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BEFORE THE  
SUBCOMMITTEE ON GOVERNMENT INFORMATION  
AND INDIVIDUAL RIGHTS  
OF THE  
COMMITTEE ON GOVERNMENT OPERATIONS  
OF THE  
U.S. HOUSE OF REPRESENTATIVES  
MAY , 1976

Ms. Chairwoman and Members of the Committee:

I am pleased to have this opportunity to meet with you and discuss the provisions of H.R. 12039, a Bill to amend the Privacy Act of 1974, as they would affect the operations of the Internal Revenue Service. Certainly, all of us here are mindful of the issues and events which have led Ms. Abzug to introduce the measures embodied by H.R. 12039. You can be assured that the present policy and procedures of the Internal Revenue Service do not permit, or tolerate, the kinds of abuses identified in the proposed legislation.

The Bill does contain, however, several provisions which give us problems. The balance of my statement discusses these problems and comments on some of the subcommittee's other areas of inquiry.

One problem concerns the Bill's provisions relating to persons with respect to whom information was included in the files established by the Special Service Staff. This Staff was created in 1969 and all activities were terminated in 1973. The Staff's files would have been destroyed long ago if Congressional leaders had not asked that they be retained. These files are inactive and outdated and, because of this, considerable time and effort would be required to comply with the Bill's notification requirements. Detailed checks would have to be made to determine current addresses of all persons included in the files. Also, some individuals included in the file may be deceased and organizations liquidated or otherwise disposed of since Special Service Staff activities were terminated. In addition, to my knowledge none of the information included in the files was ever used for purposes other than those specifically authorized by statute to enforce the internal revenue laws. In view of this, I seriously question the advantages to be gained from incurring the substantial costs required to inform persons mentioned in the files that they are mentioned and can have all information about them destroyed.

The Service will, of course, continue to preserve the Special Service Staff files until the needs of the select Congressional Committees have been met. Arrangements will then be made with the Senate and House leadership for disposition of the files

copies of information will be accomplished in accordance with Presidential directives and as otherwise provided by law.

Another problem relates to that portion of H. R. 12039 which provides that Federal agencies maintaining information about certain persons must notify such persons of this fact, furnish them with a clear and concise statement of their rights under the Privacy and Freedom of Information Acts, and give them the right to require that all copies of the information included in files be destroyed. Persons subject to this provision are those who were "the sender or receiver of any written communication, or communication by wire, cable, radio, or other means, which was intercepted, recorded, or otherwise examined, by the agency without a search warrant, or without the consent of both the sender and receiver". I assume that this language relates to information obtained through illegal investigative procedures. However, without further clarification, the Bill's language, as it relates to the Internal Revenue Service, could be interpreted to include virtually every written or other exchange between two persons involving the determination of a taxpayer's correct tax liability. This interpretation would place severe restrictions on the Service's ability to obtain and review bank statements, insurance records, financial reports, sales and purchases invoices, and other data directly related to determination of tax liability. This type of information, which is now legally obtainable by the Service for tax administration purposes, is usually

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secured from third parties under Code provisions authorizing the use of administrative summonses for the information to persons in possession of the requested data. The recipient of the summons can, of course, refuse to honor the summons and request a court hearing to determine if the data should be made available to the Service. To avoid potential problems from misinterpretation of the Bill's provisions in this area, I strongly recommend that the provisions be modified to clearly state that they apply only to information obtained from communications using illegal investigative methods.

Our final problem with the Bill concerns the period covered by its provisions. Since the Bill contains no effective date and provisions concerning the notification of persons subject to illegal information gathering activities are all written in the past tense, I assume that the effective date is the same as that of the Privacy Act, which it amends, and that the notification provisions only apply to information illegally obtained prior to this date and still maintained by the Service. If this is the intent of the proposed legislation, the provisions of the Bill should be amended to clearly reflect their retroactive nature.

In addition to the above specific comments about provisions of the Bill, I would, in the belief that it may be helpful, like to comment on Service files other than the Special Service Staff files which are directly dealt with in the Bill. In my judgment, none of these files are covered by provisions in H. R. 12039;

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however, it is possible that the present language in the Bill could be interpreted to cover our regular tax administration files. All of the information in the files is totally relevant and necessary to accomplish the Service mission of enforcing the internal revenue laws. The records are as accurate as we can make them and contain no information about how any individual exercises rights guaranteed by the First Amendment.

As you know, the Service collects and maintains files containing enormous quantities of information covering every taxpaying entity in the Nation. This information is essential in determining a taxpayer's proper tax liability. The vast preponderance of this data is submitted to us, timely and accurately, by the taxpayers themselves. However, the Service does collect additional information regarding taxpayers, under three general sets of circumstances.

The first, and by far the largest, is our normal audit process, where we are generally seeking evidence to support information reported on tax returns. In the second set of circumstances, additional information regarding taxpayers is sought by the Service, in connection with specific tax investigations, where we have established a controlled case file based upon data already in our hands that suggests the probable existence of criminal or civil tax fraud. The establishment of such an investigation will frequently have come about as a result of our normal audit procedures, such as the application of the discriminant function by our Service Center computers, or as a result of data acquired incident to

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the audit of another taxpayer. The collection of specific, case-related information is made through legal law enforcement investigative methods, such as personal interviews and the examination of third party records using administrative summonses. The third set of circumstances in which information is gathered by the Service, which may be described as "intelligence gathering", involves the evaluation of a variety of information items from many sources as potential indicators of revenue non-compliance or of breaches of integrity by our employees. All of these files contain information vital to the tax administration process. Without it, the Service would be hard-pressed to meet its responsibilities for administering the internal revenue laws in a fair and equitable way. I suggest, therefore, that the provisions of the Bill be revised or that the committee report be written to make it very clear that the files I have described are not subject to the privacy protection procedures contained in H. R. 12039.

I hope these comments will be helpful to you in considering the proposed legislation. My associates and I will be glad to answer any of your questions.