

Union Calendar No. 144

116TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
116-186

SUBMISSION TO THE U.S. HOUSE OF REPRESENTA-
TIVES OF MATERIALS RELATED TO THE EXAMINA-
TION OF PRESIDENT NIXON'S TAX RETURNS BY
THE JOINT COMMITTEE ON INTERNAL REVENUE
TAXATION

R E P O R T

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

together with
DISSENTING VIEWS



AUGUST 16, 2019.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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WASHINGTON : 2019

LETTER OF SUBMITTAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, August 13, 2019.

Hon. NANCY PELOSI,
Speaker, U.S. House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: On July 25, 2019, by a vote of 25 to 10, I was directed by the Committee on Ways and Means to submit herewith the Committee's report of materials related to the examination of President Nixon's tax returns to the U.S. House of Representatives. Dissenting views are included.

Sincerely,

RICHARD E. NEAL,
Chairman.

Union Calendar No. 144

116TH CONGRESS <i>1st Session</i>	HOUSE OF REPRESENTATIVES	REPORT 116-186
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SUBMISSION TO THE U.S. HOUSE OF REPRESENTATIVES OF MATERIALS
RELATED TO THE EXAMINATION OF PRESIDENT NIXON'S TAX RETURNS
BY THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

AUGUST 16, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NEAL, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

The Committee on Ways and Means, to whom were provided materials related to the examination of President Nixon's tax returns by the Joint Committee on Internal Revenue Taxation (now the Joint Committee on Taxation), having considered the same, submits the following report of such materials to the U.S. House of Representatives.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The Committee on Ways and Means ("Committee") recently met in closed executive session to consider materials protected by 26 U.S.C. § 6103 related to Senate Report 93-768, "Examination of President Nixon's Tax Returns for 1969 through 1972," prepared for the Joint Committee on Internal Revenue Taxation (now the Joint Committee on Taxation ("JCT")) by its staff. By a vote of 25 to 10, the Committee voted to submit those materials to the U.S. House of Representatives.

B. BACKGROUND ON THE COMMITTEE'S WORK

The Committee has oversight and legislative authority over our Federal tax laws. With this authority comes a responsibility to ensure that the Internal Revenue Service ("IRS") is enforcing the laws in a fair and impartial manner.

Consistent with its authority, the Committee is considering legislative proposals and conducting oversight related to our Federal tax laws, including, but not limited to, the extent to which the IRS audits and enforces the Federal tax laws against a President. Under the Internal Revenue Manual, individual income tax returns of a President are subject to mandatory examination, but this practice is IRS policy and not codified in the Federal tax laws. It is necessary for the Committee to determine the scope of any such examination and whether it includes a review of open tax years or underlying business activities required to be reported on the individual income tax return.

Accordingly, on April 3, 2019, Chairman Neal requested relevant individual income tax returns and return information of the President and certain entities from the IRS. This request was made pursuant to the Chairman's authority under section 6103(f)(1) of the Internal Revenue Code and required that documents be provided by April 10, 2019. On May 6, 2019, the Secretary of the Treasury, who stated that he was supervising the handling of this matter by the IRS, denied the Committee's lawful request in reliance on advice from the U.S. Department of Justice.

On May 10, 2019, Chairman Neal issued subpoenas to the Secretary of the Treasury and the IRS Commissioner for the tax returns and return information that had been requested on April 3. The subpoena required that documents be provided by May 17, 2019. The Secretary and Commissioner refused to provide the subpoenaed documents, relying on the same advice from the U.S. Department of Justice. On July 2, 2019, the Committee filed a lawsuit in the United States District Court for the District of Columbia to enforce the subpoenas and the document request made under section 6103.

On multiple occasions, the Secretary did offer to provide the Committee a briefing on the Presidential audit process in lieu of producing the requested tax returns and return information. On June 10, 2019, eight officials from the IRS and U.S. Department of the Treasury ("Treasury") briefed eight bipartisan Committee staff on the Presidential audit procedures outlined in the Internal Revenue Manual. In anticipation of the briefing, Committee staff prepared hundreds of questions for IRS and Treasury, including many questions about how the mandatory audit process has been applied to Presidents, both current and former. To facilitate a meaningful meeting, pursuant to the Chairman's authority under section 6103(f)(4), the Chairman designated all Majority and Minority staff present at the briefing as his agents for purposes of receiving confidential taxpayer information.

Despite the Chairman's designation, which had been transmitted to the IRS and Treasury in advance, officials declined to answer all specific questions about actual audits. This included declining to answer basic questions about whether Presidential returns have ever been filed electronically, how long Presidential audits generally take, whether there ever have been any assessments of tax made to Presidential returns, or whether any President-taxpayers have ever gone to IRS Appeals from a mandatory audit. In fact, of the eight Treasury and IRS officials sent to the briefing, none had ever been involved in a mandatory Presidential audit, evidencing Treasury's lack of intent to provide a meaningful briefing.

In the absence of historical information from Treasury and the IRS, the Committee has looked to other sources for information about past Presidential audits, as well as about Congress' prior use of section 6103 to obtain tax returns and return information. To the Committee's knowledge, there is only one President for whom information about the audit of returns is publicly available—President Richard Nixon. In the early 1970s, JCT conducted a comprehensive examination of President Nixon's returns and released a report of its findings. Also, according to an IRS memorandum provided to Committee staff during the June 10 briefing, the IRS implemented procedures for the handling of Presidential returns because of issues that arose regarding President Nixon. Therefore, in furtherance of the Committee's ongoing work concerning the Presidential audit process, the Chairman asked the Chief of Staff of JCT to review JCT files of its investigation of President Nixon's returns to determine if, at that time, JCT staff sought and received, under its legal authority, confidential taxpayer information directly from the IRS.

II. EXPLANATION OF THE SUBMITTED MATERIALS

A. BACKGROUND ON THE SUBMITTED MATERIALS

In 1973, issues related to President Nixon's tax compliance became a matter of public concern. President Nixon generally denied any impropriety and released a letter from the IRS noting that his returns were accepted as filed and complimenting him for the care taken in preparing his returns. However, as the controversy continued, President Nixon voluntarily made public his income tax returns for the years he served as President—1969, 1970, 1971, and 1972—and requested that JCT (then called the Joint Committee on Internal Revenue Taxation) review the returns with respect to two issues.

JCT decided to conduct a comprehensive examination of President Nixon's income tax returns for the years 1969 through 1972, not limited to only the two issues identified by the President. In its investigative report from 1974, JCT staff noted that "so many questions have been raised about the tax returns of the President for these years that the committee believed the general public can only be satisfied by a thorough examination of the President's taxes." The report stated that, though public discussion had focused largely on two issues, "broader examination was necessary in part because various items on a tax return are often so interrelated that distortions result if a comprehensive review is not made." Accordingly, JCT staff "conducted approximately 30 interviews with persons involved in different aspects of the President's tax matters," "made contact with numerous other possible sources of information," "sent staff members to California to consider various tax issues," "sent staff personnel to New York to carry out the examination," "received numerous investigations made by [IRS] personnel," and "employed experts to help it appraise the value of San Clemente property."

It had been assumed by many, including Members of the Committee, that JCT did not obtain confidential taxpayer information from the IRS and solely relied on taxpayer information voluntarily released by President Nixon. In fact, two Committee reports from

the 115th Congress (H. Rept. 115–73 and H. Rept. 115–309), related to resolutions of inquiry directing Treasury to provide certain returns of the President to the House of Representatives, stated the following: “Some Members have suggested there is a precedent for this—that tax-writing committees used the authority granted under Section 6103(f) to access and review President Nixon’s tax returns in 1973. However, such assertions are not supported by the facts. The facts are these: President Nixon voluntarily released his own tax returns[.]”

The 1974 JCT report contains numerous statements indicating that JCT actually may have used its statutory authority to request and receive from the IRS tax returns and return information of President Nixon in connection with the audit. For example, the report states: “The staff has examined the President’s tax returns and/or accountant’s work papers for the years 1964 through 1968 and has confirmed or is satisfied that maintenance expenses were taken as business deductions for each of these years.” These years predate the returns publicly released by President Nixon and also his term as President. Other statements in the report also indicate that JCT staff reviewed return information for tax years and taxpayers beyond that included in the material publicly released by President Nixon.

Further, in a statement delivered on the House floor regarding the report, the Honorable Wilbur Mills, then-Vice Chairman of JCT and Chairman of the Committee on Ways and Means, stated:

“Mr. Speaker, I am transmitting to the House today, and Senator Long is transmitting to the Senate, for the Joint Committee on Internal Revenue Taxation the following staff report, which represents an analysis of the President’s tax returns for the years 1969–1972.

There is a provision of law in the Internal Revenue Code which says that the committee cannot release information obtained with respect to a taxpayer’s return until a report has been filed with the Congress. We are proceeding to abide by that provision of law, by now filing the report with the House, so it can subsequently be released to the public.

[W]e are here and concerned about a provision of the Internal Revenue Code. Anyone who should release any of this information prior to its submission to the House would be guilty of having committed a crime.”

These statements strongly indicate that the JCT report contained confidential taxpayer information obtained directly from the IRS.

B. DESCRIPTION OF THE SUBMITTED MATERIALS

As discussed above, the Chairman recently asked the Chief of Staff of JCT to review JCT files of its investigation of President Nixon’s returns. Specifically, the Chairman’s letter to the JCT Chief of Staff stated: “I request that you review available records and files of the Joint Committee related to the investigation and report whether you can state that the Joint Committee staff sought and received, under its legal authority, confidential information directly from the Internal Revenue Service.”

In researching the Chairman's request, JCT staff confirmed that, in 1973 and 1974, the then-JCT Chief of Staff made various requests to the IRS for confidential taxpayer information of President Nixon and others. The current JCT Chief of Staff concluded that, based on his review of materials, "the Joint Committee staff sought and received, under its legal authority, confidential information directly from the Internal Revenue Service that was used in the analysis presented in the report." While it is true that President Nixon voluntarily disclosed his returns for tax years 1969 through 1972, JCT additionally sought from the IRS: (1) President Nixon's returns for prior tax years (1963 through 1968), (2) authenticated copies of the returns voluntarily disclosed (1969 through 1972), and (3) returns for additional taxpayers. Where records were available, the IRS complied with JCT's requests without delay or objection, and as evidenced by the materials submitted, JCT received from the IRS copies of the President's returns for tax years 1966 through 1972.

The following materials were reviewed by the Committee in closed executive session on July 25, 2019:

I. Letter dated July 23, 2019 from Chairman Richard E. Neal to JCT's Chief of Staff, Mr. Thomas A. Barthold, requesting that JCT review available records and files and report whether JCT staff sought and received, under its legal authority, confidential information directly from the IRS related to its investigation of President Nixon's returns.

II. Letter dated July 23, 2019 from JCT's Chief of Staff, Mr. Thomas A. Barthold, to Chairman Richard E. Neal, concluding that JCT staff sought and received, under its legal authority, confidential information directly from the IRS and enclosing two sets of documents to substantiate such conclusion. The enclosed documents include:

A. Selected pages from the JCT staff report on President Nixon that highlighted pertinent statements indicating that the staff reviewed return information for tax years and taxpayers beyond that included in the publicly released report.

B. JCT Correspondence

1. Letter dated December 13, 1973 from JCT's Chief of Staff, Dr. Laurence N. Woodworth, to the IRS Commissioner, the Honorable Donald C. Alexander, requesting authenticated copies of President Nixon's returns for tax years 1968 through 1972.

2. Letter dated December 13, 1973 from the IRS Commissioner, the Honorable Donald C. Alexander, to JCT's Chief of Staff, Dr. Laurence N. Woodworth, accompanying the transmittal of copies of President Nixon's returns for tax years 1968 through 1972 (without attachments provided by the Commissioner).

3. Letter dated January 31, 1974 from JCT's Chief of Staff, Dr. Laurence N. Woodworth, to the IRS Commissioner, the Honorable Donald C. Alexander, requesting copies of President Nixon's returns for tax years 1963 through 1967 and copies of returns of certain other taxpayers.

4. Letter dated February 11, 1974 from the IRS Commissioner, the Honorable Donald C. Alexander, to JCT's Chief

of Staff, Dr. Laurence N. Woodworth, accompanying the transmittal of copies of President Nixon's returns for tax years 1966 and 1967 and explaining that copies of President Nixon's returns for years earlier than 1966 had been destroyed in accordance with the IRS's regular procedures (without enclosures provided by the Commissioner).

5. Letter dated March 30, 1974 from JCT's Chief of Staff, Dr. Laurence N. Woodworth, to Senator Carl T. Curtis, a JCT Member, providing confidential material that was taken from a taxpayer's return and noting that unauthorized disclosure would be subject to penalties of law (without attachments provided by Dr. Woodworth).

The Committee did not receive any tax returns from JCT as part of this effort. By a vote of 25 to 10, the Committee voted on July 25, 2019 to submit these materials to the U.S. House of Representatives.

III. VOTES OF THE COMMITTEE

The following statement is made concerning the votes of the Committee on Ways and Means during the consideration of the materials reviewed in closed executive session on July 25, 2019.

A motion, pursuant to clause 2(g)(1) of House Rule 11, that the Committee proceed to executive session offered by Mr. Neal was agreed to by a roll call vote of 22 yeas and 17 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Lewis	X	.....	.....	Mr. Nunes .....	.....	X	.....
Mr. Doggett .....	.....	X	.....	Mr. Buchanan .....	.....	X	.....
Mr. Thompson	X	.....	.....	Mr. Smith .....	.....	X	.....
Mr. Larson	X	.....	.....	Mr. Marchant .....	.....	X	.....
Mr. Blumenauer	X	.....	.....	Mr. Reed .....	.....	X	.....
Mr. Kind	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Pascrell	X	.....	.....	Mr. Holding .....	.....	X	.....
Mr. Davis	X	.....	.....	Mr. Smith .....	.....	X	.....
Ms. Sánchez	X	.....	.....	Mr. Rice .....	.....	X	.....
Mr. Higgins .....	.....	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sewell .....	.....	.....	.....	Ms. Walorski .....	.....	X	.....
Ms. DelBene	X	.....	.....	Mr. LaHood (IL) .....	.....	X	.....
Ms. Chu (CA)	X	.....	.....	Mr. Wenstrup .....	.....	X	.....
Ms. Moore	X	.....	.....	Mr. Arrington .....	.....	X	.....
Mr. Kildee	X	.....	.....	Mr. Ferguson .....	.....	X	.....
Mr. Boyle	X	.....	.....	Mr. Estes .....	.....	X	.....
Mr. Beyer	X	.....	.....				
Mr. Evans	X	.....	.....				
Mr. Schneider	X	.....	.....				
Mr. Suozzi	X	.....	.....				
Mr. Panetta	X	.....	.....				
Ms. Murphy	X	.....	.....				
Mr. Gomez	X	.....	.....				
Mr. Horsford	X	.....	.....				

A motion offered by Mr. Thompson to table Mr. Brady's motion to postpone to a date certain was agreed to by 23 yeas and 17 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X	.....	.....	Mr. Brady	X	.....	.....
Mr. Lewis	X	.....	.....	Mr. Nunes	X	.....	.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Doggett	X	.....	.....	Mr. Buchanan	X	.....	.....
Mr. Thompson	X	.....	.....	Mr. Smith	X	.....	.....
Mr. Larson	X	.....	.....	Mr. Marchant	X	.....	.....
Mr. Blumenauer	X	.....	.....	Mr. Reed	X	.....	.....
Mr. Kind	X	.....	.....	Mr. Kelly	X	.....	.....
Mr. Pascrell	X	.....	.....	Mr. Holding	X	.....	.....
Mr. Davis	X	.....	.....	Mr. Smith	X	.....	.....
Ms. Sánchez	X	.....	.....	Mr. Rice	X	.....	.....
Mr. Higgins .....	.....	.....	.....	Mr. Schweikert	X	.....	.....
Ms. Sewell .....	.....	.....	.....	Ms. Walorski	X	.....	.....
Ms. DelBene	X	.....	.....	Mr. LaHood (IL)	X	.....	.....
Ms. Chu (CA)	X	.....	.....	Mr. Wenstrup	X	.....	.....
Ms. Moore	X	.....	.....	Mr. Arrington	X	.....	.....
Mr. Kildee	X	.....	.....	Mr. Ferguson	X	.....	.....
Mr. Boyle	X	.....	.....	Mr. Estes	X	.....	.....
Mr. Beyer	X	.....	.....				
Mr. Evans	X	.....	.....				
Mr. Schneider	X	.....	.....				
Mr. Suozzi	X	.....	.....				
Mr. Panetta	X	.....	.....				
Ms. Murphy	X	.....	.....				
Mr. Gomez	X	.....	.....				
Mr. Horsford	X	.....	.....				

A motion was made by Mr. Neal to move the previous question. The motion was agreed to by a roll call vote of 25 yeas and 10 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X	.....	.....	Mr. Brady	X	.....	.....
Mr. Lewis	X	.....	.....	Mr. Nunes	X	.....	.....
Mr. Doggett	X	.....	.....	Mr. Buchanan .....	.....	.....	.....
Mr. Thompson	X	.....	.....	Mr. Smith .....	.....	.....	.....
Mr. Larson	X	.....	.....	Mr. Marchant .....	.....	.....	.....
Mr. Blumenauer	X	.....	.....	Mr. Reed	X	.....	.....
Mr. Kind	X	.....	.....	Mr. Kelly	X	.....	.....
Mr. Pascrell	X	.....	.....	Mr. Holding .....	.....	.....	.....
Mr. Davis	X	.....	.....	Mr. Smith .....	.....	.....	.....
Ms. Sánchez	X	.....	.....	Mr. Rice .....	.....	.....	.....
Mr. Higgins	X	.....	.....	Mr. Schweikert	X	.....	.....
Ms. Sewell	X	.....	.....	Ms. Walorski	X	.....	.....
Ms. DelBene	X	.....	.....	Mr. LaHood (IL)	X	.....	.....
Ms. Chu (CA)	X	.....	.....	Mr. Wenstrup .....	.....	.....	.....
Ms. Moore	X	.....	.....	Mr. Arrington	X	.....	.....
Mr. Kildee	X	.....	.....	Mr. Ferguson	X	.....	.....
Mr. Boyle	X	.....	.....	Mr. Estes	X	.....	.....
Mr. Beyer	X	.....	.....				
Mr. Evans	X	.....	.....				
Mr. Schneider	X	.....	.....				
Mr. Suozzi	X	.....	.....				
Mr. Panetta	X	.....	.....				
Ms. Murphy	X	.....	.....				
Mr. Gomez	X	.....	.....				
Mr. Horsford	X	.....	.....				

A motion by Ms. Sánchez that the Committee submit to the House of Representatives the letter from the Joint Committee on Taxation and attachments was agreed to by a roll call vote of 25 yeas to 10 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Neal	X	.....	.....	Mr. Brady .....	.....	X	.....
Mr. Lewis	X	.....	.....	Mr. Nunes .....	.....	X	.....
Mr. Doggett	X	.....	.....	Mr. Buchanan .....	.....	.....	.....

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thompson	X	.....	.....	Mr. Smith (NE) .....	.....	.....	.....
Mr. Larson	X	.....	.....	Mr. Marchant .....	.....	.....	.....
Mr. Blumenauer	X	.....	.....	Mr. Reed .....	.....	X	.....
Mr. Kind	X	.....	.....	Mr. Kelly .....	.....	X	.....
Mr. Pascrell	X	.....	.....	Mr. Holding .....	.....	.....	.....
Mr. Davis	X	.....	.....	Mr. Smith (MO) .....	.....	.....	.....
Ms. Sánchez	X	.....	.....	Mr. Rice .....	.....	.....	.....
Mr. Higgins	X	.....	.....	Mr. Schweikert .....	.....	X	.....
Ms. Sewell	X	.....	.....	Ms. Walorski .....	.....	X	.....
Ms. DelBene	X	.....	.....	Mr. LaHood .....	.....	X	.....
Ms. Chu	X	.....	.....	Mr. Wenstrup .....	.....	.....	.....
Ms. Moore	X	.....	.....	Mr. Arrington .....	.....	X	.....
Mr. Kildee	X	.....	.....	Mr. Ferguson .....	.....	X	.....
Mr. Boyle	X	.....	.....	Mr. Estes .....	.....	X	.....
Mr. Beyer	X	.....	.....				
Mr. Evans	X	.....	.....				
Mr. Schneider	X	.....	.....				
Mr. Suozzi	X	.....	.....				
Mr. Panetta	X	.....	.....				
Ms. Murphy	X						
Mr. Gomez	X						
Mr. Horsford	X						

RICHARD E. NEAL
MASSACHUSETTS
(CHAIRMAN)

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BRANDON CASEY
MAJORITY STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

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GARY ANDRES
MINORITY STAFF DIRECTOR

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
502 Ford House Office Building
Washington, D.C. 20515

July 23, 2019

Dear Mr. Barthold:

In 1973 President Richard Nixon released to the public copies of his tax returns for the years 1969, 1970, 1971, and 1972, along with other financial information. In a letter to Wilbur D. Mills, the Chairman of the Joint Committee on Internal Revenue Taxation ("the Joint Committee"), the President described certain transactions and tax positions that had raised controversy. He requested that "the Joint Committee on Internal Revenue Taxation ... examine both of these transactions and ... inform me whether, in its judgment, the items have been correctly reported to the Internal Revenue Service." The Joint Committee decided to conduct a comprehensive examination of the President's income tax returns for the years 1969 through 1972, not limited to only the two issues identified by President Nixon. The Joint Committee directed its staff to undertake the investigation and prepare a report. The Joint Committee voted to submit the staff report to the Congress.

While President Nixon made a public disclosure of his tax returns for the years 1969 through 1972, I would like to know if, in addition to the publicly disclosed information, the Joint Committee staff sought information, as necessary, directly from the Internal Revenue Service under its legal authority under the Internal Revenue Code ("the Code"). I request that you review available records and files of the Joint Committee related to the investigation and report whether you can state that the Joint Committee staff sought and received, under its legal authority, confidential information directly from the Internal Revenue Service. If documentation of any Joint Committee request or any correspondence from the IRS acknowledging such Joint Committee request(s) exists, I respectfully request a copy of such materials.

Sincerely,



The Honorable Richard E. Neal, Chairman

116TH CONGRESS, 1ST SESSION

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JUL 23 2019

Honorable Richard Neal
 Committee on Ways and Means
 1102 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Neal:

In response to your request of July 23, 2019, my colleagues and I have reviewed certain Joint Committee on Taxation's file materials relating to the report: Joint Committee on Internal Revenue Taxation, *Examination of President Nixon's Tax Returns for 1969 through 1972* (JCS-9-74), April 3, 1974 ("Joint Committee staff report").¹ Based on this review, I can state that the Joint Committee staff sought and received, under its legal authority, confidential information directly from the Internal Revenue Service that was used in the analysis presented in the report.

I enclose two sets of documents in support of my conclusion. Selected pages from a public copy of the Joint Committee staff report comprise the first set of documents. President Nixon had made public his tax returns for the years 1969, 1970, 1971, and 1972, and certain other financial information. I have highlighted pertinent statements from the Joint Committee staff report indicating that the staff reviewed return information for tax years and taxpayers beyond that included in the publicly released material.

- On pages 3 and 4, the Joint Committee staff report states "[I]t was necessary to consider a limited number of items relating to prior years' returns."
- On pages 10, 11, and 12, the Joint Committee staff report specifically refers to use of information from President Nixon's return for the year 1968 in reference to the staff's analysis of the charitable deduction claimed for the gift of certain pre-presidential papers.
- On pages 41 and 42, the Joint Committee staff report specifically refers to use of information from President Nixon's return for the year 1968 in reference to the staff's analysis of the charitable deduction claimed for the gift of certain pre-presidential papers.

¹ The Joint Committee on Internal Revenue Taxation voted to submit the Joint Committee staff report to the House of Representatives and to the Senate. On April 4, 1974, Congressman Wilbur Mills submitted the Joint Committee staff report to the House of Representatives and Senator Russell Long submitted the Joint Committee staff report to the Senate.

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

Honorable Richard Neal
U.S. House of Representatives

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- On page 113, the Joint Committee staff report states, "For example, on his 1968 return, the President deducted ..."
- On page 118, footnote 13, the Joint Committee staff report states, "The staff has examined the President's tax returns and/or the accountant's work papers for the years 1964 through 1968 ..."
- On page 155, the Joint Committee staff report refers to tax positions taken by Patricia Nixon Cox and her husband Edward Cox, suggesting that the staff had examined return information related to these individuals.
- On page 209, the Joint Committee staff report states, "The staff has examined Patricia [Nixon]'s tax returns and confirmed this information."

The second set of documents is copies of certain Joint Committee staff correspondence. This material includes return information that is subject to the confidentiality restrictions of section 6103 of the Internal Revenue Code and its attendant civil and criminal penalties for unauthorized disclosure. Briefly described the enclosures are:

- A letter dated December 13, 1973, from the Joint Committee's Chief of Staff, Laurence N. Woodworth to the Commissioner of the Internal Revenue Service, Donald Alexander, and Commissioner's reply (without the enclosure provided by the Commissioner).
- A letter dated January 31, 1974, from the Joint Committee's Chief of Staff, Laurence N. Woodworth to the Commissioner of the Internal Revenue Service, Donald Alexander, and Commissioner's reply (without the enclosure provided by the Commissioner).

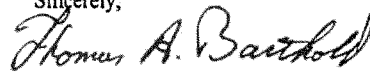
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Honorable Richard Neal
U.S. House of Representatives

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- A letter dated March 30, 1974 from the Joint Committee's Chief of Staff, Laurence N. Woodworth to Senator Carl Curtis, a member of the Joint Committee on Internal Revenue Taxation.

Sincerely,



Thomas A. Barthold

Enclosures

helpful in the staff examination of the President's returns, and they have supplied most of the information requested.¹

In its examination of the President's tax returns, the staff conducted approximately 30 interviews with persons involved in different aspects of the President's tax matters. In a number of cases, this represents more than one interview with the same person. In addition, the staff has made contact with numerous other possible sources of information, has on two occasions sent staff members to California to consider various tax issues, and on another occasion has sent staff personnel to New York to carry out the examination. This is in addition to information the staff received through numerous investigations made by the Internal Revenue Service personnel. Finally, the staff has employed experts to help it appraise the value of the San Clemente property—an engineering firm and an appraisal firm, both in California. The staff believes that it has conducted an extensive examination.

As is true in any examination of a tax return, however, it is not possible to give assurance that all items of income have been included. The staff report contains recommendations on two categories of income which it believes should have been included but were not; namely, improvements made by the Government to the San Clemente and Key Biscayne properties which the staff believes primarily represent personal economic benefits to the President, and economic benefits obtained by family and friends from the use of Government aircraft for personal purposes.

The staff did not examine the President's income tax returns for years prior to 1969. In the course of its examination of the returns for 1969-1972, however, the staff found that because of interrelationships of prior years' returns it was necessary to consider a limited number of items relating to prior years' returns, since they affect the

¹ The exceptions are listed here. (1) The Chairman of the Joint Committee requested information on flights taken by the President and his family on Government airplanes. This information was supplied only with respect to flights where the family were passengers. The President was not. The President's counsel responded to Chairman Long's letter on April 1, 1974, that this information would not be furnished and indicated the reasons. The response is shown in the Appendix in Exhibit XII-3.

(2) Because of the absence of the normal contact with the taxpayer, toward the end of its investigation the staff also submitted a series of questions for consideration by the President. The questions submitted relate to issues still not fully answered after many interviews were conducted with other persons involved in one way or another with the President's tax matters. These questions are shown in the Appendix Exhibit XII-1. The staff recognizes that these questions were submitted late in the examination period and that this may well account for the fact that the staff has not yet received an answer. It is still hoped, however, that answers will be forthcoming and that these can be made public.

(3) The staff also requested information from the President's representatives with respect to a so called "Special Projects Fund." The staff was made aware that certain expenditures out of this fund possibly had been made for personal items of the President relating to his San Clemente residence. For this reason, the staff requested a statement from the President's representatives on which of the expenditures made out of that fund were for the President's personal benefit. The staff's letter to the President's representatives on this matter is shown in Exhibit XII-2. On April 1, 1974, the President's counsel responded to this request and indicated that on the basis of an investigation there was found only one possible occasion on which a personal expense of President Nixon was paid out of the Special Projects Fund. This was for \$5.30, which was a reimbursement for an expenditure for light bulbs at San Clemente. The staff has no way to verify whether these were all the expenditures made other than the letter. The letter is shown in Exhibit XII-4.

returns for the years in question. In addition, the staff has limited its recommendations to income tax matters, although in this examination it found instances where the employment taxes were not paid and gift tax returns not filed.

The staff has made no attempt in this report to draw any conclusions whether there was, or was not, fraud or negligence² involved in any aspect of the returns, either on the part of the President or his personal representatives. The staff believes that it would be inappropriate to consider such matters in view of the fact that the House Judiciary Committee presently has before it an impeachment investigation relating to the President, and that members of the Joint Committee on Internal Revenue Taxation, along with members of the House and Senate, may subsequently be called upon to pass judgment on any charges which may be brought as a result of that investigation. The staff believes that neither the House nor the Senate members of the Joint Committee would want to have pre-judged any issue which might be brought in any such proceedings.

The staff in preparing this report recognizes that an examination by a committee staff, possibly with the publication of the recommendations does not retain for the taxpayer his usual rights of review which are available to him under the appellate procedure in the Internal Revenue Service and through the courts. For this reason, the staff has attempted to examine matters with great care before making a recommendation which will result in greater tax payments. At the same time, however, the staff has attempted to follow the standards which it believes, under the law, are required to be applicable to taxpayers generally, and the staff has not withheld recommendations because of the office of the taxpayer involved. The staff, in any case, believes it should be emphasized that this is a report only. It is not a demand for payment of taxes. Any tax payment is a matter for consideration by the taxpayer and the Internal Revenue Service.

SUMMARY OF RECOMMENDATIONS

The report which follows is divided into ten separate parts. Each of these deals with one or more major questions with respect to the tax returns of the President. In most cases the report indicates first the scope of the examination and then presents an analysis of points of law which may be involved. This is followed by a summary of staff recommendations, and finally the staff presents an analysis of these recommendations.

The staff recommendations would make the following increases in the President's taxes for the years involved:

Year	Proposed Deficiency	Interest ¹	Deficiency plus interest
1969.....	\$171,055	(?)	\$171,055
1970.....	93,410	\$16,630	110,040
1971.....	89,567	10,547	100,114
1972.....	89,890	5,224	95,114
Total.....	\$444,022	\$32,409	\$476,431

¹ Interest to April 3, 1974.

² Since 1969 is a closed year and any payment by the President would be voluntary, the staff did not include an interest payment for the deficiency in this year. However, if interest were to be included, the amount would be \$40,732.

³ The addition to tax for negligence itself, of course, is not a fraud issue, and applies when there is no intent to defraud (see I.R.C. section 6853(a)).

The staff has also looked into the events relating to the deed. In addition, questions have been raised about certain restrictions on access to the papers that were imposed in the deed. On this latter point, the question arises whether the restrictions are such that the gift should be treated as a gift of a future interest, which would not be deductible under the tax laws regardless of when the gift was made.

In its examination of this matter, the staff has interviewed the representatives of the President who were involved in the gift, including White House staff, the President's attorneys (both former and present), and the President's accountants (both former and present). In addition, the staff has interviewed personnel at the National Archives, the General Services Administration, and all other individuals who (as best the staff can determine) had some involvement in this matter. In some cases witnesses have submitted written statements of their recollections following their staff interviews.

In the discussion set forth in this report, the staff has made use of all the memoranda, letters, and other data furnished to it, and in addition has reproduced the relevant documents in full in the appendix so that the public will have the opportunity to form its own impressions from seeing the entire document rather than from relying on the staff's summary of the document.

2. 1968 Gift of Papers

President Nixon made his first gift of papers to the United States at the end of 1968 and took a charitable contribution deduction for this gift on his tax return filed for 1968. The 1968 tax return indicates that this gift consisted of personal papers, manuscripts, and other materials; that the date of the gift was December 30, 1968; and that the market value at the time of the gift was \$80,000. The tax return also indicated that there were no restrictions on the gift and that the gift was free and clear, with no rights remaining in the taxpayer. The amount of the gift was in excess of the maximum charitable contribution deduction available to President Nixon on his 1968 tax return and consequently a portion of the amount was available as a carryover to future years.

The following is a brief summary of the manner in which President Nixon made his 1968 gift of papers and a discussion of what was done by those involved. This is important to the staff examination relating to the 1969-1972 returns for two reasons. First, it is necessary to see the procedures followed for the 1968 gift since this indicates what information the people handling the President's personal finances had about gifts of papers in early 1969. In the absence of information to the contrary, it is reasonable to assume that the intended procedure for a 1969 gift would be similar to that for the 1968 gift. This is suggested, for example, by the fact that on the President's tax return the gift of papers claimed in 1969 was viewed as a second installment of President Nixon's pre-Presidential papers. The second reason for interest in the 1968 gift is that, since a carryover of the charitable contribution deduction taken on the 1968 tax return is available for future years (up to 1973), the staff must review the 1968 gift to determine if the amount available for carryover from 1968 is deductible for tax purposes for the years under examination by the Joint Com-

mittee. The Joint Committee staff did not examine the tax returns of the President for the years prior to 1969 except to review the effect any of the items on the prior years' returns may have on the tax returns under examination.

The following is a summary of those procedures followed by President Nixon's representatives for his gift of papers in 1968. A full discussion of the staff view on whether this gift is deductible for tax purposes is discussed in Section 5 of this report.

Procedures followed for 1968 gift

First consideration of 1968 gift.—According to public statements made by President Nixon, at a meeting he had with President Johnson after the election in late November or early December 1968, President Johnson told him that he could obtain tax deductions for gifts of his papers. John Ehrlichman told the staff that President Johnson gave President-elect Nixon the name of an appraiser, Ralph Newman, whom he had used.²

People assigned to work on gift.—Richard Ritzel, President Nixon's former law partner at what is now Mudge, Rose, Guthrie & Alexander, told the staff that on December 15 or 16, 1968, he was asked by President-elect Nixon to look into the possibility of making a gift of papers in 1968. Mr. Ehrlichman told the staff that he was also asked by Mr. Nixon to look into the desirability of making a gift of papers, and Mr. Ehrlichman assigned Edward L. Morgan and Egil Krogh of his staff to this task.

Decision to make a gift.—Mr. Ritzel told the staff that on December 22, 1968, he met with President-elect Nixon and reported that it was feasible to make a gift but that, since it was close to the end of the year, time would be a problem. Mr. Nixon told him to go ahead.

Determination of amount of gift.—Mr. Ritzel told the staff that an accountant with the firm handling Mr. Nixon's taxes at that time called him and said that they would need approximately \$60,000 to use up the maximum deduction allowable for 1968 (30 percent of Mr. Nixon's adjusted gross income). Mr. Ritzel said that he came up with a figure of \$80,000 for the size of the gift because he wanted to make sure that they had enough for the maximum deduction. Mr. Ritzel said that a decision was made not to make a larger gift with a larger carryover at that time because Mr. Nixon was thinking of assigning to charity income from certain royalties which he believed might not be appropriate for him to receive while serving as President. Mr. Ritzel said that for this reason, and because of the short time period during which they had to make the arrangements for the gift, they decided only to make a gift slightly larger than that needed to use up the maximum deduction for 1968 and to wait for the future for other gifts.

Segregation of material for gift.—The pre-Presidential Nixon papers were stored in a warehouse near the offices of Mudge, Rose in New York. During the week of December 23, 1968, a number of boxes of these papers were transported from the warehouse to the offices of the law firm. On December 26 and 27, the boxes of papers were reviewed to isolate those that were sensitive in any way. Those who

² A full discussion of the practices of President Johnson and his staff on his pre-Presidential papers is set forth in Section 6.

worked on this included Loie Gaunt, who had been with Mr. Nixon most of the time since 1951 and was the person most familiar with the boxes of papers, since she had been involved in organizing his files and had a list of the contents of the boxes; Messrs. Morgan and Krogh of Mr. Ehrlichman's staff; and James P. (Pat) Tannian, a member of the Mudge, Rose firm who assisted Mr. Ritzel with the papers. On December 29 (Sunday), Ralph Newman, an appraiser, arrived and was told by Mr. Ritzel the amount needed for the gift. Mr. Newman told the staff that he worked with the group reviewing the material to remove the more sensitive papers and then proceeded to identify sufficient material to cover the required amount that was to be included in the gift. He said he identified the boxes by putting Roman numerals on them and made an estimate of the value of each box.

1968 deed.—Mr. Ritzel told the staff that on or about December 26, 1968, he drafted two deeds of gift, one containing restrictions on access and the other without restrictions. He said that his associate, Pat Tannian, came to Washington to meet with Sheldon Cohen, the Commissioner of Internal Revenue, on December 28, and that Mr. Cohen assured Mr. Tannian that either version of the deed would be acceptable for a tax-deductible gift. (Mr. Cohen has told the staff that he met with Mr. Tannian but did not give this opinion, and Mr. Tannian has told the staff that he does not recall that he, in fact, showed the deeds to Mr. Cohen.) Mr. Ritzel said that Mr. Tannian also went to the General Services Administration to have them review the deed and that they requested an additional provision in the deed with restrictions to allow employees of the Archives to catalog the papers. Mr. Ritzel said that President-elect Nixon was unhappy with the language of the unrestricted deed, so he signed the one with the restrictions. Mr. Ritzel said Mr. Krogh, who had taken the deeds to Key Biscayne for signing, came back immediately so that the gift with the deed could be finalized. The 1968 deed is Exhibit I-1 in the Appendix.

Delivery of papers.—On December 30, 1968, a representative of the National Archives, Peter Iacullo, who had been authorized by Lawson Knott, the Administrator of General Services, accepted the gift by writing "accepted" and countersigning the deed on the last page opposite Mr. Nixon's signature. The papers were picked up at this time by the General Services Administration and were transferred to the Federal Records Center in New York.

Treatment of gift on tax returns.—Ralph Newman valued President Nixon's 1968 gift at \$80,000. Of this, \$70,552.27 was deducted on the President's 1968 tax return and \$9,447.73 was available for carryover to future years. The treatment of this available carryover to 1969 is discussed in Section 5 below.

3. Documents on the Second Gift of Papers Furnished the Joint Committee by President Nixon's Representatives

President Nixon's representatives have released to the public or submitted to the Joint Committee three documents setting forth facts and legal opinions on the validity of the charitable contribution deduction taken by President Nixon on his 1969 tax return for the

them. In addition, the restrictions apply to all donated papers even though President Nixon has no common law copyright in many of the papers. For example, a sizable portion of the "General Correspondence File" donated in 1969 and all of the "Children's Letters" collection donated in 1968 consist of letters received by the President. The common law copyright to these letters belongs to the writers of the letters, not to the President. (This point is discussed in detail in the analysis of Professor L. Hart Wright, which is set out in Exhibit I-4.) In these cases, the restrictions on access and the rights retained by the President must relate to the tangible personal property since the restrictions in fact apply to these letters and since the President has no intangible property rights in the letters. For these reasons, the staff believes that the gifts of 1968 and 1969 are gifts of future interests in tangible personal property for which section 170(a)(3) prevents an income tax deduction until the end of Mr. Nixon's presidency.

Deduction for gift of papers in 1969

As indicated above, the staff believes that a valid gift of papers was not made prior to July 25, 1969, and, therefore, recommends denial of the charitable contribution deduction for 1969 and the carryovers in subsequent years. Also, the staff believes that a deed is necessary for this gift because of the restrictions and that since delivery of the deed conveying title of the papers to the United States, was not made until after April 10, 1970, the gift was not valid before July 25, 1969. But, even if the staff believed that a valid gift had been made before July 25, 1969, it believes that the gift represents a gift of a future interest in property and, therefore, that the charitable contribution deduction would in any event not be allowable for 1969 and subsequent years.

Carryover of excess deduction for gift of papers in 1968

The staff did not examine President Nixon's tax returns for any year prior to 1969 for any purpose other than to determine the effect certain items on prior tax returns had on the tax returns under examination by the staff. The charitable contribution deduction taken with respect to the gift of papers in 1968, however, was in excess of the maximum amount deductible in that year; consequently, an amount (the excess was \$9,447) was available as a carryover to 1969 and the four succeeding taxable years. This amount was not taken as a deduction in 1969 or in the subsequent years because the deduction claimed by the President on his 1969 tax return was large enough to cover the maximum amount available in 1969 and in the succeeding years since then. Since the staff believes that the charitable contribution deduction for the gift of papers in 1969 should be disallowed, this would have the effect of making the carryover of the excess deduction from the 1968 tax return available in 1969. It is for this reason that the staff believed it was necessary to make a recommendation with respect to the 1968 gift.

Because the staff believes that the restrictions contained in the 1968 chattel deed make the gift a gift of a future interest in property, it also believes that the carryover, which would otherwise be available for 1969 (since the deduction for the gift of papers in 1969 is disallowed), is not available.

Statement on tax return on restrictions of gift

The Internal Revenue Service's regulations require anyone taking an income tax deduction for a gift of property to a charity to include on the tax return certain information, including any restrictions that may be attached to the gift. The President's tax return for 1969 had an information sheet consistent with what was required by the regulations, setting forth a brief description of the relevant information about the gift. As to any restrictions, it was stated on the tax return:

"None. The gift was free and clear with no rights remaining the taxpayer."

This is essentially the same statement that was contained in the 1968 tax return relating to the gift of papers in that year.

The staff believes that this statement on the tax return is inaccurate. The staff has no conclusive evidence, however, that the statement was made intentionally by those preparing the President's tax returns or any evidence that the President was aware of this statement on his tax return.

This statement on the 1969 return was prepared primarily by Frank DeMarco, according to his statements and the statement of Arthur Blech, the President's accountant, to the Joint Committee staff. Mr. DeMarco states that he knew of the 1969 deed and its contents at the time the statement was prepared, but that since the 1968 deed contained similar restrictions and the 1968 tax return contained the statement of no restrictions, he believed that a similar statement was appropriate on the 1969 return.

6. Staff Analysis of Facts Relating to the Second Gift of Papers Apart From the Deed

A. INTENTIONS OF PRESIDENT NIXON TO MAKE A GIFT IN EARLY 1969

During the course of its investigation into the validity of the deduction for the second gift of papers, the staff made an effort to determine whether President Nixon intended to make a gift of his papers in the early part of 1969 and the amount of the intended gift, including whether the thinking at this time was to make a bulk gift (that is, one large enough to permit a carryforward) or a one-year gift for tax purposes. The staff discussed this issue with several members of President Nixon's staff who were handling his personal finances in early 1969, other individuals who were involved in President Nixon's legal and financial matters at that time, and personnel at the National Archives who were involved in the discussions and arrangements with the White House staff relating to the gift. The following discussion of intentions is based on the information the staff has received in the interviews with these people and in the various items of correspondence and memoranda that the staff obtained. The staff has specifically asked the President's counsel to furnish all materials which may in any way provide information on the intent to make a gift in the early part of 1969, but as yet at least, the staff has not received any information other than what is summarized below. During our interviews, there were references to other internal White House memoranda not referred to below, but the staff has not been furnished copies of them.

basis in the New York property, the President failed to take account of certain downward adjustments in his basis in that property which are required under the law.

The President's 1969 tax return contained a statement that both his new and old properties were used as a principal residence and that no part of either residence was "rented or used for business purposes at any time." As discussed below, these statements are subject to serious challenge.

Business use of the old and new property.

The statement on President Nixon's 1969 return that no rooms in either the old residence or the new residence were used for business purposes at any time is inconsistent with other statements made and deductions taken on the 1969 return and on earlier and later returns. For example, on his 1968 return, the President deducted 25 percent of the maintenance costs (other than real estate taxes and mortgage interest) on his New York City cooperative apartment. The amount deducted in that year was \$3,231. The deduction was for use of the apartment for business purposes.³ Similar amounts were deducted for the New York City apartment in earlier years at least as far back as 1965.

The committee staff has no authority to examine the appropriateness of these deductions and has no reason to question them. If the deductions were correctly taken, they indicate that approximately one-quarter of the New York City apartment was used for business purposes. Thus, the gain from the sale of the apartment attributable to that portion of the property cannot qualify for nonrecognition treatment under section 1034.⁴

Furthermore, the statement on the President's 1969 tax return that none of the San Clemente property was used for business purposes is inconsistent with deductions taken on that same return. On the 1969 tax return, a deduction was claimed for 25 percent of the maintenance costs of the San Clemente residence as "expenses incurred in connection with the use of residences for official government functions." Depreciation was taken on 25 percent of the building on the property because a similar business use was claimed.⁵

Obviously, the statement on the President's 1969 tax return that neither the New York nor the San Clemente residences were used for business purposes is not correct since deductions were taken for business use of the New York apartment in prior years and for business use of the San Clemente residence in 1969.

The President's representatives explain the discrepancy on the President's 1969 tax return with respect to the business use of the San Clemente property by stating that the property was, in fact, used for business purposes and by admitting that the statement to the contrary on the return was incorrect. They state that this misrepresentation with respect to the property was a mistake on their part and was not made intentionally. Mr. Blech, the President's accountant in

³ If the deduction is correct, the President could also have deducted depreciation on approximately twenty-five percent of his apartment. In fact, the President did not take this deduction.

⁴ As discussed earlier in text, the regulations under section 1031 clearly state that if the old residence is used only partially for residential purposes, "only that part of the gain allocable to the residential portion is not to be recognized under this section. . . ." (Regs. § 1.1031-1(c)(3)(ii)). The legislative history of this provision is to the same effect. H. Rept. 586, 82d Cong., 1st Sess. (1961), p. 109; S. Rept. 737 (Part 2) 82d Cong., 1st Sess. (1961), p. 32.

⁵ At another point in this report, the staff does question the validity of the 1969 deductions taken with respect to the San Clemente property.

occupancy requirement. There are certain exceptions under section 1034, but these have been carefully specified in the statute. For example, in cases where the taxpayer begins construction of his new residence within the required one-year period, the statute allows him 18 months in which to occupy the property (sec. 1034(c)(5)). Also, members of the Armed Forces who serve on extended active duty are allowed a 4-year period under the statute in order to comply with the purchase and occupancy requirements (sec. 1034(h)).

In the most relevant case (cited by the President's counsel on this point), *United States v. Sheahan*, 12 AFTR 2d 5654, 323 F. 2d 383 (5th Cir. 1963), the court held that the taxpayer was not entitled to nonrecognition treatment. There the taxpayer, a civilian Army doctor, sold his home in Missouri in anticipation of his retirement from his Army post. The Army told him that he would be free to leave as soon as a replacement physician could be found. The taxpayer then purchased a residence in Atlanta, Georgia. He did not occupy the premises within the required period, however. Although the court did not question the taxpayer's good faith and intent to occupy the property, it held that this was not enough to override the clear statutory mandate concerning occupancy.¹² See also Rev. Rul. 69-434, *supra* (where the taxpayer's failure to comply was not excused even though he was prevented from occupying his new property because he was on a 2-year assignment in another city).

Basis adjustment for "allowable" depreciation

The President reported \$142,912 of gain from the sale of his New York apartment on his 1969 tax return (then seeking nonrecognition treatment of this gain). This figure was based on the sales price for his cooperative apartment of \$312,500 less \$169,588, consisting chiefly of the President's acquisition cost of the stock, the costs of certain improvements to the apartment and miscellaneous items. There were no downward adjustments made to this basis because of depreciation resulting from the claimed partial trade or business use of the property.

As discussed above, for the years from 1963 through and including 1968,¹³ the President deducted a portion (approximately one-fourth) of the maintenance expenses of the apartment as trade or business deductions. Thus, the President was entitled to deduct an allowance for depreciation based on approximately one-fourth of the value of the apartment and its improvements (under sec. 167 of the Code).¹⁴

In fact, the President did not claim a deduction for depreciation in 1963 or earlier years. Nonetheless, the allowable depreciation must reduce the President's basis in his stock and other property. Section 1016(a)(2) of the Code provides for an adjustment to basis for depreciation and amortization to the extent that such depreciation and amorti-

¹² At least part of the delay in occupying the new residence was caused by the fact that the taxpayer was not released from his Army post as quickly as he had expected. The taxpayer apparently did not rely on this argument, but the court was aware of this fact when it made its decision.

¹³ The staff has examined the President's tax returns and/or the accountant's work papers for the years 1964 through 1968 and has confirmed or is satisfied that maintenance expenses were taken as business deductions for each of these years. The staff has asked for the tax return and/or the accountant's work papers for the taxable year 1963 (in which the cooperative apartment was purchased by the President), but have not been furnished either of them. Based on what the staff has examined for the taxable years 1964 through 1968 and from its interview with the President's accountant, the staff has no indication that a similar deduction for business use of the apartment was not taken in 1963 and, accordingly, has used this year as well in recomputing the allowable depreciation.

¹⁴ This result is not changed because the President held the apartment through means of stock in a cooperative housing corporation since section 216(c) of the Internal Revenue Code allows a pass-through of otherwise allowable depreciation to the tenant-stockholder of a cooperative housing unit, in this case the President.

ment was before the sale, or at the time of the sale. Again, because of the lack of evidence and the need to have clear evidence in intrafamily transactions, the staff believes this issue must be resolved against President Nixon. Consequently, the staff concludes that President Nixon should report all of the gain realized on the sale of the Cape Florida lots in 1972 as his income. There is a question whether he should report the transfer to Patricia Nixon Cox (less \$20,000 plus 6 percent per annum from July 1, 1967, to the date of payment) as a gift to her. (President Nixon, of course, would be entitled to a deduction for the interest paid in the year 1973.)

Tax adjustment

The President reported on his 1972 Federal tax return that \$11,616.59 was the allocated portion of profit from the installment sale of the Cape Florida lots due his daughter Patricia. (The staff understands, however, that President Nixon did not distribute any of this gain to Patricia in 1972 although he did receive \$39,150 as an initial down payment.) The staff believes that the \$11,616.59 allocated to Patricia should have been reported by the President as his gains, thus increasing his total gain on this installment sale from \$17,424.88 to \$29,041.47.

The staff believes that the remaining gain on the installment sale of the Cape Florida lots, amounting to \$82,228.38, should be treated as taxable income to the President on his 1973 tax return.

On this basis, Patricia and her husband (with whom she filed a joint return for 1972) should file an amended Federal income tax return for 1972 and eliminate the capital gain relating to the installment sale of the Cape Florida lots. Additionally, the Federal income tax return of Patricia and her husband for 1973 should not include any income from the installment sale from the Cape Florida lots.

The President's note to Patricia, which amounted to \$20,000 and which called for an interest payment of 6 percent per annum, was liquidated on March 12, 1973. Patricia, should, therefore, report interest income from that note which was paid to her in 1973.

Finally, on this same basis, because the President's payment to Patricia was in the amount of \$85,000 and she loaned the President \$20,000, she may have received a gift from the President in 1973 amounting to \$45,000, less interest on the note at 6 percent per annum from May 1967 to March 1973. Accordingly, the question arises whether President Nixon should also file a gift tax return for 1973 for this gift to Patricia.

refused to accept income due them from an employer, the courts have held that no taxable income should be attributed to the employee, *Commissioner v. Giannini*, 129 F.2d 638 (9th Cir. 1942). On these grounds the staff believes that the President's agreement did not give rise to taxable income to him.

2. Dependency exemption for Patricia Nixon

In 1969 and 1970, President Nixon claimed his daughter Patricia as a dependent. Under sections 151(e) and 152 of the Internal Revenue Code, he was entitled to do this if he supplied more than half of Patricia's support and if she either had gross income of less than \$600 in 1969 (\$625 in 1970) or if she was a student or was less than 19 years of age.

Arthur Blech informed the staff that Patricia's income was less than \$600 in 1969 and less than \$625 in 1970. The staff has examined Patricia's tax returns and confirmed this information. Therefore, the President was entitled to a dependency exemption for her in those years.

3. Sale of stock in Fisher's Island, Inc.

The December 8, 1973, White House statement on President Nixon's personal finances states the following about the sale of his stock in Fisher's Island, Inc.:

"The only stock that President Nixon owned upon taking office was in Fisher's Island, Inc. Fisher's Island, Inc. is a corporation in Florida formed in 1957 for the purpose of acquiring and developing Fisher's Island in Biscayne Bay. Mr. Nixon bought 199,891 shares in the company in 1967 and prior years for \$199,891. After he became President, Mr. Nixon decided to limit his investments to real estate, Government bonds, and cash or its equivalent. President Nixon transferred 14,000 shares for \$13,000 net to full fill options given by him to others in 1967. He sold 185,891 shares of Fisher's Island stock back to the company on May 22, 1969 for \$371,782. His 1969 Federal income tax return shows a capital gain from that sale of \$184,891 and tax paid on that amount."

The staff has examined this transaction and verified the amounts stated. It finds nothing improper with the way President Nixon reported the transaction on his 1969 tax return.

4. Deductions on Whittier property

President Nixon claimed losses totalling \$24,050 between 1969 and 1972 in connection with a house in Whittier, California, which he owns and rents out at a nominal rent. The staff believes this property was treated correctly on the President's tax returns. Under section 212 of the Code, expenses of maintaining property held for investment purposes can be deducted even though the amount of income received from the property is less than total expenses. Since the staff believes that President Nixon holds the property for investment purposes, it views these deductions as properly taken.

5. Treatment of expense allowances

President Nixon included his \$30,000 expense allowance as income and deducted his employee business expenses as itemized deductions. Under section 62(2) (A) of the Internal Revenue Code, trade and busi-

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

Dec. 13 1973

Honorable Donald C. Alexander
Commissioner
Internal Revenue Service
Washington, D.C.

Dear Mr. Commissioner:

The Joint Committee on Internal Revenue Taxation has recently agreed to a request from the President of the United States to examine his tax returns for the years 1969 through 1972. In view of this, I would like to request from you copies of his returns for the years 1968 through 1972. These should be authenticated copies, and we would like any other material which you may have which bears on this subject. Included in this, if possible, should be a copy of the material sent to you by Senator Welch relative to the President's charitable contribution deduction.

I am requesting the 1968 return on the President not because we intend to examine it as such but because it seemed appropriate to see what relationship this return might have to his 1969 and later returns.

If the Internal Revenue Service is reexamining any of the returns I have referred to above, I would appreciate the opportunity of having a conference with the agents assigned to such examinations.

Sincerely yours,

Laurence N. Woodworth

LNU/ew 12/13/73

Department of the Treasury / Internal Revenue Service / Washington, D.C. 20224

Commissioner

December 13, 1973

Dr. Laurence N. Woodworth, Chief of Staff
Joint Committee on Internal Revenue Taxation
1015 Longworth House Office Building
Washington, D. C. 20515

Dear Larry:

Attached, in response to your December 13, 1973, request, are true copies of the original joint federal income tax returns filed by Richard M. and Patricia R. Nixon for the taxable years ending December 31, 1968, through December 31, 1972. Also attached is a photocopy of a letter dated December 10, 1973, addressed to me by Lowell Weicker, Jr., United States Senator, together with a 16-page memorandum that accompanied that letter, which is referred to on its face as a Summary of Facts Re Income Tax Deduction by Richard M. Nixon.

At such time as the conference referred to in the last paragraph of your letter is held you may review other materials in the hands of the Revenue Agents assigned to the examination of these returns. Should you desire copies of any or all of that material we can make them available to you at that time.

With best wishes,

Sincerely,


Donald C. Alexander

Attachments

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

JAN 31 1974

Honorable Donald C. Alexander
Commissioner
Internal Revenue Service
Washington, D. C.

Handwritten:
J.D.
in re litigation
Nixon

Dear Mr. Commissioner:

In connection with the Joint Committee on Internal Revenue Taxation's examination of the tax returns of the President of the United States, I had previously requested copies of his returns for the years 1968 through 1972. I would like to request from you at this time copies of his returns for the years 1963 through 1967. As indicated in my request for the 1968 return of the President, we do not intend to examine these prior returns as such but believe it is appropriate to review these returns to determine what relationship, if any, they might have to his 1969 and later returns.

I would also like to request the tax returns filed by Tricia Nixon and, after her marriage, the returns filed by her and her husband, Edward Cox, for the years 1968 through 1972. We do not intend to examine these returns except to determine what relationship, if any, they might have in connection with our examination of the President's returns.

Sincerely yours,

(Signed) Laurence N. Woodworth

Laurence N. Woodworth

ES:jsr 1/19/74

CONFIDENTIAL

February 11, 1974

Dr. Laurence N. Woodworth
Chief of Staff
Joint Committee on Internal
Revenue Taxation
1015 Longworth House Office Building
Washington, D. C. 20515

Dear Dr. Woodworth:

In accordance with your request, I am enclosing certified copies of the income tax returns of Richard M. and Patricia R. Nixon for the calendar years 1967 and 1966.

We do not have the taxpayers' returns for years earlier than 1966. I understand that these returns have been destroyed, in accordance with our regular procedures.

We are taking steps to obtain the tax returns that you requested for Patricia (Tricia) and for herself and her husband, Edward Cox.

Sincerely yours,

/s/ Donald C. Alexander

Donald C. Alexander

Enclosures 2

Congress of the United States
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION
Washington, D.C. 20515

*la
fyi*

March 30, 1974

Honorable Carl T. Curtis
United States Senate
Washington, D. C.

Dear Senator Curtis:

Re: Attached material

I am giving you the enclosed factual material to be included in the report on the President's returns at the direct instruction of Chairman Long.

No one else is receiving the material at this time (although the President's attorneys will probably receive it Monday). This material is confidential and not to be seen by anyone other than the attorneys you consult according to my instructions from Chairman Long.

This material is preliminary and subject to change although I do not believe it will be changed in any substantive way.

This contains material taken from a taxpayer's return and therefore its unauthorized release would be subject to penalties of law. This is being given to you only to aid you in the committee's executive session discussion as authorized by law with respect to tax returns.

Sincerely yours,

Laurence H. Woodworth

LNW/jm
3/30/74

DISSENTING VIEWS

Committee Republicans vehemently oppose the Committee's action of holding a secretive executive session meeting on July 25, 2019, and voting to release documents that were previously protected as confidential under section 6103 of the Internal Revenue Code.¹ Committee Republicans oppose both the secretive process leading up to the meeting and the substance of the meeting itself.

The Chairman announced the meeting on July 23, 2019, to be held on July 25, 2019, but only provided a cryptic description indicating that the purpose of the meeting would be to consider "Historical documents protected under Internal Revenue Code section 6103." No additional information was provided in advance. Committee Members on both sides of the aisle had no idea what historical documents they would be reviewing during the meeting. Committee Members were not given the opportunity to review the materials prior to the meeting, as has been Committee practice during previous executive session meetings.

For example, during the last executive session by the Committee, held on April 9, 2014, then Chairman Dave Camp (R-MI) gave members twenty-four hours prior to the meeting to review the materials they would be voting on which related to the Lois Lerner criminal referral. Additionally, both Republican and Democrat Members and staff participated in the more than 10-month long investigation which included more than 60 transcribed interviews and review of 660,000 pages of documents. This transparency helped Members digest the information, which allowed time for thoughtful analysis prior to the executive session. Sadly, none of these steps were taken leading up to or during last week's executive session meeting where the Committee Democrats voted to make public documents related to an audit by the Joint Committee on Taxation (JTC) of President Nixon's tax returns (the Nixon Materials). As a result, the press published a variety of wild assertions and speculation about the true purpose and subject of the executive session.²

Once the Chairman began the executive session portion of the meeting, he announced that Members would receive only fifteen minutes to review the Nixon Materials. While the Chairman characterized the materials for review as only a few paragraphs, Members were actually presented with a packet of twenty pages of documents. After Committee Democrats voted down a motion to extend

¹ 26 U.S.C. § 6103 (2019).

² Brian Falter, *Even Members Seem in the Dark about Hush-Hush Ways and Means Huddle*, PoliticoPro (July 24, 2019, 5:28 PM) (citing Democrat Members of Congress describing the executive session as an opportunity to update Members on their legal fight for the President's tax returns); Kaustuv Basu and Colin Wilhelm, *House Dems May Boost Trump Tax Return Argument in Closed Session*, Bloomberg Tax (July 24, 2019, 4:57 PM) (citing a House aide stating that the documents could help with legal arguments in support of the accessing the President's tax returns); Bernie Becker, *Getting Historical*, Politico Morning Tax (July 25, 2019, 10:00 AM) (quoting the Chairman as describing the proceedings as "good" and newsworthy").

the review time from fifteen minutes to two hours, Committee Republicans secured an agreement from the Chairman to allow one hour for review. Although an improvement from fifteen minutes, this amount of time was insufficient for a thorough review and analysis of the materials.

Not providing Members a chance to review the materials prior to the executive session meeting or providing sufficient time during the meeting itself presented significant problems and led to a chaotic meeting. At the outset, Members were asked to accept the agency of the Chairman and told that once they accepted § 6103 information, they would be subject to substantial liability if they were to disclose any aspect of the protected materials. The willful, unauthorized disclosure of a tax return or tax return information is a felony, punishable under Internal Revenue Code section 7213 by up to five years imprisonment, a fine of not exceeding \$5,000, or both, together with the costs of prosecution.³ Some Members were understandably uncomfortable accepting the Chairman's agency and the potential criminal liability risk without any indication as to the purpose of the meeting or the nature of the materials. As a result, some Members left without participating.

Another concern with the process was with the lack of participation by JCT, which typically provides Members nonpartisan technical advice and expertise on various tax issues. No members of JCT staff appeared at the meeting, nor were they available for questioning. JCT staff compiled and provided the materials to the Chairman and, therefore, were in the best position to speak to them. This was particularly surprising because JCT's presence is standard practice for Committee business meetings when tax information with which JCT is familiar is considered. JCT usually answers technical questions so that Members can better understand the materials prior to voting.

Finally, the executive session meeting was scheduled on the last day prior to a six-week House recess and on an already incredibly busy day for the Committee. Squeezed in between a full committee hearing on Social Security, a Rural and Underserved Communities Health Task Force meeting, and House Floor votes, the executive session meeting was extremely rushed. Members were simply not given the enough time to thoughtfully consider the materials and come to a reasoned decision on how best to proceed. Indeed, after taking an hour to review the Nixon Materials, many Republican Members were still wrestling with the context and purpose of the documents. Given the rushed time frame, however, Democrat Members repeatedly interrupted Republican Member deliberations and the Chairman appeared ready to continue the proceeding without any Republican Members participating. Even after the proceeding concluded, most Members had no idea what information could and could not be shared. No guidance was provided.

In all, the executive session meeting was a failure in planning and execution. Members were ultimately asked to vote to publicly release information without sufficient time to review, analyze, digest, and discuss whether public disclosure was appropriate and desirable. Several Republican Members declined to participate in

³ 26 U.S.C. § 7213(a) (2019).

this unfair and secretive process due in large part to a lack of transparency and advanced notice of the materials to be evaluated. The Members that did participate were left no choice but to vote no on public disclosure given the lack of time for review and their inability to ask questions of JCT staff. The chaotic nature of the meeting represented the worst of the House of the Representatives. As Committee Republicans noted, the process for carrying out the executive session was below the dignity of the Ways and Means Committee and should not be replicated or repeated.

NO JOINT COMMITTEE ON TAXATION STAFF WERE AVAILABLE FOR QUESTIONING

The executive session meeting and the Nixon Materials that have now been publicly released place JCT at the center of the matter. The materials show that JCT staff provided the documents to the Chairman and the documents relate to JCT work done in the 1970s. As discussed above, no members of JCT staff attended the executive session meeting. Given JCT's central role in relation to the documents at issue, and the number of questions Committee Republicans have for JCT, it was disappointing that JCT was not made available during the executive session meeting. Following the meeting, Ranking Member Kevin Brady (R-TX) sent a letter to JCT on July 26, 2019, with an initial set of questions Committee Republicans would have asked if they had been given the opportunity; a copy of that letter is attached as Attachment A. JCT's response letter is attached as Attachment B.

THE NIXON MATERIALS LIKELY SHOW CONSENT NOT COMPULSION

In 1973, President Nixon voluntarily asked that JCT examine his tax returns. Committee Democrats argue that certain related documents establish some precedent for their politically motivated attempt to weaponize the tax code and publicize President Trump's tax returns. This is not so. The two matters are entirely distinguishable and attempts to connect them are misleading.

President Nixon initiated the JCT examination of his tax returns voluntarily and without any legislative purpose. Instead, the purpose of President Nixon's action was to answer specific questions that had been raised in the press and "to dispel public doubts."⁴

To date, there is no evidence that the audit work by JCT required the use of its authority under § 6103 or any other statute.⁵ President Nixon asked the committee to conduct an examination and the committee agreed to undertake that work. Although Mr. Barthold stated in his July 23 letter to Chairman Neal that JCT "sought and received, under its legal authority, confidential information directly from the Internal Revenue Service," in his July 29 letter to Ranking Member Brady, Mr. Barthold indicated that he did not have access to all records necessary to confirm that consent to the disclosure of tax returns was not provided by President

⁴Joint Comm. on Internal Revenue Taxation, Examination of President Nixon's Tax Returns for 1969 through 1972, JCS 9-74 (93rd Cong. 1974).

⁵26 U.S.C. § 6103 (d)(1) (1974).

Nixon (or his attorneys).⁶ The July 29 letter further indicates that there is evidence that certain additional private tax information was provided voluntarily by President Nixon's accountant.⁷ This makes sense given that President Nixon stated that the JCT would have "full access to all relevant documents pertaining to these matters and will have the full cooperation of my office."⁸

President Nixon's statement providing full access to all relevant documents makes clear that he expected that the JCT may need additional information to complete the examination, such as tax returns and tax return information prior to 1969 and accountant work papers. The 1973 and 1974 letters between JCT and the Internal Revenue Service (IRS), which the Committee voted to publicly release during the executive session meeting on July 25, 2019, substantiate JCT carrying out this agreement. Given the voluntary nature of President Nixon's request to JCT, it is highly likely that President Nixon's representatives were involved in conversations with JCT to make accommodations to allow JCT to gather the information it needed. In addition, IRS procedures specify that reviewing related returns is part of its normal audit process and would be expected from JCT, as the transactions in question may have been related to line items from returns prior to 1969.⁹ Reviewing limited line items on returns prior to 1969 would have allowed JCT to check for consistency across the returns, which is a standard IRS auditing practice.

As the above example indicates, the Chairman's current request for President Trump's tax returns differs markedly from the circumstances surrounding President Nixon's returns. President Nixon consented to releasing his returns, President Trump has not. JCT had approval from President Nixon to seek additional tax-related information, if necessary, as part of their review. The publicly released letters between JCT and IRS in 1973 and 1974 do not set a precedent for Chairman Neal's request for President Trump's tax returns. The two situations make for nothing but an apples and oranges comparison.

Chairman Neal's request continues to be an effort to weaponize the tax code and publicly release President Trump's tax returns for political purposes. President Trump has not consented to the release of his private tax return information and the Committee has no legitimate legislative purpose to justify its request under § 6103.

THE NIXON MATERIALS DO NOT ESTABLISH A § 6103 PRECEDENT

Committee Democrats' attempt to find a precedent for their illegitimate request for President Trump's tax returns fails for two additional reasons. First, neither JCT nor the IRS referenced § 6103 in any of the Nixon materials publicly released on July 25, 2019. And second, Congress made significant changes to § 6103 in 1976.

The Nixon Materials, specifically the 1973 and 1974 letters provided by JCT, do not cite to any statutory authority at all in con-

⁶Letter from Thomas Barthold, Chief of Staff, Joint Comm. on Taxation, to the Hon. Kevin Brady, Ranking Member, Comm. on Ways and Means (July 29, 2019).

⁷*Id.*; see also, Joint Comm. on Internal Revenue Taxation, Examination of President Nixon's Tax Returns for 1969 through 1972, JCS 9-74 at 118 n. 13 (93rd Cong. 1974).

⁸Joint Comm. on Internal Revenue Taxation, Examination of President Nixon's Tax Returns for 1969 through 1972, JCS 9-74 (93rd Cong. 1974).

⁹Internal Revenue Manual, 4.10.5.4, *Related and Spin-Off Returns*.

junction with the requests to the Internal Revenue Service. It is unclear what, if any, statutory authority JCT relied on when making the requests or on what authority IRS relied on in fulfilling them. Given that President Nixon requested the inquiry and stated that JCT would have all relevant materials, it appears much more likely that the JCT requests relied on the consent of the taxpayer as the basis for obtaining the requested information. Although Mr. Barthold acknowledged in his July 29 letter to Ranking Member Brady that JCT did not have any records indicating there was a consent document, he made clear that the best source for such a document would be IRS records.¹⁰ The unique context surrounding the Nixon Materials and President Nixon's voluntary submission to a JCT examination make that situation simply inapplicable to the Ways and Means Committee's modern-day request for President Trump's tax returns.

The Democrats' search for a precedent fails to consider the fact that Congress amended 26 U.S.C. § 6103 substantially via the Tax Reform Act of 1976.¹¹ Prior to 1976 and during the time JCT was examining President Nixon's tax returns at his request, tax returns and tax return information were considered public records. The Tax Reform Act of 1976 fundamentally changed the treatment of tax returns and return information and established the structure of § 6103 as it generally exists today. Significantly, the Act changed the default rule of § 6103(a) to establish that tax returns and tax return information are presumed confidential subject only to specific statutory exceptions.¹² These amendments to § 6103 marked a significant change in the legal approach to the privacy of taxpayer information. For the first time in modern history, taxpayers had the security of knowing their tax returns and tax information would be kept confidential. Any statutory analysis taking place in 2019 and beyond must be informed by the 1976 amendments that changed the nature of taxpayer privacy protections.

The legislative history surrounding the Tax Reform Act of 1976 demonstrates the significance of the changes it made to the tax code. Protecting taxpayer privacy was central to the debate and Congress intended that the law would prevent misuse of taxpayer information for political purposes. While numerous members of Congress addressed these issues, Senator Bob Dole (R-KS) clearly articulated the importance of the issues Congress was debating at the time:

I cannot stress enough the importance of preserving the confidentiality of individual tax returns I speak of a more basic, procedural unfairness in the tax laws which presently permits supposedly confidential individual income tax returns to come into the hands of literally thousands of bureaucrats outside the Internal Revenue Service, and which leaves open the possibility that mischievous political operatives will again attempt to gain access to such

¹⁰ Letter from Thomas Barthold, Chief of Staff, Joint Comm. on Taxation, to the Hon. Kevin Brady, Ranking Member, Comm. on Ways and Means (July 29, 2019).

¹¹ Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 520 (1976).

¹² Compare 26 U.S.C. § 6103(a) ("Returns made with respect to taxes imposed by chapters 1, 2, 3, and 6 upon which the tax has been determined by the Secretary or his delegate shall constitute public records.") (1970), with 26 U.S.C. § 6103(a) ("Returns and return information shall be confidential, and except as authorized by this title") (1976).

returns for partisan political purposes. The tax privacy sections of H.R. 10612 will assure every American that his or her tax return will remain confidential and immune from political misuse.¹³

Protecting taxpayer information from partisan political misuse was central to the passage of the Tax Reform Act of 1976. Congress intended to prevent what Chairman Neal and Committee Democrats are seeking through their request for President Trump's tax returns.

THE PUBLICATION OF PRIVATE TAX RETURN INFORMATION DOES NOT
CREATE A LEGITIMATE LEGISLATIVE PURPOSE

Chairman Neal's effort to obtain President Trump's tax returns continues to be political in nature, lacking a legitimate legislative purpose. From the beginning, Committee Democrats have sought to weaponize the tax code in an effort to damage their political opponent, President Trump, through the publication of his tax returns. Chairman Neal and other Committee Democrats have made numerous statements demonstrating their true purpose in requesting the President's tax returns. The following is but a small, representative sample of those comments:

- During the 115th Congress, then Ranking Member Neal stated that "Committee Democrats remain steadfast in [their] pursuit to have [President Trump's] individual tax returns disclosed to the public."¹⁴
- Chairman Neal stated earlier this year that "the public has reasonably come to expect that presidential candidates and aspirants release those documents." He also said that "[w]e need to approach this gingerly and make sure the rhetoric that is used does not become a footnote to the court case."¹⁵
- Another Committee Democrat noted on television that the Committee's Oversight Subcommittee hearing was intended to "lay the foundation for the public purpose to acquire access to these returns."¹⁶

In contrast, President Nixon voluntarily submitted information to JCT and asked for an examination of his tax returns for reasons completely unrelated to legislation. That voluntary approach did not require a legislative purpose analysis, whereas Chairman Neal's §6103 request for President Trump's tax returns must be based on a legitimate legislative purpose. Recent efforts by Democrats to create a legislative purpose is contrary to their prior public statements and serves as a mere pretext for obtaining and publicizing the President's tax returns for purely political reasons.

In conclusion, the process for making the Nixon Materials public was unnecessarily rushed, chaotic, and shrouded in secrecy. The materials themselves have no bearing on a legislative purpose and

¹³ 122 Cong. Rec. 24012–13 (1976) (statement of Senator Bob Dole).

¹⁴ H.R. Rep. No. 115–309, at 8 (2017) (dissenting views); H.R. Rep. No. 115–73, at 8 (2017) (dissenting views).

¹⁵ Mark Sullivan, *Powerful Ways and Means chairman Neal to pursue Trump's tax returns*, Telegram & Gazette (Jan. 23, 2019, 5:41 PM) <https://www.telegram.com/news/20190123/powerful-ways-and-means-chairman-neal-to-pursue-trumps-tax-returns>. Chairman Neal also stated: "We are now in the midst of putting together the case." *Id.*

¹⁶ MSNBC, *All In with Chris Hayes* (transcript of television broadcast Feb. 7, 2019), <http://www.msnbc.com/transcripts/all-in/2019-02-07> (statement of Rep. Dan Kildee).

because they were likely provided by consent, set no precedent for Chairman Neal's illegitimate request.

KEVIN BRADY,
*Republican Leader, Com-
mittee on Ways and
Means.*

Attachment A

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

July 26, 2019

Mr. Thomas A. Barthold
Chief of Staff
Joint Committee on Taxation
502 Ford House Office Building
Washington, DC 20515

Dear Mr. Barthold:

I write in reference to letters and associated attachments containing private taxpayer information, dated July 23, 2019, that were exchanged between yourself and Chairman Neal and were considered at the closed executive session held by the Committee on Ways and Means (the Committee) yesterday, July 25, 2019. The letters and associated attachments generated many questions from the Republican Members of the Committee. As neither you nor any member of the staff of the Joint Committee on Taxation (JCT) was available to answer questions at the executive session, I am enclosing in this letter an initial set of questions regarding the material at issue in yesterday's Committee meeting. I ask that you respond by Monday, July 29, 2019, so that the responses can be included with the report filed by the Committee.

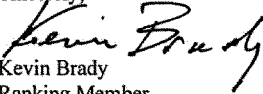
1. In your July 23, 2019, letter to Chairman Neal, you stated that JCT staff "sought and received, under its legal authority, confidential information directly from the Internal Revenue Service." Yet none of the attachments you provided to substantiate that claim have a citation to any legal authority under which the information was provided. Can you be certain that there were no negotiations between the Internal Revenue Service and President Nixon or his attorneys regarding the provision of non-public information to JCT?
 - a. Is it possible that either President Nixon or his attorneys voluntarily provided some additional private tax information to JCT staff during the 1973-74 audit by JCT?
 - b. Page 1 of the *Examination of President Nixon's Tax Returns for 1969 through 1972 (JCS-9-74)*, April 3, 1974 (Joint Committee staff report), contains a letter from President Nixon to then Chairman Wilbur Wills, stating "I also want to assure you that the committee will have full access to all relevant documents pertaining to these matters and will have the full cooperation of my office." (Attachment 1). President Nixon did not limit JCT's access to only publicly available information but explicitly provided consent for access to "all relevant documents."

- i. Do you have any evidence that President Nixon's attorneys were asked to provide, but refused to facilitate the provision of, President Nixon's tax returns for 1966, 1967, or 1968 to JCT?
 - ii. Do you have any evidence that President Nixon's attorneys were asked to provide, but refused to facilitate the provision of, the 1968 through 1972 tax returns of Tricia Nixon and Edward Cox to JCT?
 - c. Page 3 of the Joint Committee Report confirmed that President Nixon's attorneys "supplied most of the information requested" to the JCT staff. Page 3, Footnote 1 lists the information that was not provided. (Attachment 1). The list does not include the 1968 tax return. Are you certain that consent was not provided by either President Nixon or his attorneys for his 1968 tax return to be provided to JCT? If you are certain that consent was not provided, please provide evidence to substantiate that assertion.
 - d. Are you certain that consent was not provided by either President Nixon or his attorneys for the tax returns of Tricia Nixon and Edward Cox? If you are certain that consent was not provided, please provide evidence to substantiate that assertion.
2. Two of the letters provided in your attachment to Chairman Neal are dated "December 13, 1973" with one of them requesting tax returns and the other furnishing the returns. It is difficult to believe that a Congressional request for private tax information was made and responded to in less than 24 hours by the Internal Revenue Service (IRS). Is it possible that the December 13, 1973 letters were pre-arranged and were the result of an accommodation process?
 3. Page 118, Footnote 13 of the Joint Committee staff report indicates that JCT staff examined tax returns and accountant's work papers for taxable years 1964 through 1968. The letter provided in your attachment to Chairman Neal dated February 11, 1974, from IRS Commissioner Donald Alexander states that the IRS did not have "returns for years earlier than 1966." What was the source of the tax returns reviewed by JCT staff for taxable years 1964 and 1965 if they were not provided by the IRS?
 - a. Is it possible that President Nixon's attorneys provided the 1964 and 1965 tax returns by consent to JCT?
 4. Page 118, Footnote 13 of the Joint Committee staff report indicates that JCT staff examined the President's "accountant's work papers for the years 1964 through 1968." What was the source of the accountant's work papers that were reviewed by JCT staff?
 - a. If the information was provided by the IRS, can you be sure it was not provided with the consent of the taxpayer?
 5. Were the materials you shared with Chairman Neal which were then provided to the Members of the Committee at the executive session all of the documents containing 6103 protected material related to JCT's audit of President Nixon?
 - a. If not, please indicate how many documents containing 6103 material were not shared.

6. Was the current version of 26 U.S.C. § 6103 applicable in 1973 and 1974?
7. Chairman Neal's letter requesting information from you is dated July 23, 2019. Your response letter, to which you attached 6103 material from the 1970s and excerpted and highlighted portions of the Joint Committee staff report, is also dated July 23, 2019. How were you able to draft a response letter and obtain, compile, review, select, and highlight the relevant materials for presentation to the Chairman on the very same day you received the request?

Thank you for reviewing this initial question set. I may have additional questions as I continue reviewing the material.

Sincerely,


Kevin Brady
Ranking Member
Committee on Ways and Means

116TH CONGRESS, 1ST SESSION

Attachment B

THOMAS A. BARTHOLO
CHIEF OF STAFF
ROBERT P. HARVEY
DEPUTY CHIEF OF STAFF

HOUSE	SENATE
RICHARD NEAL, MASSACHUSETTS CHAIRMAN	CHUCK GRASSLEY, IOWA VICE CHAIRMAN
JOHN LEWIS, GEORGIA	MIKE CRAPO, IDAHO
LLOYD DOGGETT, TEXAS	MICHAEL B. ENZI, WYOMING
KEVIN BRADY, TEXAS	RON WYDEN, OREGON
DEVIN NUÑEZ, CALIFORNIA	DEBBIE STABENOW, MICHIGAN

Congress of the United States

JOINT COMMITTEE ON TAXATION
502 FORD HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6453
(202) 225-3621
<http://www.jct.gov>

JUL 29 2019

Honorable Kevin Brady
U.S. House of Representatives
1011 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Brady:

This is in response to the questions you asked in your letter of July 26, 2019, regarding my letter to Ways & Means Committee Chairman Richard Neal of July 23, 2019. Several of your inquiries relate to whether it was possible President Nixon or his attorneys had engaged in negotiations with the Internal Revenue Service ("IRS") regarding the scope of the Joint Committee on Internal Revenue Taxation ("Joint Committee") investigation and whether President Nixon (or his attorneys), Patricia Nixon, and Edward Cox and Patricia Nixon Cox may have provided consent to disclose their return information to the Joint Committee. To respond to Chairman Neal's inquiry, I reviewed certain files of the Joint Committee relating to the staff investigation and staff report¹ of President Nixon's tax returns. In my review of Joint Committee files, I did not see documentation of negotiations between the IRS and President Nixon or his attorneys regarding the provision of non-public information to the Joint Committee or other accommodations regarding non-public information. Documentation of such negotiations would more likely be found in the IRS's records. In my review of Joint Committee files, I did not see documentation that President Nixon or his attorneys provided consent to disclose his return information to the Joint Committee. Similarly, I did not see documentation of Patricia Nixon or Edward Cox and Patricia Nixon Cox, or any third party on their behalf providing consent to disclose their return information to the Joint Committee. The most likely source of a consent document, if one exists, would be in the records of the IRS. Please note that I did not have access to any files relating to the Joint Committee staff investigation and staff report that may have been maintained by the Executive Office of the President, the IRS, or any other entity besides the Joint Committee.

You ask several questions regarding footnote 13 on page 118 of the staff report. In footnote 13 on page 118, the staff report acknowledges receipt of certain tax information from President Nixon's accountant. In footnote 13, the Joint Committee staff states that it relied on

¹ All of my references in my letter to Chairman Neal and in this letter to the staff report are references to Senate Report No. 93-768, *Examination of President Nixon's Tax Returns for 1969 through 1972*, prepared for the Joint Committee on Internal Revenue Taxation by its staff, April 3, 1974.

Congress of the United States
JOINT COMMITTEE ON TAXATION
Washington, DC 20515-6453

Honorable Kevin Brady
U.S. House of Representatives

Page 2

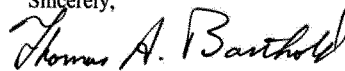
the accountant's work papers and its interviews of the President's accountant. I have no specific knowledge of the source of the accountant's work papers.

The entirety of the Joint Committee files was not transmitted with my letter to Chairman Neal. While I reviewed a substantial number of documents contained in Joint Committee files, I did not review all of the Joint Committee files related to the staff investigation and staff report. Therefore, I cannot provide a specific document or page count of all section 6103-protected material. However, the Joint Committee files contain additional documents containing section 6103-protected material.

Regarding the July 23, 2019 date on both Chairman Neal's request letter to me and my response letter, it is not unusual for the chairmen and ranking members of the Committee on Ways and Means and the Senate Finance Committee to make requests of the Joint Committee staff prior to sending a formal request letter. Work is often started as soon as the chairmen and ranking members make the request. For our records, we ask for a formal request letter to be sent to us subsequently. The material I reviewed to address Chairman Neal's inquiry required a number of hours of work by Joint Committee staff and was not completed in one day.

You also inquired if Internal Revenue Code section 6103 as it exists today was applicable in 1973 and 1974. Section 6103 was substantially amended in the Tax Reform Act of 1976, Pub. L. No. 94-455. Generally, congressional access to return information was governed by section 6103(d) in 1973 and 1974. Congressional access to return information is governed by section 6103(f) under current law. I enclose a copy of section 6103(d) as in effect in 1973 and 1974 and a copy of section 6103(f) as in effect currently. I also enclose section 1202 of the Tax Reform Act of 1976.

Sincerely,



Thomas A. Barthold

Enclosures: Code Section 6103(d) as in effect 1973 and 1974
Code Section 6103(f) as in effect currently
Section 1202 of Public Law 94-455

Code Section 6103 (d)
as in effect in 1973 and 1974

[Sec. 6103(d)]

(d) INSPECTION BY COMMITTEES OF CONGRESS.—

(1) COMMITTEES ON WAYS AND MEANS AND FINANCE.—

(A) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(B) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(C) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(2) JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.—The Joint Committee on Internal Revenue Taxation shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be.

Source: Sec. 55(d), 1939 Code, substantially unchanged.

Code Section 6103 (f)
as in effect currently

(f) Disclosure to Committees of Congress**(1) Committee on Ways and Means, Committee on Finance, and Joint Committee on Taxation**

Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(2) Chief of Staff of Joint Committee on Taxation

Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(3) Other committees

Pursuant to an action by, and upon written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

(4) Agents of committees and submission of information to Senate or House of Representatives**(A) Committees described in paragraph (1)**

Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(B) Other committees

Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

(5) Disclosure by whistleblower

Any person who otherwise has or had access to any return or return information under this section may disclose such return or return information to a committee referred to in paragraph (1) or any individual authorized to receive or inspect information under paragraph (4)(A) if such person believes such return or return information may relate to possible misconduct, maladministration, or taxpayer abuse.

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**SEC. 1302. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND
RETURN INFORMATION.**

(a) CONFIDENTIALITY.—

(1) IN GENERAL.—Section 6103 (relating to publicity of tax returns and disclosure of information as to persons filing tax returns) is amended to read as follows:

***SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND
RETURN INFORMATION.**

“(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

"(1) no officer or employee of the United States,

"(2) no officer or employee of any State or of any local child support enforcement agency who has or had access to returns or return information under this section, and

"(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e) (1) (D) (iii) or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term 'officer or employee' includes a former officer or employee.

"Officer or employee."

"(b) DEFINITIONS.—For purposes of this section—

"(1) RETURN.—The term 'return' means 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.

"(2) RETURN INFORMATION.—The term 'return information' means—

"(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

"(B) 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.

Ante, p. 1660.

"(3) TAXPAYER RETURN INFORMATION.—The term 'taxpayer return information' means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

"(4) TAX ADMINISTRATION.—The term 'tax administration'—

"(A) means—

"(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

"(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

"(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

"(5) STATE.—The term 'State' means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(6) TAXPAYER IDENTITY.—The term 'taxpayer identity' means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

26 USC 6109.

"(7) INSPECTION.—The terms 'inspected' and 'inspection' mean any examination of a return or return information.

"(8) DISCLOSURE.—The term 'disclosure' means the making known to any person in any manner whatever a return or return information.

"(9) FEDERAL AGENCY.—The term 'Federal agency' means an agency within the meaning of section 551(1) of title 5, United States Code.

"(c) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER.—The Secretary may, subject to such requirements and conditions as he may prescribe by regulations, disclose the return of any taxpayer, or return information with respect to such taxpayer, to such person or persons as the taxpayer may designate in a written request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the Secretary determines that such disclosure would seriously impair Federal tax administration.

Regulations.

"(d) DISCLOSURE TO STATE TAX OFFICIALS.—Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 44, 51, and 52 and subchapter D of chapter 36, shall be open to inspection by or disclosure to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the return or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

26 USC 1, 1401,
1501, 2001,
2501, 3101,
3301, 3401,
Post, p. 1754.
26 USC 5001,
5701, 4481.

"(e) DISCLOSURE TO PERSONS HAVING MATERIAL INTEREST.—

"(1) IN GENERAL.—The return of a person shall, upon written request, be open to inspection by or disclosure to—

"(A) in the case of the return of an individual—

90 STAT. 1670

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Ante, p. 1578.

26 USC 2513.

26 USC 1371.

- “(i) that individual,
- “(ii) if property transferred by that individual to a trust is sold or exchanged in a transaction described in section 644, the trustee or trustees, jointly or separately, of such trust to the extent necessary to ascertain any amount of tax imposed upon the trust by section 644, or
- “(iii) the spouse of that individual if the individual and such spouse have signified their consent to consider a gift reported on such return as made one-half by him and one-half by the spouse pursuant to the provisions of section 2513;
- “(B) in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed;
- “(C) in the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return;
- “(D) in the case of the return of a corporation or a subsidiary thereof—
 - “(i) any person designated by resolution of its board of directors or other similar governing body,
 - “(ii) any officer or employee of such corporation upon written request signed by any principal officer and attested to by the secretary or other officer,
 - “(iii) any bona fide shareholder of record owning 1 percent or more of the outstanding stock of such corporation,
 - “(iv) if the corporation was a foreign personal holding company, as defined by section 552, any person who was a shareholder during any part of a period covered by such return if with respect to that period, or any part thereof, such shareholder was required under section 551 to include in his gross income undistributed foreign personal holding company income of such company,
 - “(v) if the corporation was an electing small business corporation under subchapter S of chapter 1, any person who was a shareholder during any part of the period covered by such return during which an election was in effect, or
 - “(vi) if the corporation has been dissolved, any person authorized by applicable State law to act for the corporation or any person who the Secretary finds to have a material interest which will be affected by information contained therein;
- “(E) in the case of the return of an estate—
 - “(i) the administrator, executor, or trustee of such estate, and
 - “(ii) any heir at law, next of kin, or beneficiary under the will, of the decedent, but only if the Secretary finds that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained therein: and
- “(F) in the case of the return of a trust—
 - “(i) the trustee or trustees, jointly or separately, and
 - “(ii) any beneficiary of such trust, but only if the Secretary finds that such beneficiary has a material interest which will be affected by information contained therein.

"(2) INCOMPETENCY.—If an individual described in paragraph (1) is legally incompetent, the applicable return shall, upon written request, be open to inspection by or disclosure to the committee, trustee, or guardian of his estate.

"(3) DECEASED INDIVIDUALS.—The return of a decedent shall, upon written request, be open to inspection by or disclosure to—

"(A) the administrator, executor, or trustee of his estate, and

"(B) any heir at law, next of kin, or beneficiary under the will, of such decedent, or a donee of property, but only if the Secretary finds that such heir at law, next of kin, beneficiary, or donee has a material interest which will be affected by information contained therein.

"(4) BANKRUPTCY.—If substantially all of the property of the person with respect to whom the return is filed is in the hands of a trustee in bankruptcy or receiver, such return or returns for prior years of such person shall, upon written request, be open to inspection by or disclosure to such trustee or receiver, but only if the Secretary finds that such receiver or trustee, in his fiduciary capacity, has a material interest which will be affected by information contained therein.

"(5) ATTORNEY IN FACT.—Any return to which this subsection applies shall, upon written request, also be open to inspection by or disclosure to the attorney in fact duly authorized in writing by any of the persons described in paragraph (1), (2), (3), or (4) to inspect the return or receive the information on his behalf, subject to the conditions provided in such paragraphs.

"(6) RETURN INFORMATION.—Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer if the Secretary determines that such disclosure would not seriously impair Federal tax administration.

"(f) DISCLOSURE TO COMMITTEES OF CONGRESS.—

"(1) COMMITTEE ON WAYS AND MEANS, COMMITTEE ON FINANCE, AND JOINT COMMITTEE ON TAXATION.—Upon written request from the chairman of the Committee on Ways and Means of the House of Representatives, the chairman of the Committee on Finance of the Senate, or the chairman of the Joint Committee on Taxation, the Secretary shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

"(2) CHIEF OF STAFF OF JOINT COMMITTEE ON TAXATION.—Upon written request by the Chief of Staff of the Joint Committee on Taxation, the Secretary shall furnish him with any return or return information specified in such request. Such Chief of Staff may submit such return or return information to any committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

"(3) OTHER COMMITTEES.—Pursuant to an action by, and upon

written request by the chairman of, a committee of the Senate or the House of Representatives (other than a committee specified in paragraph (1)) specially authorized to inspect any return or return information by a resolution of the Senate or the House of Representatives or, in the case of a joint committee (other than the joint committee specified in paragraph (1)) by concurrent resolution, the Secretary shall furnish such committee, or a duly authorized and designated subcommittee thereof, sitting in closed executive session, with any return or return information which such resolution authorizes the committee or subcommittee to inspect. Any resolution described in this paragraph shall specify the purpose for which the return or return information is to be furnished and that such information cannot reasonably be obtained from any other source.

"(4) AGENTS OF COMMITTEES AND SUBMISSION OF INFORMATION TO SENATE OR HOUSE OF REPRESENTATIVES.—

"(A) COMMITTEES DESCRIBED IN PARAGRAPH (1).—Any committee described in paragraph (1) or the Chief of Staff of the Joint Committee on Taxation shall have the authority, acting directly, or by or through such examiners or agents as the chairman of such committee or such chief of staff may designate or appoint, to inspect returns and return information at such time and in such manner as may be determined by such chairman or chief of staff. Any return or return information obtained by or on behalf of such committee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both. The Joint Committee on Taxation may also submit such return or return information to any other committee described in paragraph (1), except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

"(B) OTHER COMMITTEES.—Any committee or subcommittee described in paragraph (3) shall have the right, acting directly, or by or through no more than four examiners or agents, designated or appointed in writing in equal numbers by the chairman and ranking minority member of such committee or subcommittee, to inspect returns and return information at such time and in such manner as may be determined by such chairman and ranking minority member. Any return or return information obtained by or on behalf of such committee or subcommittee pursuant to the provisions of this subsection may be submitted by the committee to the Senate or the House of Representatives, or to both, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate or the House of Representatives only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

"(g) DISCLOSURE TO PRESIDENT AND CERTAIN OTHER PERSONS.—

"(1) IN GENERAL.—Upon written request by the President, signed by him personally, the Secretary shall furnish to the Presi-

dent, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request. Any such request shall state—

“(A) the name and address of the taxpayer whose return or return information is to be disclosed,

“(B) the kind of return or return information which is to be disclosed,

“(C) the taxable period or periods covered by such return or return information, and

“(D) the specific reason why the inspection or disclosure is requested.

“(2) DISCLOSURE OF RETURN INFORMATION AS TO PRESIDENTIAL APPOINTEES AND CERTAIN OTHER FEDERAL GOVERNMENT APPOINTEES.—The Secretary may disclose to a duly authorized representative of the Executive Office of the President or to the head of any Federal agency, upon written request by the President or head of such agency, or to the Federal Bureau of Investigation on behalf of and upon written request by the President or such head, return information with respect to an individual who is designated as being under consideration for appointment to a position in the executive or judicial branch of the Federal Government. Such return information shall be limited to whether such individual—

“(A) has filed returns with respect to the taxes imposed under chapter 1 for not more than the immediately preceding 3 years; 26 USC 1.

“(B) has failed to pay any tax within 10 days after notice and demand, or has been assessed any penalty under this title for negligence, in the current year or immediately preceding 3 years;

“(C) has been or is under investigation for possible criminal offenses under the internal revenue laws and the results of any such investigation; or

“(D) has been assessed any civil penalty under this title for fraud.

Within 3 days of the receipt of any request for any return information with respect to any individual under this paragraph, the Secretary shall notify such individual in writing that such information has been requested under the provisions of this paragraph. Notification.

“(3) RESTRICTION ON DISCLOSURE.—The employees to whom returns and return information are disclosed under this subsection shall not disclose such returns and return information to any other person except the President or the head of such agency without the personal written direction of the President or the head of such agency.

“(4) RESTRICTION ON DISCLOSURE TO CERTAIN EMPLOYEES.—Disclosure of returns and return information under this subsection shall not be made to any employee whose annual rate of basic pay is less than the annual rate of basic pay specified for positions subject to section 5316 of title 5, United States Code.

“(5) REPORTING REQUIREMENTS.—Within 30 days after the close of each calendar quarter, the President and the head of any agency requesting returns and return information under this subsection shall each file a report with the Joint Committee on Taxation setting forth the taxpayers with respect to whom such requests were

Report to congressional committee.

made during such quarter under this subsection, the returns or return information involved, and the reasons for such requests. The President shall not be required to report on any request for returns and return information pertaining to an individual who was an officer or employee of the executive branch of the Federal Government at the time such request was made. Reports filed pursuant to this paragraph shall not be disclosed unless the Joint Committee on Taxation determines that disclosure thereof (including identifying details) would be in the national interest. Such reports shall be maintained by the Joint Committee on Taxation for a period not exceeding 2 years unless, within such period, the Joint Committee on Taxation determines that a disclosure to the Congress is necessary.

"(h) DISCLOSURE TO CERTAIN FEDERAL OFFICERS AND EMPLOYEES FOR PURPOSES OF TAX ADMINISTRATION, ETC.—

"(1) DEPARTMENT OF THE TREASURY.—Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

"(2) DEPARTMENT OF JUSTICE.—A return or return information shall be open to inspection by or disclosure to attorneys of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court in a matter involving tax administration, but only if—

"(A) the taxpayer is or may be a party to such proceeding;

"(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

"(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

"(3) FORM OF REQUEST.—In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection—

"(A) if the Secretary has referred the case to the Department of Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

"(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return the information so requested.

"(4) DISCLOSURE IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS.—A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

"(A) if the taxpayer is a party to such proceeding;

“(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

“(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

“(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

18 USC app.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

“(5) PROSPECTIVE JURORS.—In connection with any judicial proceeding described in paragraph (4) to which the United States is a party, the Secretary shall respond to a written inquiry from an attorney of the Department of Justice (including a United States attorney) involved in such proceeding or any person (or his legal representative) who is a party to such proceeding as to whether an individual who is a prospective juror in such proceeding has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service. The Secretary shall limit such response to an affirmative or negative reply to such inquiry.

“(i) DISCLOSURE TO FEDERAL OFFICERS OR EMPLOYEES FOR ADMINISTRATION OF FEDERAL LAWS NOT RELATING TO TAX ADMINISTRATION.—

“(1) NONTAX CRIMINAL INVESTIGATION.—

“(A) INFORMATION FROM TAXPAYER.—A return or taxpayer return information shall, pursuant to, and upon the grant of, an ex parte order by a Federal district court judge as provided by this paragraph, be open, but only to the extent necessary as provided in such order, to officers and employees of a Federal agency personally and directly engaged in and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party.

“(B) APPLICATION FOR ORDER.—The head of any Federal agency described in subparagraph (A) or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, may authorize an application to a Federal district court judge for the order referred to in subparagraph (A). Upon such application, such judge may grant such order if he determines on the basis of the facts submitted by the applicant that—

“(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

“(ii) there is reason to believe that such return or return information is probative evidence of a matter in

issue related to the commission of such criminal act; and

“(iii) the information sought to be disclosed cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

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

“(2) RETURN INFORMATION OTHER THAN TAXPAYER RETURN INFORMATION.—Upon written request from the head of a Federal agency described in paragraph (1) (A), or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) described in paragraph (1) (A). Such request shall set forth—

“(A) the name and address of the taxpayer with respect to whom such return information relates;

“(B) the taxable period or periods to which the return information relates;

“(C) the statutory authority under which the proceeding or investigation is being conducted; and

“(D) the specific reason or reasons why such disclosure is or may be material to the proceeding or investigation.

However, the Secretary shall not disclose any return or return information under this paragraph if he determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

“(3) DISCLOSURE OF RETURN INFORMATION CONCERNING POSSIBLE CRIMINAL ACTIVITIES.—The Secretary may disclose in writing return information, other than taxpayer 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.

“(4) USE IN JUDICIAL OR ADMINISTRATIVE PROCEEDING.—Any return or return information obtained under paragraph (1), (2), or (3) may be entered into evidence in any administrative or judicial proceeding pertaining to enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or an agency described in paragraph (1) (A) is a party but, in the case of any return or return information obtained under paragraph (1), only if the court finds that such return or return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt of a party. However, any return or return information obtained under paragraph (1), (2), or (3) shall not be admitted into evidence in such proceeding if the Secretary determines and

notifies the Attorney General or his delegate or the head of such agency that such admission would identify a confidential informant or seriously impair a civil or criminal tax investigation. The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in such proceeding.

"(5) RENEGOTIATION OF CONTRACTS.—A return or return information with respect to the tax imposed by chapter 1 upon a taxpayer subject to the provisions of the Renegotiation Act of 1951 shall, upon request in writing by the Chairman of the Renegotiation Board, be open to officers and employees of such board personally and directly engaged in, and solely for their use in, verifying or analyzing financial information required by such Act to be filed with, or otherwise disclosed to, the board, or to the extent necessary to implement the provisions of section 1481 or 1482. The Chairman of the Renegotiation Board may, upon referral of any matter with respect to such Act to the Department of Justice for further legal action, disclose such return and return information to any employee of such department charged with the responsibility for handling such matters.

26 USC 1.
50 USC app.
1211 note.

26 USC 1481,
1482.

"(6) COMPTROLLER GENERAL.—

"(A) RETURNS AVAILABLE FOR INSPECTION.—Except as provided in subparagraph (B), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making—

"(i) an audit of the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms which may be required by section 117 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 67), or

"(ii) any audit authorized by subsection (p) (6), except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p) (6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or employee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

"(B) DISAPPROVAL BY JOINT COMMITTEE ON TAXATION.—Returns and return information shall not be open to inspection or disclosed under subparagraph (A) with respect to an audit—

"(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

"(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.

Notification of
congressional
committee.

Regulations.

“(j) STATISTICAL USE.—

“(1) DEPARTMENT OF COMMERCE.—Upon request in writing by the Secretary of Commerce, the Secretary shall furnish—

“(A) such returns, or return information reflected thereon, to officers and employees of the Bureau of the Census, and

“(B) such return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis,

as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

26 USC 1.

“(2) FEDERAL TRADE COMMISSION.—Upon request in writing by the Chairman of the Federal Trade Commission, the Secretary shall furnish such return information reflected on any return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of such commission as the Secretary may prescribe by regulation for the purpose of, but only to the extent necessary in, administration by such division of legally authorized economic surveys of corporations.

“(3) DEPARTMENT OF TREASURY.—Returns and return information shall be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for the purpose of, but only to the extent necessary in, preparing economic or financial forecasts, projections, analyses, and statistical studies and conducting related activities. Such inspection or disclosure shall be permitted only upon written request which sets forth the specific reason or reasons why such inspection or disclosure is necessary and which is signed by the head of the bureau or office of the Department of the Treasury requesting the inspection or disclosure.

“(4) ANONYMOUS FORM.—No person who receives a return or return information under this subsection shall disclose such return or return information to any person other than the taxpayer to whom it relates except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

“(k) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION FOR TAX ADMINISTRATION PURPOSES.—

26 USC 7122.

“(1) DISCLOSURE OF ACCEPTED OFFERS-IN-COMPROMISE.—Return information shall be disclosed to members of the general public to the extent necessary to permit inspection of any accepted offer-in-compromise under section 7122 relating to the liability for a tax imposed by this title.

“(2) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.—If a notice of lien has been filed pursuant to section 6323(f), the amount of the outstanding obligation secured by such lien may be disclosed to any person who furnishes satisfactory written evidence that he has a right in the property subject to such lien or intends to obtain a right in such property.

“(3) DISCLOSURE OF RETURN INFORMATION TO CORRECT MISSTATEMENTS OF FACT.—The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed

with respect to such taxpayer's return or any transaction of the taxpayer with the Internal Revenue Service.

"(4) DISCLOSURE TO COMPETENT AUTHORITY UNDER INCOME TAX CONVENTION.—A return or return information may be disclosed to a competent authority of a foreign government which has an income tax convention with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention.

"(5) STATE AGENCIES REGULATING TAX RETURN PREPARERS.—Taxpayer identity information with respect to any income tax return preparer, and information as to whether or not any penalty has been assessed against such income tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of income tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of income tax return preparers.

Post, pp. 1689,
1692.
26 USC 7216.

"(6) DISCLOSURE BY INTERNAL REVENUE OFFICERS AND EMPLOYEES FOR INVESTIGATIVE PURPOSES.—An internal revenue officer or employee may, in connection with his official duties relating to any audit, collection activity, or civil or criminal tax investigation or any other offense under the internal revenue laws, disclose return information to the extent that such disclosure is necessary in obtaining information, which is not otherwise reasonably available, with respect to the correct determination of tax, liability for tax, or the amount to be collected or with respect to the enforcement of any other provision of this title. Such disclosures shall be made only in such situations and under such conditions as the Secretary may prescribe by regulation.

Regulations.

"(1) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

"(1) DISCLOSURE OF CERTAIN RETURNS AND RETURN INFORMATION TO SOCIAL SECURITY ADMINISTRATION AND RAILROAD RETIREMENT BOARD.—The Secretary may, upon written request, disclose returns and return information with respect to—

"(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

26 USC 1401,
3101, 3401.
42 USC 1305.
26 USC 401.

"(B) a plan to which part 1 of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

42 USC
1320b-1.
26 USC 6057.
26 USC 3201.
45 USC 215
note.

"(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

"(2) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO THE DEPARTMENT OF LABOR AND PENSION BENEFIT GUARANTY CORPORATION.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the

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29 USC 1001
note.

administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

"(3) DISCLOSURE OF RETURNS AND RETURN INFORMATION TO PRIVACY PROTECTION STUDY COMMISSION.—The Secretary may, upon written request, disclose returns and return information to the Privacy Protection Study Commission, or to such members, officers, or employees of such commission as may be named in such written request, to the extent provided under section 5 of the Privacy Act of 1974.

5 USC 552a
note.

"(4) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN PERSONNEL OR CLAIMANT REPRESENTATIVE MATTERS.—The Secretary may disclose returns and return information—

"(A) upon written request—

"(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

"(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 3 of the Act of July 7, 1884 (23 Stat. 258; 31 U.S.C. 1026),

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

"(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

26 USC 6031.

42 USC 432.

"(5) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.—Upon written request by the Secretary of Health, Education, and Welfare, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

"(6) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

"(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

"(i) available return information from the master files of the Internal Revenue Service relating to the address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect

42 USC 651.

to any individual to whom such support obligations are owing, and

"(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

26 USC 61.

"(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

"(m) DISCLOSURE OF TAXPAYER IDENTITY INFORMATION.—The Secretary is authorized—

"(1) to disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons, and

"(2) upon written request, to disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the collection or compromise of a Federal claim against such taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.

31 USC 952.
Regulations.

"(n) CERTAIN OTHER PERSONS.—Pursuant to regulations prescribed by the Secretary, returns and return information may be disclosed to any person, including any person described in section 7513(a), to the extent necessary in connection with the processing, storage, transmission, and reproduction of such returns and return information, and the programming, maintenance, repair, testing, and procurement of equipment, for purposes of tax administration.

"(o) DISCLOSURE OF RETURNS AND RETURN INFORMATION WITH RESPECT TO CERTAIN TAXES.—

"(1) TAXES IMPOSED BY SUBTITLE E.—Returns and return information with respect to taxes imposed by subtitle E (relating to taxes on alcohol, tobacco, and firearms) shall be open to inspection by or disclosure to officers and employees of a Federal agency whose official duties require such inspection or disclosure.

26 USC 5001.

"(2) TAXES IMPOSED BY CHAPTER 35.—Returns and return information with respect to taxes imposed by chapter 35 (relating to taxes on wagering) shall, notwithstanding any other provision of this section, be open to inspection by or disclosure only to such person or persons and for such purpose or purposes as are prescribed by section 4424.

26 USC 4401.

"(p) PROCEDURE AND RECORDKEEPING.—

"(1) MANNER, TIME, AND PLACE OF INSPECTIONS.—Requests for the inspection or disclosure of a return or return information and such inspection or disclosure shall be made in such manner and at such time and place as shall be prescribed by the Secretary.

"(2) PROCEDURE.—

"(A) REPRODUCTION OF RETURNS.—A reproduction or certified reproduction of a return shall, upon written request, be furnished to any person to whom disclosure or inspection

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Fee.

of such return is authorized under this section. A reasonable fee may be prescribed for furnishing such reproduction or certified reproduction.

Fee.

“(B) DISCLOSURE OF RETURN INFORMATION.—Return information disclosed to any person under the provisions of this title may be provided in the form of written documents, reproductions of such documents, films or photoimpressions, or electronically produced tapes, disks, or records, or by any other mode or means which the Secretary determines necessary or appropriate. A reasonable fee may be prescribed for furnishing such return information.

“(C) USE OF REPRODUCTIONS.—Any reproduction of any return, document, or other matter made in accordance with this paragraph shall have the same legal status as the original, and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding as if it were the original, whether or not the original is in existence.

“(3) RECORDS OF INSPECTION AND DISCLOSURE.—

“(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a (c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h) (1), (3) (A), or (4), (i) (4) or (6) (A) (ii), (k) (1), (2), or (6), (1) (1) or (4) (B) or (5), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a (c) (3) of title 5, United States Code.

Report to
congressional
committee.

“(B) REPORT BY THE SECRETARY.—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation a report with respect to, or summary of, the records or accountings described in subparagraph (A) in such form and containing such information as such joint committee or the Chief of Staff of such joint committee may designate. Such report or summary shall not, however, include a record or accounting of any request by the President under subsection (g) for, or the disclosure in response to such request of, any return or return information with respect to any individual who, at the time of such request, was an officer or employee of the executive branch of the Federal Government. Such report or summary, or any part thereof, may be disclosed by such joint committee to such persons and for such purposes as the joint committee may,

by record vote of a majority of the members of the joint committee, determine.

"(C) **PUBLIC REPORT ON DISCLOSURES.**—The Secretary shall, within 90 days after the close of each calendar year, furnish to the Joint Committee on Taxation for disclosure to the public a report with respect to the records or accountings described in subparagraph (A) which—

Report to congressional committee.

"(i) provides with respect to each Federal agency, each agency, body, or commission described in subsection (d) or (1) (3) or (6), and the General Accounting Office the number of—

"(I) requests for disclosure of returns and return information,

"(II) instances in which returns and return information were disclosed pursuant to such requests,

"(III) taxpayers whose returns, or return information with respect to whom, were disclosed pursuant to such requests, and

"(ii) describes the general purposes for which such requests were made,

"(4) **SAFEGUARDS.**—Any Federal agency described in subsection (h) (2), (i) (1), (2) or (5), (j) (1) or (2), (l) (1), (2), or (5), or (o) (1), the General Accounting Office, or any agency, body, or commission described in subsection (d) or (1) (3) or (6) shall, as a condition for receiving returns or return information—

"(A) establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of return or return information made by or to it;

Record maintenance.

"(B) establish and maintain, to the satisfaction of the Secretary, a secure area or place in which such returns or return information shall be stored;

"(C) restrict, to the satisfaction of the Secretary, access to the returns or return information only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this title;

"(D) provide such other safeguards which the Secretary determines (and which he prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the returns or return information;

"(E) furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, which describes the procedures established and utilized by such agency, body, or commission or the General Accounting Office for ensuring the confidentiality of returns and return information required by this paragraph; and

Report.

"(F) upon completion of use of such returns or return information—

Report.

"(i) in the case of an agency, body, or commission described in subsection (d) or (1) (6), return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner; and

"(ii) in the case of an agency described in subsections (h)(2), (i)(1), (2), or (5), (j)(1) or (2), (l)(1), (2), or (5), or (o)(1), the commission described in subsection (l)(3), or the General Accounting Office, either—

"(I) return to the Secretary such returns or return information (along with any copies made therefrom),

"(II) otherwise make such returns or return information undisclosable, or

"(III) to the extent not so returned or made undisclosable, ensure that the conditions of subparagraphs (A), (B), (C), (D), and (E) of this paragraph continue to be met with respect to such returns or return information,

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met.

"(5) **REPORT ON PROCEDURES AND SAFEGUARDS.**—After the close of each calendar quarter, the Secretary shall furnish to each committee described in subsection (f)(1) a report which describes the procedures and safeguards established and utilized by such agencies, bodies, or commissions and the General Accounting Office for ensuring the confidentiality of returns and return information as required by this subsection. Such report shall also describe instances of deficiencies in, and failure to establish or utilize, such procedures.

"(6) **AUDIT OF PROCEDURES AND SAFEGUARDS.**—

"(A) **AUDIT BY COMPTROLLER GENERAL.**—The Comptroller General may audit the procedures and safeguards established by such agencies, bodies, or commissions pursuant to this subsection to determine whether such safeguards and procedures meet the requirements of this subsection and ensure the confidentiality of returns and return information. The Comptroller General shall notify the Secretary before any such audit is conducted.

"(B) **RECORDS OF INSPECTION AND REPORTS BY THE COMPTROLLER GENERAL.**—The Comptroller General shall—

"(i) maintain a permanent system of standardized records and accountings of returns and return information inspected by officers and employees of the General Accounting Office under subsection (i)(6)(A)(ii) and shall, within 90 days after the close of each calendar year, furnish to the Secretary a report with respect to, or summary of, such records or accountings in such form and containing such information as the Secretary may prescribe, and

"(ii) furnish an annual report to each committee described in subsection (f) and to the Secretary setting forth his findings with respect to any audit conducted pursuant to subparagraph (A). Report to congressional committees.

The Secretary may disclose to the Joint Committee any report furnished to him under clause (i).

"(7) ADMINISTRATIVE REVIEW.—The Secretary shall by regulations prescribe procedures which provide for administrative review of any determination under paragraph (4) that any agency, body, or commission described in subsection (d) has failed to meet the requirements of such paragraph. Regulations.

"(8) STATE LAW REQUIREMENTS.—

"(A) SAFEGUARDS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed after December 31, 1978, to any officer or employee of any State which requires a taxpayer to attach to, or include in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

"(B) DISCLOSURE OF RETURNS OR RETURN INFORMATION IN STATE RETURNS.—Nothing in subparagraph (A) shall be construed to prohibit the disclosure by an officer or employee of any State of any copy of any portion of a Federal return or any information on a Federal return which is required to be attached or included in a State return to another officer or employee of such State (or political subdivision of such State) if such disclosure is specifically authorized by State law.

"(q) REGULATIONS.—The Secretary is authorized to prescribe such other regulations as are necessary to carry out the provisions of this section. Regulations.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter B of chapter 61 is amended by striking out the item relating to section 6103 and inserting in lieu thereof the following:

"Sec. 6103. Confidentiality and disclosure of returns and return information."

(b) STATISTICAL PUBLICATIONS AND STUDIES.—Section 6108 (relating to publication of statistics of income) is amended to read as follows: 26 USC 6108.

"SEC. 6108. STATISTICAL PUBLICATIONS AND STUDIES.

"(a) PUBLICATION OR OTHER DISCLOSURE OF STATISTICS OF INCOME.—The Secretary shall prepare and publish not less than annually statistics reasonably available with respect to the operations of the internal revenue laws, including classifications of taxpayers and of income, the amounts claimed or allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.

"(b) SPECIAL STATISTICAL STUDIES.—The Secretary may, upon written request by any party or parties, make special statistical studies and compilations involving return information (as defined in section 6103(b)(2)) and furnish to such party or parties transcripts of any such special statistical study or compilation. A reasonable fee may be prescribed for the cost of the work or services performed for such party or parties. Fee.

"(c) ANONYMOUS FORM.—No publication or other disclosure of statistics or other information required or authorized by subsection (a) or special statistical study authorized by subsection (b) shall in any manner permit the statistics, study, or any information so published, furnished, or otherwise disclosed to be associated with, or otherwise identify, directly or indirectly, a particular taxpayer."

26 USC 4102.

(c) INSPECTION OF CERTAIN RECORDS BY LOCAL OFFICERS.—

(1) IN GENERAL.—Section 4102 (relating to inspection of records, returns, etc., by local officers) is amended to read as follows:

"SEC. 4102. INSPECTION OF RECORDS BY LOCAL OFFICERS.

Regulations.

"Under regulations prescribed by the Secretary, records required to be kept with respect to taxes under this part shall be open to inspection by such officers of a State, or a political subdivision of any such State, as shall be charged with the enforcement or collection of any tax on gasoline or lubricating oils."

(2) CONFORMING AMENDMENT.—The table of sections for subpart B of part III of chapter 32 is amended by striking out the item relating to section 4102 and inserting in lieu thereof the following:

"Sec. 4102. Inspection of records by local officers."

26 USC 7213.

(d) PENALTY FOR UNAUTHORIZED DISCLOSURE OF INFORMATION.—Section 7213 (relating to unauthorized disclosure of information) is amended by striking out subsection (c), redesignating subsections (d) and (e) as (c) and (d), respectively, and by amending subsection (a) to read as follows:

"(a) RETURNS AND RETURN INFORMATION.—

Ante, p. 1681.

"(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

Ante, p. 1668.

"(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in section 6103(b)(5)) or any local child support enforcement agency to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under section 6103(d) or (1)(6). Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

"(3) OTHER PERSONS.—It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title to thereafter print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount

not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

"(4) SOLICITATION.—It shall be unlawful for any person to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution. *Ante*, p. 1668.

"(5) SHAREHOLDERS.—It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution."

(e) CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OF RETURNS AND RETURN INFORMATION.—

(1) IN GENERAL.—Part I of subchapter A of chapter 75 (relating to miscellaneous penalties and forfeitures) is amended by adding at the end thereof the following new section:

"SEC. 7217. CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OF RETURNS AND RETURN INFORMATION. 26 USC 7217.

"(a) GENERAL RULE.—Whenever any person knowingly, or by reason of negligence, discloses a return or return information (as defined in section 6103(b)) with respect to a taxpayer in violation of the provisions of section 6103, such taxpayer may bring a civil action for damages against such person, and the district courts of the United States shall have jurisdiction of any action commenced under the provisions of this section.

"(b) DAMAGES.—In any suit brought under the provisions of subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

"(1) actual damages sustained by the plaintiff as a result of the unauthorized disclosure of the return or return information and, in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, but in no case shall a plaintiff entitled to recovery receive less than the sum of \$1,000 with respect to each instance of such unauthorized disclosure; and

"(2) the costs of the action.

"(c) An action to enforce any liability created under this section may be brought, without regard to the amount in controversy, within 2 years from the date on which the cause of action arises or at any time within 2 years after discovery by the plaintiff of the unauthorized disclosure."

(2) CONFORMING AMENDMENT.—The table of sections for such part is amended by adding at the end thereof the following new item:

"Sec. 7217. Civil damages for unauthorized disclosure of returns and return information."

(f) PROCESSING OF RETURNS, RETURN INFORMATION, AND OTHER DOCUMENTS.—Section 7513 (relating to reproduction of returns and other documents) is amended by striking out subsection (c) and redesignating subsection (d) as subsection (c). 26 USC 7513.

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- 26 USC 7852. (g) OTHER APPLICABLE RULES.—Section 7852 (relating to other rules applicable under title 26) is amended by adding at the end thereof the following new subsection:
- “(e) PRIVACY ACT OF 1974.—The provisions of subsections (d) (2), (3), and (4), and (g) of section 552a of title 5, United States Code, shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of this title apply.”
- (h) TECHNICAL AND CONFORMING AMENDMENTS.—
- (1) Section 6106 (relating to publicity of unemployment tax returns) is hereby repealed.
- 26 USC 6106. (2) Section 6323 (relating to validity and priority of tax liens against certain persons) is amended by striking out paragraph (3) of subsection (i).
- 26 USC 6323. (3) Subsection (d) of section 7213 (relating to cross references) is amended by striking out paragraph (1) and inserting in lieu thereof:
- “(1) Penalties for disclosure of information by preparers of returns.—For penalty for disclosure or use of information by preparers of returns, see section 7215.”
- 26 USC 7515. (4) Section 7515 (relating to special statistical studies and compilations and other services on request) is hereby repealed.
- 26 USC 7809. (5) Subsection (c) of section 7809 (relating to deposit of collections) is amended by striking out in paragraph (1) “section 7515 (relating to special statistical studies and compilations for other services on request)” and inserting in lieu thereof “section 6103(p) (relating to furnishing of copies of returns or of return information), and section 6108(b) (relating to special statistical studies and compilations)”.
- 26 USC 4424. (6) Subsection (d) of section 4424 (relating to disclosure of wagering tax information) is amended by striking out “6103(d)” and inserting in lieu thereof “6103(f)”.
- 26 USC 6103 note. (i) EFFECTIVE DATE.—The amendments made by this section take effect January 1, 1977.