agencies information it has regarding violations of criminal law that are not within its jurisdiction under 26 U.S.C. 6103(D)(3), astonishingly, his testimony revealed that DEA records do not show ever having received such disclosures from IRS.

This indicates not a problem with the law, but a problem with the agency empowered to act pursuant to the law. How can one profess that the provisions of the Tax Reform act prohibit effective law enforcement when a provision of the act designed to assist law enforcement is not properly utilized?

What the record justifies is a fine tuning of the provisions of the act to insure that law enforcement officials properly utilize the tools that are already available. Thus the provisions in the Nunn legislation which place time limits on court action and IRS's response, which allow a magistrate to act upon ex parte application, that limit those empowered to make applications, and which send a signal to the IRS, are justified.

However, those provisions which would expand the material available to the Justice Department without affording Americans the protection of a court order are simply not justified nor tolerable. And cutting through the rhetoric, that is the thrust of this proposal.

Now, gentlemen, I referred to my experiences of last December 11, 1979, at 9 o'clock at night, on the floor of the U.S. Senate. What was being proposed at that time? I ask you to remember. It was basically this legislation without any court order at all under any circumstances. Rather, the decision to disclose tax information would have been made by the Secretary of the Treasury.

So, those that come in here with this legislation have already had a run, if you will, at this proposal, removing the protection of any court order. Now, that seems to me to strain the credibility as to what it is that is really involved here. What is involved is expediency and convenience plain and simple. It is not law enforcement, and it is not, certainly, protection of Americans' constitutional rights. On a matter such as this, I am loath to throw the Constitution out the window for the convenience and for the expedience Government agencies that are either incapable of doing their own work or too lazy to do it.

I have found over the past several years, that when something goes wrong it is everybody else's fault—except those directly charged with a particular responsibility. It is said that the reason why the CIA can't operate is Congress fault, ever since we have been exercising our oversight responsibility. Now, it is being claimed here that the reason why the FBI can't work is the fault of the IRS.

To quote Mr. Shakespeare, “The fault lies not in the stars, dear Brutus, but in ourselves.” That is, the fault lies in the law enforcement agencies, not in the IRS. If there is a matter to be corrected,

Senator BYRD. Thank you, Senator Weicker.
Thank you, Mr. Chairman.

Senator BAUCUS. One question further. You are concerned, apparently, about delays. Under the present summons provisions, whenever IRS seeks information from a third party, the taxpayer has the right to ask for an automatic stay. According to the criminal division, this automatic stay results in long delays.

I am wondering if you have some suggestion to help speed up that process.

Senator WEICKER. I have no difficulty with the provision in the Nunn bill which requires the taxpayer to show why he should not comply with the summons. This conforms to the procedure in the Right to Privacy Act.

Senator BAUCUS. Thank you very much, Senator. We appreciate your being with us this morning.

Senator WEICKER. Thank you very much.

[The prepared statement of Senator Weicker follows:]

STATEMENT OF SENATOR LOWELL P. WEICKER, JR.

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Congress enacted tax privacy safeguards in the Tax Reform Act of 1976 as a result of:

1. Abuses uncovered during the Watergate investigations which documented use of the IRS as an intelligence body to derive information harmful to enemies of the Nixon administration and helpful to its friends. These abuses were summarized by the House Judiciary Committee in Article II, subparagraph 2 of the Articles of Impeachment of President Nixon: "He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner."

2. Violations of Americans' Constitutional rights discovered by the Church Committee. In its 1976 Report, the Committee concluded that: "* * * The FBI used as a weapon against the taxpayer the very information the taxpayer provided pursuant to his legal obligation to assist in tax cases and, in many cases, on the assumption that access to the information would be restricted to those concerned with revenue collection and used only for tax purposes."

3. Disclosures that special powers of the IRS were being misused to collect information for purposes well beyond tax administration but related to other law enforcement activities which led to a series of Congressional hearings on the propriety of various uses of tax information. In the 93rd Congress the Senate Judiciary Committee held hearings and numerous hearings were conducted by the Senate Finance Committee and House Ways and Means Committee in the 94th Congress. Law enforcement officials testified at length concerning the need for efficient enforcement procedures, raising a spectre similar to that being raised today.

4. Recommendations made by the Privacy Protection Study Commission for more stringent safeguards with respect to disclosures of records made by the IRS. The Commission stated that the taxpayer's disclosures to the IRS "* * * cannot be considered voluntary because the threat of criminal penalties for failure to disclose always exists. The fact that tax collection is essential to government justifies an extraordinary intrusion of personal privacy by the IRS, but it is also the reason why extraordinary precautions must be taken against misuse of the information the Service collects from and about taxpayers."

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What is the rationale for this new encroachment upon the rights of Americans? It is done under the banner—which all good citizens willingly carry—of the fight against organized crime, mobsters and narcotics traffickers. Why? Because one is best able to obfuscate the true issues by arguing in an inflammatory way that a change in the law is the only solution to these evils.

One must look behind the rhetoric to ascertain the reason for this legislation. The reason is expediency. It is not that the Justice Department does not have the means of obtaining evidence other than from tax return information in its fight against crime. The Justice Department, as evidenced by the great number of its successful prosecutions, does. But it is far quicker—and more expedient—to go directly to the tax return and related information than to the other sources.

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