

DEC 13 1983

Assistant Secretary (Tax Policy)

Commissioner *Ys/* Roscoe Egger

**Legislative Proposal on Records Management (Archives)**

As a result of our decision on July 21, 1983, the Service has prepared the following attached documents:

1. Legislative proposal to transfer records management and disposition authority to the Secretary.
2. Draft bill to accomplish this function.
3. Draft transmittal letter to OMB, and
4. Draft transmittal letter to the President of the Senate.

**Attachments  
As Stated**

C:L/BLind/sag/566-3880/7-29-83  
UIL# 6103  
Doc. No. 22190

INTERNAL REVENUE SERVICE--LEGISLATIVE PROPOSAL  
POLICY MATTER CONCERNING NATIONAL ARCHIVES AND  
RECORDS SERVICE STORAGE OF RECORDS AND ACCESS  
TO TAX RETURNS AND RETURN INFORMATION

Current Law

The National Archives and Records Service (NARS) has four basic roles assigned to it by Title 44. First is the responsibility for the custody and control of records in the National Archives. In its "archival" role, NARS may accession into the Archives governmental records that it deems to have sufficient historical value to warrant preservation by the United States. Second is the maintenance of Federal Records Centers (FRCs) to provide inexpensive storage of relatively inactive records. These records are "considered to be maintained by the agency which deposited" them (41 C.F.R. 101-11.410-7). Third is the responsibility for reviewing and approving agency proposals for records disposition. Fourth is its record management role of providing guidance and assistance to Federal agencies with respect to records creation, records maintenance and use and records disposition. To fulfill these roles, NARS takes the position that it has the authority to inspect the records or records management practices and programs of any Federal agency.

The role of the Internal Revenue Service is that of an Executive agency charged with the administration of Federal taxes. The overwhelming bulk of records which it receives are records defined under 26 U.S.C 6103 as tax returns or return information. These records are viewed by the IRS and Department of Justice as confidential and may be disclosed only as expressly provided in 26 U.S.C. 6103. Many courts have held that 26 U.S.C. 6103 is the exclusive means to obtain access to these records. In addition, where returns and return information are disclosed to another agency as authorized by 26 U.S.C. 6103, we feel the documents are to be safeguarded from further disclosure as provided by that section.

When FRCs were established by NARS to provide inexpensive storage for inactive records, the IRS became a prime user of the FRCs by retiring large volumes of tax returns and related records. In 1968, IRS and NARS entered into a Memorandum of Understanding that provided for certain FRCs to accept the retirement of tax returns on an earlier schedule than prescribed by the records control schedule. This warehouse storage was

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substantially more economical than storage in expensive office space or IRS service centers. In turn, IRS agreed to transfer funding and positions to NARS to perform the required reference services. Eventually, all IRS service centers entered into a similar agreement with NARS to retire records on an early or accelerated basis.

### Problem

IRS has demonstrated a continuing cooperative spirit towards NARS concerning their mission to provide storage for inactive records. In fact, IRS records occupy 40 percent of the total FRC inventory and account for 80 percent of the reference requests performed by the FRCs. Although the IRS/NARS Memorandum of Understanding stipulates that reference requests for tax returns will be serviced within eight working hours, until recently the average turnaround time was between four and six weeks. These references include taxpayer requests for photocopies of tax returns. NARS's inability to produce returns in an established time frame precluded the IRS from promptly providing information to taxpayers. Investigations and certain activities were hampered by the delay in obtaining returns or copies of returns from a FRC. This inadequate level of service occurred despite the fact that over the last three years IRS transferred 454 Full Time Equivalency positions, 109 Full Time Permanent positions, 863 Other than Full Time positions, and \$6.3 million to enable the FRC's to provide adequate services for reference requests. In FY 84, IRS will begin a 100 percent reimbursable approach for NARS services.

As the FRCs became filled, NARS changed their position regarding the early retirement of records and has pressured IRS to establish or shorten retention periods for records that IRS functions need to retain to effectively administer the tax laws. These records include certain corporation returns, estate and gift returns and EP/EO case files. NARS ceased accepting estate and gift returns or EP/EO records for FRC storage without IRS agreement to fixed retention periods. As a result, IRS recently agreed to the disposal (destruction) of most estate tax returns after 75 years as well as the disposal of pre-1966 gift tax returns. EP/EO records and some gift tax returns are currently being stored in expensive IRS office space. IRS agreed to disposal of corporation returns after 75 years. However, NARS is now urging the destruction of corporate returns after a fifty year retention period.

An additional, fundamental conflict has recently arisen between IRS and NARS. This concerns the question of historic appraisal of records involving returns and return information.

As an example, in 1975 NARS authorized the disposal of IRS Criminal Investigation case files after a ten-year retention period (the prior retention period had been 25 years). In 1983, NARS suspended the disposal authority for these records on the grounds that an onsite historic appraisal of these records is necessary before granting disposal authority.

The position of both the Treasury and Justice Departments is that NARS cannot have access to returns or return information since disclosure to NARS is not authorized under 26 U.S.C. 6103. The legislative history of amendments to this section, beginning with the Tax Reform Act of 1976, indicates that Congress clearly intended that the public could expect tax returns and return information to be confidentially maintained with disclosure only as specifically authorized in the Internal Revenue Code. Moreover, if these records should be accessioned into the National Archives, Title 44 might permit their disclosure to the public 30 years after they were created. Such action would breach the reasonable expectation of privacy on the part of the American citizen with respect to such information. In our view the disclosure of returns and return information after 30 years has a definite potential to damage the voluntary compliance system by undermining taxpayer confidence in the privacy and confidentiality of tax information.

In American Friends v Webster, \_\_\_ Fed. 2d \_\_\_ (September 30, 1983), the court concluded that the procedures in Title 44 prescribe the exclusive means by which Federal records may be destroyed. Perhaps more importantly, the court rejected the Government's argument that 26 U.S.C. 6103 established an absolute bar to the disclosure of returns and return information to NARS. Instead, the court held that 44 U.S.C. 2906 (which pertains to NARS' records management function) operated as a "limited exception" to section 6103, and pursuant to 44 U.S.C. 2906, disclosure for records management purposes was authorized upon approval of the head of the agency having custody of the records or by the President. The Court left open the question of NARS' authority to direct the transfer of historically significant records to the Archives and to make such records available to the public. Thus, although NARS was barred from examining tax records in the American Friends case (since neither the Director of the FBI nor the President had approved such access) the court's analysis calls into question the primacy of 26 U.S.C. 6103 regarding access to confidential tax information.

### Proposed Solution

The authority and responsibility for management of IRS records should be placed in Title 26 with IRS making

determinations on the retention and disposition of records subject to Congressional review. Rendering the Title 44 provisions not applicable to Title 26 records would assure taxpayers that returns and return information would only be disclosed as specifically authorized by section 6103. This would be true whether the returns or return information are in the possession of the IRS or another agency.

This legislative solution would make clear that tax returns and return information are confidential and should not be available for disclosure as documents of historic value. By removing any NARS' jurisdiction over returns and return information, the question of confidentiality would be permanently closed. Should a taxpayer feel their return was of historic value, the taxpayer could directly donate a copy of the return to NARS.

NARS' current pressure for the earlier disposition of records appears to reflect a greater concern with storage space limitations than IRS' tax administration needs. In conjunction with Congress, IRS would determine and justify its needs for the retention of records for tax administration purposes through the oversight and appropriation processes.

NARS' function of providing inexpensive storage and retrieval of inactive IRS records has shown inadequacies. In the past, reference requests did not receive the timely priority that they should have received. IRS has a direct concern with the timely retrieval and copying of returns for both its tax administration needs and as a service to taxpayers. Consequently, IRS could be expected to perform this service in a more timely and cost effective manner than NARS.

IRS is in the forefront of utilizing modern technology for the storage of records. A high density storage and retrieval system for returns is being explored with a pilot program anticipated for 1985 and full implementation in 1988. The Library of Congress is currently using similar technology. An example of the potential space savings is that one disc could store over 150,000 pages. This method of storage would permit computer controlled random access recall, thus returns could be quickly found and copied for either administrative use or a taxpayer. While this technology is important for storage of relatively inactive records, such as those sent to FRCs, its greatest potential lies in sharply curtailing the movement of paper documents through IRS service centers. This technology is expected to provide substantial long run savings in staff, space and other resources for both reference (FRC) work and operating efficiencies at the service centers. Indeed, this should eventually eliminate our need for FRC storage of tax returns.

The Service could continue to utilize NARS' records management skills in an advisory capacity. Access to returns and return information would not be necessary for NARS to provide advice in the records management area. Indeed, IRS recognizes that the mutual exchange of ideas regarding records management practices could be profitable to both agencies.

This proposal would not increase the Federal budget since NARS' storage costs for IRS records are currently appropriated; nor will it increase the IRS budget for FY 84. It may actually result in reduced costs since NARS is reimbursed all costs and has no incentive to minimize these costs. In contrast, under this proposal IRS would be directly accountable for both funding and operations. Consequently, IRS would be motivated to minimize costs while still maintaining an acceptable level of performance for reference requests.

98th Congress  
1st Session

H.R. \_\_\_\_\_

To transfer authority for the management and disposition of the records of the Internal Revenue Service by adding a new section 6112 to the Internal Revenue Code of 1954, relating to final authority for records management in the Internal Revenue Service.

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IN THE HOUSE OF REPRESENTATIVES  
AUGUST \_\_\_\_\_, 1983

Mr. \_\_\_\_\_ introduced the following bill, which was referred to the Committee on Ways and Means.

\_\_\_\_\_  
A BILL

To add a new section 6112 to the Internal Revenue Code of 1954, relating to final authority for the management and disposition of Internal Revenue Service records.

Be it enacted by the Senate and House of Representatives of  
the United States of America in Congress assembled,

SEC. 1. Subchapter B of Chapter 61 (relating to information and returns) of the Internal Revenue Code of 1954 is amended by inserting immediately after section 6111 the following new section:

Sec 6112. Records Management and Disposition

"(a) General responsibilities of the Secretary. - Notwithstanding any provision of chapters 21, 29, 31, and 33 of title 44 of the United States Code, the Secretary shall have final and complete authority for all matters involving the creation, maintenance and use, and disposition of the records of the Internal Revenue Service. The Secretary shall establish and maintain an active, continuing program for the economical and efficient management of the records of the Internal Revenue Service, which, among other things, shall provide for

(1) effective controls over the creation and over the maintenance and use of records in the conduct of current business;

(2) developing and applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and for the segregation and disposal of records of temporary value;

(3) promulgating schedules authorizing the disposal after the lapse of specified periods of time of records of specified form or character that after the lapse of the periods specified, are determined not to have sufficient administrative, legal, research, or other value to warrant further preservation by the Government; and

(4) authorizing and effecting the disposal of records not needed in the transaction of the current business of the Internal Revenue Service and that are determined not to have sufficient administrative, legal, research, or other value to warrant their further preservation by the Government.

"(b) Records centers. - The Secretary is authorized to establish, maintain, and operate storage facilities and records centers for the Internal Revenue Service. When the Secretary determines that such action may affect substantial economies or increased operating efficiency, the Secretary may provide for the transfer of records (including returns and return information pursuant to section 6103(n) of this title), under disposition schedules approved by the Secretary, to a record center maintained and operated by the Administrator of General Services.

"(c) Safeguards. - Inspections, transfers or appraisals of the records of federal agencies authorized to receive returns and return information under section 6103 of this title by or to the Administrator of General Services or his delegate in accordance with the provisions of chapters 21, 29, 31, and 33 of title 44 of the United States Code are not authorized if such records contain any returns or return information, unless such returns or return information were made part of the public record of a judicial or administrative proceeding as described in subsection 6103(p)(4) of this title.

"(d) Preservation of claims. - Records pertaining to claims and demands by or against the Government of the United States or to accounts in which the Government of the United States is concerned, either as debtor or creditor, may not be disposed of under the authorization granted in this section, until the claims, demands, and accounts have been settled and adjusted in the General Accounting Office, except upon the written approval of the Comptroller General of the United States.

"(e) Health and safety emergency. - The Secretary may authorize the disposal of any records in the custody of the Internal Revenue Service that the Secretary determines constitute a threat to human health or safety.

"(f) Deposit of records in the National Archives. - The Administrator of General Services may not direct the transfer of records of the Internal Revenue Service to the National Archives of the United States under 44 U.S.C. § 2103. The Secretary shall offer for deposit with the National Archives of the United States any records of the Internal Revenue Service, excluding returns and return information, that have been determined to have sufficient historical or other value to warrant their continued preservation by the United States Government.

"(g) Definitions. - For purposes of this section -

(1) Return. - The term "return" has the same meaning as provided in subsection 6103(b)(1) of this title.

(2) Return information. - The term "return information" has the same meaning as is provided in subsection 6103(b)(2) of this title.

(3) Records. - The term "records" has the same meaning as is provided in 44 U.S.C § 3301.

(4) Records management. - The term "records management" has the same meaning as is provided in 44 U.S.C. § 2901.

(5) Records creation. - The term "records creation" has the same meaning as is provided in 44 U.S.C. § 2901.

(6) Records maintenance and use. - The term "records maintenance and use" has the same meaning as is provided in 44 U.S. C § 2901.

(7) Records disposition. - the term "records disposition" has the same meaning as is provided in 44 U.S.C. § 2901.

(8) Records center. - The term "records center" has the same meaning as is provided in 44 U.S.C § 2901.

(9) Inspection. - The term "inspection" has the same meaning as is provided in 44 U.S.C. § 2901.

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

**DRAFT**

The Honorable George P. Bush  
President of the Senate  
Washington, DC 20515

Dear Mr. President:

Enclosed for referral to the appropriate committee is a draft bill prepared by the Department of the Treasury "To amend Chapter 61 of Title 26, United States Code to ensure the confidentiality of tax returns and return information by vesting records management and disposition authority with the Secretary of the Treasury."

This proposed bill would amend Chapter 61 of the Internal Revenue Code (26 U.S.C. 6001, et seq) to place responsibility for management and disposition of Internal Revenue Service records with the Treasury Department. This proposed amendment is intended to clarify the principle that tax returns and return information received by the Internal Revenue Service are confidential and may be disclosed only as directed by Congress through 26 U.S.C. 6103. It has been the position of Treasury and the Justice Department that such is the case.

Under this proposed legislation, tax returns and return information would be retained by the Internal Revenue Service for as long as needed in performing tax administration functions. When no longer useful, such records would be destroyed. The legislation would permit donation to the National Archives of documents of an administrative nature which the National Archives wishes to accept as having historical or other value warranting continued preservation by the United States. However, tax returns and return information could not be transferred into the National Archives on the grounds of historic value.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of the proposed bill.

Sincerely,

Enclosure

IDENTICAL LETTER SENT TO THE HONORABLE THOMAS P. O'NEILL, JR.,  
SPEAKER OF THE HOUSE