IRS: TAXING THE HEROIN BARONS

HEARINGS

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

Pursuant to S. Res. 375, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

NARCOTIC SENTENCING AND SEIZURE ACT OF 1976
(S. 3411 and S. 3645)

Volume II

JULY 28 AND AUGUST 5, 1976

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94TH CONGRESS
2D SESSION

S. 3411

IN THE SENATE OF THE UNITED STATES

MAY 11, 1976

Mr. HRUSKA (for himself, Mr. BUCKLEY, Mr. EASTLAND, Mr. HUGH SCOTT, and Mr. THURMOND) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the public from traffickers in heroin and other opiates, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Narcotic Sentencing and Seizure Act of 1976".

TITLE I—MANDATORY MINIMUM SENTENCES

SEC. 101. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 et seq.) is amended as follows:

(a) Section 401 (21 U.S.C. 841) is amended by—

(1) adding the following new subparagraph at the end of subsection (b) (1):

"(C) (i) Except as provided in clause (ii), the judge, in setting the sentence under paragraph (A) for an offense involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a) (1) of title 18, United States Code, of not less than 3 years. If the person committed such violation after he had been convicted of a felony under Federal, State, or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this paragraph shall be not less than 6 years and the mandatory minimum term of parole ineligibility pursuant to section 4208(a) (1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a) (1) of title 18.

"(ii) Notwithstanding the provisions of clause (i), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under clause (i), to a term of imprisonment with no term of parole ineligibil-

ity, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(a) the defendant was less than eighteen years old;

"(b) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(c) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(d) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor."; and

(2) adding at the end thereof the following new subsection:

"(d) As used in subsection (b) (1) (C):

"(1) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (A) coca leaves; (B) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (C) a substance chemically identical thereto; and

"(2) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

(b) Section 405 (21 U.S.C. 845) is amended by adding at the end thereof the following:

(c) (1) Except as provided in subparagraph (2), the judge, in setting the sentence under section 401 (b) (1) (A) of a person at least eighteen years of age who violated section 401 (a) (1) by distributing an opiate to a person under twenty-one years of age, shall not sentence the person to probation or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to—

"(A) except as provided in paragraph (B), a term of imprisonment of not less than 6 years and shall designate a term of parole ineligibility pursuant to section 4208 (a) (1) of title 18, United States Code, of not less than 6 years; or

"(B) a term of imprisonment of not less than 9 years and shall designate a term of parole ineligibility pursuant to section 4208 (a) (1) of title 18, United States Code, of not less than 9 years, if the person committed such violation after he had been convicted of a felony under Federal, State, or foreign law relating to an opiate.

A term of imprisonment under this subsection shall run con-

secutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this subsection shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208 (a) (1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense:

"(A) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(B) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(C) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection—

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that

is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

(c) Section 406 (21 U.S.C. 846) is amended by designating the existing language as subsection (a) and adding the following new subsection (b):

"(b) (1) Except as provided in paragraph (2), the judge, in setting the sentence under subsection (a) for an attempt or conspiracy to commit an offense described in section 401 involving an opiate, may not sentence the person to probation or suspend imposition or execution of the sentence or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a) (1) of title 18, United States Code, of not less than 3 years. If the person committed such violation after he had been convicted of a felony under Federal, State or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this subsection shall be not less than 6 years and the manda-

tory minimum term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense—

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct

of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection—

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

SEC. 102. Part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 951 et seq.) is amended as follows:

(a) Section 1010 (21 U.S.C. 960) is amended by adding the following new paragraph at the end of subsection (b):

"(3) (A) Except as provided in subparagraph (B), the judge, in setting the sentence under paragraph (A) for an offense involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the defendant to a term of imprisonment of not less than 3 years and shall

designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years. A term of imprisonment under this subparagraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this subparagraph shall run consecutively to any other terms of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(B) Notwithstanding the provisions of paragraph (3)(A), the court may sentence the defendant to a shorter term of parole ineligibility than required under paragraph (3)(A), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense—

"(i) the defendant was less than eighteen years old;

"(ii) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(iii) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(iv) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(C) As used in this paragraph—

"(i) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (a) coca leaves; (b) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (c) a substance chemically identical thereto, and

"(ii) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

(b) Section 1012 (21 U.S.C. 962) is amended by adding the following at the end thereof:

"(d) (1) Except as provided in paragraph (2), the judge, in setting the sentence for an offense under section 1010(b) involving an opiate, if the person committed such violation after he had been convicted of a felony under Federal, State, or foreign law relating to an opiate, shall not sentence the person to probation or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 6 years and

shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense—

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct

of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection—

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

(c) Section 1013 (21 U.S.C. 963) is amended by designating the existing language as subsection (a) and adding the following new subsection (b):

"(b) (1) Except as provided in paragraph (2), the judge, in setting the sentence under subsection (a) for an attempt or conspiracy to commit an offense described in section 1010(a) involving an opiate, may not sentence the person to probation, or suspend imposition or execution of the sentence, or sentence the person pursuant to chapter 402 of title 18, but shall sentence the person to a term of imprisonment of not less than 3 years and shall designate a term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, of not less than 3 years.

If the person committed such violation after he had been convicted of a felony under Federal, State, or foreign law relating to an opiate, the mandatory minimum term of imprisonment under this subsection shall be not less than 6 years and the mandatory minimum term of parole ineligibility pursuant to section 4208(a)(1) of title 18, United States Code, shall be not less than 6 years. A term of imprisonment under this paragraph shall run consecutively to any other term of imprisonment imposed on the defendant, and a term of parole ineligibility under this paragraph shall run consecutively to any other term of parole ineligibility imposed on the defendant pursuant to section 4208(a)(1) of title 18.

"(2) Notwithstanding the provisions of paragraph (1), the court may sentence the defendant to a shorter term of parole ineligibility or imprisonment than required under paragraph (1), to a term of imprisonment with no term of parole ineligibility, or to probation, or may suspend imposition or execution of the sentence, if the court finds that, at the time of the offense—

"(A) the defendant was less than eighteen years old;

"(B) the defendant's mental capacity was significantly impaired, although not so impaired as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; or

"(D) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another person, and the defendant's participation was relatively minor.

"(3) As used in this subsection—

"(A) 'opiate' means a mixture or substance containing a detectable amount of any narcotic drug that is a controlled substance in schedule I or II, other than a narcotic drug consisting of (i) coca leaves; (ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or (iii) a substance chemically identical thereto; and

"(B) 'felony' means an offense for which a term of imprisonment of more than one year is authorized.".

SEC. 103. The Federal Rules of Criminal Procedure are amended by adding the following new rule after rule 32:

"RULE 32.1—SENTENCE TO A MANDATORY SENTENCE OF IMPRISONMENT

"If a defendant is convicted of an offense for which he may be sentenced to a mandatory term of imprisonment or a mandatory term of parole ineligibility under section 401(b)(1)(C), 405(c), 406(b), 1010(b)(3), 1012(d), or

1013 (b) of the Comprehensive Drug Abuse Prevention and Control Act, as amended (21 U.S.C. 841 (b) (1) (C), 845 (c), 846 (b), 960 (b) (3), 962 (d), or 963 (b)), the court, prior to imposition of sentence shall hold a hearing to determine whether a term of imprisonment and parole ineligibility is mandatory. The hearing shall be held before the court sitting without a jury, and the defendant and the Government shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. If it appears by a proponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report relies on, that the defendant is subject to a mandatory term of imprisonment and parole ineligibility, the court shall sentence the defendant in accordance with the appropriate provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. The court shall place in the record its findings, including an identification of the information relied upon in making its findings.".

TITLE II—CONDITIONS OF RELEASE

SEC. 201. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) is amended by adding at the end thereof the following new sections:

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"RELEASE CONDITIONS

"SEC. 412. In setting conditions of release under section 3146 (a) of title 18, United States Code, for any person charged with an offense under section 401 (a) of this title or section 1010 (a) of title III with respect to an opiate, or charged under section 406 of this title with attempting or conspiring to commit an offense under section 401 (a) of this title relating to an opiate, or charged under section 1013 of title III with attempting or conspiring to commit an offense under section 1010 (a) of title III relating to an opiate, the judicial officer shall, in addition to determining which conditions will reasonably assure the appearance of the person for trial, consider which conditions will reasonably assure the safety of the community, the personal safety of persons in the community including witnesses to the offense, and the avoidance of future similar offenses by the person charged.

"DENIAL OF RELEASE PRIOR TO TRIAL

"SEC. 413. (a) Subject to the provisions of this section and notwithstanding the provisions of section 3146 of title 18, United States Code, a judicial officer may deny release of a person charged with a violation of section 401 (a) of this title or section 1010 (a) of title III with respect to an opiate, or charged under section 406 of this title with attempting or conspiring to commit an offense under section 401 (a) relating to an opiate, or charged under section 1013

of title III with attempting or conspiring to commit an offense under section 1010(a) of title III relating to an opiate, who—

"(1) has previously been convicted of an offense under any provision of Federal, State, or foreign law, relating to an opiate, which is punishable by more than one year's imprisonment;

"(2) at the time of the offense, was on parole, probation, or other conditional release in connection with a conviction for or a pending charge of an offense under Federal or State law that is punishable by more than one year's imprisonment;

"(3) is a nonresident alien;

"(4) was arrested while in possession of a passport or other documentation necessary for international travel incorrectly identifying him or belonging to some other person; or

"(5) has been convicted of having been a fugitive from justice, an escapee, or for willfully failing to appear before any court or judicial officer under Federal or State law.

"(b) No person described in subsection (a) of this section shall be denied release unless the judicial officer—

"(1) holds a hearing in accordance with the provisions of subsection (c) of this section;

"(2) finds—

"(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section;

"(B) that there are no conditions of release which will reasonably assure the appearance of the person charged, the safety of the community, the personal safety of persons in the community including witnesses to the offense, or the avoidance of future similar offenses by the person charged; and

"(C) that on the basis of information presented by proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is present before the officer, and

"(3) issues an order denying release accompanied by written findings of fact and the reasons for its entry.

"(c) The following procedures shall apply to hearings held pursuant to this section:

"(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

"(2) Whenever the person has been released pursuant to section 3146 of title 18, United States Code,

and it subsequently appears that such person may be subject to an order denying release under this section, the United States attorney may initiate a hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person.

"(3) The hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance or motion of the United States attorney shall be granted upon good cause shown and not exceed three calendar days. The person may be held pending the hearing.

"(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

"(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(6) Testimony of the person given during the

hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 3150 and 3151 of title 18, United States Code, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

"(7) Appeals from orders denying release may be taken pursuant to section 3147 of title 18, United States Code. The United States may appeal from orders granting release under this section.

"(d) The case of a person denied release pursuant to this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

"DEFINITIONS

"SEC. 414. As used in sections 412 and 413 of this title, the term—

"(a) 'judicial officer' means any person or court authorized pursuant to section 3041 of title 18, United States Code, or the Federal Rules of Criminal Procedure, to admit to bail or otherwise to release a person before trial or sentencing or pending appeal, in a court of the United States and any judge of the Superior Court of the District of Columbia; and

"(b) 'opiate' has the meaning set forth in section 401 (d) of this title.".

SEC. 202. The table of contents at the beginning of the Drug Abuse Prevention and Control Act of 1970 is amended by adding the following new items after the item relating to section 411:

"Sec. 412. Release conditions.
"Sec. 413. Denial of release prior to trial.
"Sec. 414. Definitions.".

TITLE III—FORFEITURE OF PROCEEDS OF ILLEGAL DRUG TRANSACTIONS

SEC. 301. Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) is amended by:

(a) adding at the end of subsection (a) the following new paragraph:

"(6) All proceeds of an offense described in this title or title III and all moneys, negotiable instruments, and securities used or intended to be used by any person, directly or indirectly, in connection with a violation of this title or title III."; and

(b) adding after the words "Whenever property" in subsection (e) the words "described in subsections (a) (1) through (a) (5)"; and

(c) adding a new subsection (h) at the end thereof as follows:

"(h) Whenever property described in subsection (a) (6) is forfeited for violation of this title or title III, the Attorney General, making due provision for the rights of any innocent person;

"(1) may dispose of property other than moneys, negotiable instruments, and securities in the manner set forth in subsection (e);

"(2) may dispose of negotiable instruments and securities in the manner prescribed in subsection (c) (2); and

"(3) shall forward currency obtained from sales pursuant to paragraph (2) and moneys forfeited under subsection (a) (6) to the Treasurer of the United States for deposit in the general fund of the United States Treasury.".

TITLE IV—ILLEGAL EXPORT OF CASH

SEC. 401. Section 231 (a) of the Currency and Foreign Transactions Reporting Act is amended to read as follows:

"(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee:

(1) intends to transport, or have transported, monetary instruments from any place within the United

States to or through any place outside the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) prior to departing from the United States;

(2) knowingly transports, or causes to be transported, monetary instruments from any place outside the United States to or through any place within the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports prior to or at the time of arrival in accordance with subsection (b); or

(3) receives monetary instruments at the termination of their transportation by common carrier to the United States from or through any place outside the United States in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b).".

SEC. 402. Section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by adding a new subsection (b) as follows:

"(b) When because of exigent circumstances a warrant cannot be obtained, any officer of Customs may search without a warrant any of the individuals or objects included in subsection (a) of this section if he has probable cause to

believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 of this Act (31 U.S.C. 1101) has not been filed or contains material omissions or misstatements.".

TITLE V—PROMPT REPORTING OF VESSELS

SEC. 501. Section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), is amended to read as follows:

"The master of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, arriving at any port or place within the United States, shall immediately report the arrival of the vessel at the nearest customhouse or such other place as the Secretary of the Treasury may prescribe in regulations. The Secretary may by regulation extend the time, not to exceed twenty-four hours after the arrival of the vessel, in which to report arrival.".

SEC. 502. Section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), is amended by substituting a comma for the word "or" wherever it appears between the words "entry" and "customhouse", and inserting after the word "customhouse" the phrase "or other places as the Secretary of the Treasury may prescribe in regulations.".

94TH CONGRESS
2D SESSION

S. 3645

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, JUNE 18), 1976

Mr. HRUSKA (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 511 (d) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881 (d)) to raise the monetary limit applicable to drug-related judicial forfeitures from $2,500 to $10,000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 511 (d) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881 (d)) is amended by deleting the semicolon after the words "custom laws" in the first sentence and inserting in lieu thereof the following: ", except that whenever property is forfeited under this Act, the sum of $2,500 in sections 607, 610, and 612 of the Tariff Act of 1930 (19 U.S.C. 1607, 1610, and 1612) shall be $10,000.".

94th Congress, 2d Session - - - - - - - House Document No. 94-470

DRUG ABUSE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSALS FOR FIGHTING DRUG ABUSE

APRIL 27, 1976.—Message referred to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

To the Congress of the United States:

I address this message to the Congress on a matter which strikes at the very heart of our national well-being—drug abuse.

The cost of drug abuse to this Nation is staggering. More than 5,000 Americans die each year from the improper use of drugs. Law enforcement officials estimate that as much as one half of all "street crime"—robberies, muggings, burglaries—are committed by drug addicts to support their expensive and debilitating habits. In simple dollar terms, drug abuse costs us up to $17 billion a year.

But these statistics—ominous as they are—reflect only a part of the tragic toll which drug abuse exacts. For every young person who dies of a drug overdose, there are thousands who do not die but who are merely going through the motions of living. They sit in classrooms without learning. They grow increasingly isolated from family and friends. At a time when they should be preparing for the future, they are "copping out" on the present.

The problem, moreover, is not limited to youth or to the disadvantaged. It extends to citizens of all ages and all walks of life—from the housewife to the college professor. The cumulative effect is to diminish the quality and vitality of our community life; to weaken the fabric of our Nation.

When this problem exploded into the national consciousness in the late 1960's, the response of the Federal Government was swift and vigorous. Federal spending on a comprehensive program to control drug abuse grew from less than $100 million in 1969 to over three-quarters of a billion in 1974; specialized agencies like the Drug Enforcement Administration and the National Institute on Drug Abuse were created; and international diplomatic efforts to mobilize the assistance of foreign governments in a world-wide attack on drug trafficking were intensified.

With the help of State and local governments, community groups and our international allies in the battle against narcotics, we were able to make impressive progress in combatting the drug menace. So much so that by mid-1973 many were convinced that we had "turned the corner" on the drug abuse problem.

Unfortunately, while we had won an important victory, we had not won the war on drugs. By 1975, it was clear that drug use was increasing, that the gains of prior years were being lost, that in human terms, narcotics had become a national tragedy. Today, drug abuse constitutes a clear and present threat to the health and future of our Nation.

The time has come to launch a new and more aggressive campaign to reverse the trend of increasing drug abuse in America. And this time we must be prepared to stick with the task for as long as necessary.

Because of my deep concern about this problem and my personal commitment to do something about it, last year I directed the Domestic Council to undertake a thorough review and assessment of the adequacy of the Federal drug program. That review, which culminated

in the publication of the "White Paper on Drug Abuse," has helped tremendously to refocus and revitalize the Federal effort. We have made substantial progress in implementing the many sound recommendations contained in the White Paper, but more needs to be done.

And more will be done. The first need for stronger action is against the criminal drug trafficker. These merchants of death, who profit from the misery and suffering of others, deserve the full measure of national revulsion. They should be the principal focus of our law enforcement activities—at the Federal, State and local level. In this regard, I am pleased to note that arrests by Federal law enforcement officers of major drug traffickers are up substantially over previous years. However, the progress we have made in improving our ability to apprehend these traffickers will be lost unless major changes are made in the way our criminal justice system deals with drug traffickers after arrest.

Justice Department statistics show that one out of every four persons convicted of trafficking in heroin received no prison sentence at all. One out of very three received a sentence of less than three years. And since convicted traffickers are eligible for parole upon the completion of one-third of their sentence, even those who received longer sentences rarely served more than a few years.

I believe this is wrong. It is wrong for the criminals who profit by selling drugs, it is wrong for the victims of drugs, and it is wrong for our system of justice. Laws which permit traffickers to go free to prey again on society should be changed. These criminals must know with certainty that, if convicted, they will go to jail for a substantial period of time. Only then will the risk of apprehension be a deterrent rather than just another cost of doing business.

Accordingly, I will submit to the Congress this week legislation which will require mandatory minimum prison sentences for persons convicted of trafficking in heroin and similar narcotic drugs. Sentences under this legislation would be at least three years for a first offense and at least six years for subsequent offenses or for selling to a minor.

I want to emphasize that the purpose of this proposal is not to impose vindictive punishment but to protect society from those who prey upon it and to deter others who might be tempted to sell drugs. Considering the terrible human toll that drug addiction takes and the extent to which it contributes to more and more crime, it is a matter of high priority that Congress make our laws more effective in curbing drug traffic.

Another serious problem with current Federal law is that even the most notorious drug traffickers are usually released on bail soon after arrest. The bail is often small and the profits from drug trafficking are large, so raising and then forfeiting the bail is just another cost of doing business. A 1974 Justice Department study shows that 48 percent—nearly one out of two—of a sample of individuals arrested for trafficking in narcotics were implicated in post-arrest drug trafficking while out on bail. Other studies show that approximately one-fourth of all bail-jumpers in drug cases are aliens who were caught smuggling drugs into the country. These offenders simply flee to their homelands upon posting bail. There, they serve as walking advertisements for international traffickers attempting to recruit other couriers.

This, too, is wrong. Therefore, in addition to asking Congress to establish mandatory minimum sentences, I shall submit to Congress legislation that would enable judges to deny bail if a defendant arrested for trafficking heroin or dangerous drugs is found (1) to have previously been convicted of a drug felony; (2) to be presently free on parole; (3) to be a non-resident alien; (4) to have been arrested in possession of a false passport; or (5) to be a fugitive or previously convicted of having been a fugitive.

Next, the Federal government must act to take the easy profits out of drug selling.

We know that tremendous amounts of money are illegally taken out of the country each day, either to purchase drugs or to transfer profits made by selling drugs to safe and secret bank accounts abroad. To prevent this money from being smuggled out of the country, I will ask Congress to grant to the U.S. Customs Service the authority to search persons suspected of smuggling money out of the country as Customs now has the authority to search for contraband entering the country.

I shall ask Congress to pass legislation requiring the forfeiture of cash or other personal property found in the possession of a narcotics violator—where it is determined that it was used or was intended for use in connection with an illegal drug transaction.

I shall ask Congress to change provisions of the law which allow the seizure of vehicles, boats and aircraft used to smuggle drugs. At present, these may be seized by administrative action only if the value of the property is less than $2,500; otherwise action by a Federal judge is necessary.

This $2,500 limitation is out of date and must be changed. Therefore, I shall ask Congress to raise to $10,000 the ceiling for administrative forfeitures. This will not only make law enforcement against traffickers more swift and more effective but it will also help to relieve court congestion.

I shall ask Congress to tighten the provisions of the law relating to small privately owned boats reporting to Customs after their arrival. At present, the masters of these vessels have 24 hours to report their arrival to Customs—and that is ample time to unload contraband. I shall ask Congress to pass legislation requiring such vessels to report to Customs immediately upon their arrival.

I call on Congress also to ratify an existing treaty for the international control of synthetic drugs.

Over the past fifty years the major nations of the world have worked out treaty arrangements for the international control of drugs with a natural base, such as opiates and cocaine. But no similar arrangements exist for the control of synthetic drugs—such as barbiturates, amphetamines and tranquilizers; and the abuse of these synthetic drugs is a growing problem which is now almost as serious as the abuse of heroin in the United States.

Five years ago the United States played a major role in the preparation of the 1971 Convention on Psychotropic Substances, a treaty to deal with international traffic in synthetic drugs. But the Senate has not yet ratified this treaty, and Congress has not yet passed the enabling legislation.

The delay in U.S. ratification of the Convention has been an embarrassment to us. Moreover, it has made it extremely difficult for us to urge other countries to tighten controls on natural-based narcotic substances, when we appear unwilling to extend international controls to amphetamines, barbiturates and other psychotropic drugs which are produced here in the United States.

So far, I have emphasized the need for additional legislation and Congressional action.

But there are Executive actions which I can take and I am today doing so.

The Federal program to control drug abuse is as diverse as any in government, involving some seven Cabinet departments and seventeen agencies. It is vitally important that the efforts of these departments and agencies be integrated into an effective overall program but that responsibility for specific program management rest with the appropriate departments and agencies.

Accordingly, I am today establishing two new Cabinet committees—one for drug law enforcement and the other for drug abuse prevention, treatment and rehabilitation.

The Cabinet Committee for Drug Law Enforcement will consist of the Attorney General as chairman and the Secretaries of the Treasury and Transportation. The Cabinet Committee on Drug Abuse Prevention, Treatment and Rehabilitation will consist of the Secretary of Health, Education, and Welfare as chairman, the Secretary of Defense, the Secretary of Labor and the Administrator of the Veterans Administration. I charge the Attorney General and the Secretary of HEW, as chairmen of these committees, with responsibility for oversight and coordination at all Federal activities within their respective areas.

In carrying out his responsibilities as Chairman of the new Cabinet Committee on Drug Abuse Prevention, Treatment and Rehabilitation, the Secretary of HEW should give particular attention to developing expanded vocational rehabilitation opportunities for drug addicts. Experience has shown that treatment alone is not enough. Unless something is done to alter the fundamental conditions which led the individual to seek escape through drug use, a relapse is likely. A job, with the dignity and self-esteem it brings, is essential to help the individual re-enter the mainstream of American life. Further, the Secretary of HEW and the Attorney General will work together to develop plans for improving the coordination between the drug abuse treatment system and the criminal justice system.

I am directing the Secretary of the Treasury to work with the Commissioner of the Internal Revenue, in consultation with the Attorney General and the Administrator of the Drug Abuse Enforcement Administration, to develop a tax enforcement program aimed at high-level drug traffickers. We know that many of the biggest drug dealers do not pay income taxes on the enormous profits they make on this criminal activity. I am confident that a responsible program can be designed which will promote effective enforcement of the tax laws against these individuals who are currently violating these laws with impunity.

No matter how hard we fight the problem of drug abuse at home, we cannot make really significant progress without the continued coopera-

tion of foreign governments. This is because most dangerous narcotics are produced in foreign countries. Thus, our capability to deal with supplies of drugs available in the United States depends largely on the interest and capability of foreign governments in controlling the production and shipment of illicit drugs.

Many countries still see drug abuse as primarily an American problem and are unaware of the extent to which the problem is truly global in scope. Poorer nations find it difficult to justify the allocation of scarce resources to deal with drug abuse in the face of many other pressing needs. Also, some opium producing countries lack effective control over, or access to, growing areas within their boundaries and, thus, their efforts in drug control programs are made more difficult.

Still, we have been reasonably successful in enlisting the cooperation of foreign governments. We must now intensify diplomatic efforts at all levels in order to encourage the greatest possible commitment from other governments to this international problem. We must continue to provide technical and equipment assistance through cooperative enforcement efforts with U.S. agents stationed overseas, all aimed at strengthening drug control organizations within foreign countries. And we must continue to participate in building institutions and a system of international treaties which can provide a legal framework for an international response to this international problem.

I have spoken personally to President Echeverria of Mexico and Lopez-Michelsen of Colombia and with Prime Minister Demirel of Turkey in an effort to strengthen cooperation among all nations involved in the fight against illicit drug traffic. I intend to continue to urge foreign leaders to increase their efforts in this area. Attorney General Levi has recently discussed drug control problems with the Attorney General of Mexico and Secretary of State Kissinger has discussed narcotic control efforts with senior officials in Latin America on his recent trip there. I have asked both of them, as well as our Ambassador to the United Nations, William Scranton, to continue to expand these important discussions.

The reactions of the governments which we have approached have been positive—there is a genuine and healthy air of mutual concern and cooperation between our countries and I am confident that our joint efforts will bring about a real reduction in drug trafficking into the United States.

One recent example of the new awareness and commitment of foreign governments to this struggle deserves special mention. President Echeverria has written to inform me of his intention to set up a cabinet level commission to coordinate all law enforcement and drug treatment programs within Mexico and to suggest that his commission might periodically exchange information and ideas with a counterpart here. This proposal, which was the result of discussions between President Echeverria and concerned members of the United States Congress, stands as a clear signal that the Mexican government recognizes the need to build a coordinated response to the problem of drug abuse. I believe the periodic exchange of views on this matter between our two nations would be helpful. Accordingly, I am assigning responsibility for liaison with the Mexican Commission to the Cabinet Committee on International Narcotic Control and I am directing the Secretary of State, as Chairman of the CCINC to immediately form

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an executive committee to meet with its Mexican counterpart to discuss ways in which our government can collaborate more effectively. We shall of course consult with concerned members of Congress as these efforts are carried on.

Drug abuse is a national problem. Our national well-being is at stake. The Federal Government—the Congress, the Executive Branch and the Judicial Branch—State and local governments, and the private sector must work together in a new and far more aggressive attack against drugs.

I pledge that the Federal Government will maintain the high priority which it has given this problem. We will strengthen our law enforcement efforts and improve our treatment and rehabilitation programs. With Congress' help, we will close loopholes in our laws which permit traffickers to prey on our young; and we shall expect the courts to do their part.

All of this will be of little use, however, unless the American people rally and fight the scourge of drug abuse within their own communities and their own families. We cannot provide all the answers to young people in search of themselves, but we can provide a loving and a caring home; we can provide good counsel; and we can provide good communities in which to live. We can show through our own example that life in the United States is still very meaningful and very satisfying and very worthwhile.

Americans have always stood united and strong against all enemies. Drug abuse is an enemy we can control but there must be a personal and a national dedication and commitment to the goal.

If we try, we can be successful in the long run. I am convinced we can—and that we will.

GERALD R. FORD.

THE WHITE HOUSE, *April 27, 1976.*

IRS: TAXING THE HEROIN BARONS

The Narcotic Sentencing and Seizure Act of 1976 (S. 3411 and S. 3645)

THURSDAY, AUGUST 5, 1976

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee (composed of Senators Bayh, Hart, Burdick, Kennedy, Mathias, Hruska, and Fong) met, pursuant to notice, at 9:40 a.m., in room 2226, Dirksen Senate Office Building, Senator Birch Bayh (chairman of the subcommittee) presiding.

Present: Senator Bayh.

Also present: John M. Rector, staff director and chief counsel; Mary Kaaren Jolly, editorial director and chief clerk; and Kevin O. Faley, assistant counsel.

Senator BAYH. We will reconvene our hearing this morning, from the hearing of July 28, 1976.

The subcommittee's enabling resolution, Senate Resolution 375, section 12, 94th Congress, is hereby noted for the record. Also, S. 3411,[1] the bill before us, and President Ford's message of April 27, 1976,[2] on drug abuse will be included in the record.

OPENING STATEMENT OF SENATOR BIRCH BAYH, CHAIRMAN

Senator BAYH. Today we continue the Subcommittee To Investigate Juvenile Delinquency's review of the President's drug abuse message to the Congress and his "Narcotic Sentencing and Seizure Act of 1976," S. 3411. It is our intention to forge a sensible statutory response to the abuse of high-risk drugs and to major drug traffickers that will assure an effective and judicious use of our limited criminal justice resources.

There is an enterprise in this Nation that employs persons from every walk of life. This business packages its goods in ski poles, hand made pottery, antiques, sardine cans and even expensive sports cars. It operates around the clock 7 days a week; it has at its disposal fleets of fishing trawlers, pleasure boats and squadrons of aircraft to serve the needs of its hundreds of thousands of American customers. It has not only managed to endure a record period of inflation, but also has, in fact, prospered under full employment.

[1] See p. XIX et seq.
[2] See p. XLIV et seq.

The enterprise is heroin trafficking.

A primary premise of my approach is that the Federal Government must act more decisively to attempt to take the easy profits out of major drug trafficking.

As policymakers we must place the nature and extent of heroin traffic in perspective. As Assistant Secretary of the Treasury David Macdonald told the Subcommittee last week, it is important to recognize that what we are talking about: "is big business. In terms of dollars, it is one of the larger industries in the United States and exceeds the gross sales of many multinational corporations."

The Treasury Department estimates that the retail value of heroin sold in the United States each year is in the neighborhood of $7 billion. In my view this is a conservative estimate. Others have found that the domestic heroin market sales are in excess of $10 billion annually. In 1972, the entire domestic prescription drug industry accounted for $5.4 billion in sales, or significantly less than the illicit domestic heroin industry—which, incidentally, pales by comparison with our legitimate domestic narcotic sales of $120 million. The drug industry employed 143,985 persons in the United States; and, in the latest year for which data are available, paid a total of nearly a billion dollars in taxes. The outlaw drug industry paid negligible taxes, if any.

ILLEGAL EMPIRE GREATER THAN 65 PERCENT OF WORLD'S LARGEST COMPANIES

The annual domestic sales of this illegal empire are greater than 34 of the 50 largest industrial companies in the world.

The annual domestic sales of this illicit giant exceed those of 495 of America's 500 largest industrial corporations. Its gross sales: double Eastman Kodak's; triple those of Lockheed Aircraft or McDonnell Douglas, Coca-Cola or Pepsi Co., R. J. Reynolds Industries or Phillip Morris; quadruple Anheuser-Busch and are tenfold the sales of Jos. Schlitz Brewing; and are 7 times those of Campbell Soup and 30 times the sales of Gerber Products.

Many of the high-level traffickers who generate these astronomical sales records are insulated from the illegal merchandise and consequently cannot readily be convicted for drug violations, but are often vulnerable to financially oriented investigations. As Secretary Macdonald pointed out last week such an approach "could have greater impact than by concentrating solely on the drug transactions themselves."

PRESIDENT'S MESSAGE SUPPORTS DORMANT NTTP PROGRAM

I was especially pleased that the President, in his April drug message, called for the reactivation of the Internal Revenue Service tax enforcement program aimed at high-level drug traffickers. In reaffirming his support for this dormant, but vital program, the President said:

> We know that many of the biggest drug dealers do not pay income taxes on the enormous profits they make on this criminal activity. I am confident that a responsible program can be designed which will promote effective enforcement of the tax laws against these individuals who are currently violating these laws with impunity.

This IRS narcotic traffickers tax program, aimed specifically at major trug traffickers, was announced by the former President in June 1971, and the Congress then voted emergency funds for this vital and worthwhile initiative. Though a recent review of the impact of this program by the Domestic Council Drug Abuse Task Force characterized it as "extremely successful," all is not well with this special attempt to tax narcotics merchants. In fact, since 1973, after an impressive 18-month track record, the current IRS Commissioner, whom we will hear from this morning, reportedly downgraded and eventually deemphasized—some would assert dismantled—the program.

It appears, however, that the Internal Revenue Service is in the process of reconsidering the viability of the NTTP. Whether this apparent reassessment was voluntary or not should be left to the speculators; but, coincidentally, the day before our first hearing on the President's drug message, on July 27, 1976, the Administrator of DEA and the Commmissioner of IRS signed a memorandum of understanding regarding the Presidential directive to reestablish a tax enforcement program aimed at high-level drug trafficking.

We are anxious to cooperate with DEA and IRS in the revitalization of this program. I cannot accept, however, the premise of some that an intolerable level of abuse is an inherent byproduct of a Federal effort designed to insure that the barons of this enormous heroin empire are not immune from the burden that law-abiding taxpayers share.

Of course, reasonable persons can differ about policy, but I am certain that we all are concerned that the IRS not be used for political or other improper purposes.

We intend to work closely with the Justice and Treasury Departments to help guarantee that the narcotics traffickers tax program is implemented consistent with the effective oversight and controls recommended by my distinguished colleague from Idaho.

It is remarkable that taxpayers have not revolted against an absurd policy that requires millions of decent, hardworking men and women to voluntarily relinquish a portion of their paychecks, while, despicable merchants of death and despair are put on notice that they can continue to flaunt our tax laws with impunity.

As testimony before the subcommittee last week reemphasized, the American public and the Congress were hoodwinked into believing that the legendary corner of heroin abuse had been turned. Today's realities regarding drug abuse—a country blanketed from coast-to-coast with lethal brown heroin and all the inevitable tragedies—are sobering evidence of the task before us and the compelling need for a realistically focused Federal drug policy.

Our witnesses today each have special knowledge and responsibilities regarding these concerns. I welcome them and look forward to an informative and productive session.

The Congress and the President and the country have talked and worked and expressed concern about the problems of drugs for more years than I care to remember, yet the problem continues to escalate. Society continues to suffer in part because a few of its members are trying to get rich at the expense of others.

What this committee is determined to do is to redouble our efforts to try and get some results. I believe in due process and I believe in

the rights of each American citizen, but I think the time has long since passed when we can permit a handful of these citizens to peddle poison for profit and prey on the rest of society. Surely we have the capacity to walk that delicate balance, on the one side of which we guarantee to each of our citizens his or her rights; at the same time, say to those nonaddicts who continuously involve themselves in heroin traffic that we are going to put them in jail and that we are going to keep them there. We are not going to let them continue to make life miserable for so many. That is not an easy task, and we don't offer any panacea. Certainly we are going to continue our search for a better solution.

Our leadoff witness this morning is Mr. Alexander, the Commissioner of the Internal Revenue Service. We appreciate your being with us this morning, especially in view of your longtime interest and relevant responsibility.

However, before we begin with our panel of witnesses I will enter in the record at this point my remarks before the Senate, of August 3, 1976, in regards to legislative strategy targeting drug traffic kingpins.

[Testimony continues on p. 29.]

[Excerpt from the Congressional Record, Aug. 3, 1976]

BAYH CALLS FOR SENSIBLE FEDERAL DRUG CONTROL PRIORITIES

Legislation Strategy Targeting Drug Traffic Kingpins

Mr. Bayh. Mr. President, last week the Subcommittee to Investigate Juvenile Delinquency began its assessment of President Ford's April 27, 1976, drug abuse message to the Congress and the accompanying proposal for fighting drug abuse, the Narcotic Sentencing and Seizure Act of 1976, S. 3411, which was introduced on May 11, 1976, by Senators Hruska, Eastland, Hugh Scott, Thurmond, and Buckley.

Since this Presidential proposal was introduced in mid-May, other committee business, and my illness coupled with recent recesses made immediate hearings impossible. We are especially appreciative that Majority Leader Mansfield and Minority Leader Scott permitted us to proceed with these vital hearings late in the session.

We intend to give specific attention to the stark reality that many who sustain the flow of heroin and equally dangerous drugs such as barbiturates, do so while on bail and that when convicted only a few spent substantial time in custody. To add insult to injury these same high-level traffickers manage to avoid the tax collector while law-abiding citizens carry their share of the tax burden. It is intended that these hearings will help refocus national concern and stimulate fair, but firm Federal response to those who profit from the havoc wrought by drug traffic.

Last week we heard impressive and alarming testimony about our Nation's inability to even focus our drug law enforcement apparatus and our criminal justice resources on these "kingpin" profiteers. While I am especially concerned that the constitutional rights of criminal defendants are fully secured, I am likewise concerned that within such a framework our citizens are fully protected. We must reallocate our resources and sharpen our prosecutorial tools and strengthen our criminal justice system so that it deters, disrupts, and detains these criminals.

Since the passage of the Comprehensive Drug Abuse Prevention and Control Act—Public Law 91–513—in 1970, our subcommittee to investigate juvenile delinquency, which developed this measure, has monitored its implementation and sought to assure that the Federal agencies responsible for its enforcement acted appropriately to curb the illegal importation, manufacture, and distribution of controlled drugs.

The 1970 act also established a comprehensive scheme for the regulation and control of dangerous drugs manufactured for legitimate purposes. It was to more specifically address that facet of the 1970 act—the Controlled Substances Act and the Controlled Substances Transport and Export Act—that the constitutional cornerstone became the commerce clause rather than the taxing authority. In any case, regarding illegal traffic in natural opiates—heroin, mor-

phine—whether under the tax authority approach or the commerce clause it is difficult to hypothesize a case with no interstate aspect.

Regarding the dimension and abuse of domestic legally manufactured controlled substancse we have made considerable progress in the last several years. We have obtained a drastic, but necessary, 95-percent reduction in domestic amphetamine production. We have secured more appropriate control over our production and distribution of other drugs with high abuse potential, including the barbiturates and methaqualone. And to prevent illegal traffic and abuse of methadone we have obtained stricter controls over its storage and distribution. In short, these and similar important steps have effectively helped to reduce illicit traffic and clandestine manufacture of controlled drugs.

Our efforts aimed at curbing illegal traffic in illegal drugs have not experienced the same degree of success.

The subject of extensive hearings by the subcommittee last year on the effectiveness of the Nation's drug control laws—the opium poppy—is not of domestic origin, but its byproducts, or at least one of them—heroin—is certainly familiar to every American.

Indeed, we are all too familiar with the devastating effects of heroin on the individual addict, their families, and society at large. We know that heroin abuse has destructive physiological consequences, debilitating the health of the abuser and impairing an addict's ability to lead a normal productive life. The social consequences are equally devastating. In order to support a habit, the addict is driven to engage in criminal activities which threaten the safety and well-being of all our citizens. The costs in human and economic terms are enormous:

Billions of dollars are expended each year to protect our citizens from drug-related crime;

Billions of dollars of merchandise are stolen each year to support heroin habits;

Billions of dollars are invested annually in drug prevention, treatment, and rehabilitation programs;

Many innocent people are physically assaulted and even killed in the course of drug-related crime; and

Hundreds of thousands of otherwise productive lives are lost to the destructive and often endless cycle of heroin addiction.

We have learned—and through the course of our recent hearings are still learning—from bitter experience that there are no simple solutions to the epidemic of narcotic addiction nor to the ever-escalating levels of illegal narcotic traffic. There are no panaceas—no magic wands.

In fact, opium control presents especially difficult and complex considerations. The plant which spawns heroin to which our citizens succumb likewise issues drugs to ease the misery of the terminal cancer patient and, ironically, provides us with the antagonist medication necessary to treat those suffering acute narcotic overdose. There is little doubt that the opium poppy is a double-edged sword, life threatening and life saving.

We have made some progress in curbing narcotic traffic and addiction, but we must be forever vigilant that rhetoric about "the light at the end of the tunnel" or "turning the corner" on any problem not delude us into believing that we have actually accomplished our objectives.

One thing that we established through our hearings last year was that the White House was less than candid with Congress and the American people regarding their assessment of the importance of the Turkish ban on the cultivation of opium poppies in the effort to curb heroin traffic and addiction.

Former Presidential assistants with special responsibilities in the area of drug control and abuse told the subcommittee that in October 1971 shortly after the Turkish Government announced the ban, that the plan was ill-conceived.

Dr. Jerome Jaffe, former Director of the White House Special Action Office testified that he never believed that a ban on the growth of opium poppies would be effective in stopping the spread of heroin in the United States.

Mr. Walter Minnick, former White House Staff Assistant to the President for Domestic Affairs and Staff Coordinator for the Cabinet Committee on International Narcotics Control, told the subcommittee, quite candidly, that:

"The Congress and the American people were led to believe that the ban was an indispensable part of getting on top of heroin addiction."

Throughout 1972 the White House produced release after release, heralding the Turkish ban as a major breakthrough in the fight against heroin addiction and as clear evidence that the battle was well on its way to being won. This "hoopla" about the ban stepped up markedly during the fall of that year.

Apparently the Nixon administration was more concerned in 1972 with the re-election campaign than they were about controlling poppy production and solving the heroin problem.

The record developed to date by the subcommittee leaves little doubt that the Nixon administration not only created a misimpression about the ban and the policy of eradication, but that it had little time, if any, to heed the caution and advice of medical experts and others who warned that such policies could have long-term damaging ramifications including possible shortages and the emergence of a strong, viable Mexican connection along our southwestern border.

Even prior to former President Nixon's message to Congress in June 1971, which set out the dual objectives of a ban on poppies and the development of synthetic alternatives to opiates, agencies experts in a confidential memorandum had alerted the White House to these likely ramifications.

Testimony presented to the subcommittee, however, revealed that White House advisers including Mr. John Ehrlichman reportedly had decided that the poppy ban was "good politics" in that it would provide a high-profile, simple, ostensible answer to the crime problem with which heroin addiction and traffic are so intimately associated.

Even in late 1972 and 1973 when the prospect of an opiate shortage was rapidly becoming a reality, the White House ignored warnings by the medical community and others that White House "poppy politics" was responsible for the shortage as well as the failure to effectively focus on heroin traffic.

In a very short period of time Mexico had become the primary supplier of heroin to the United States, and although the Turkey ban did cause a shortage of heroin it was, as General Accounting Office investigators told the subcommittee, limited to major cities in the East and "a temporary thing at best."

The heroin problem now is worse than it was before the ban.

The American people are sick and tired of being sold a bill of goods.

As a Member of Congress who has, likewise, relied on less than candid representations at the highest levels of the executive branch in recent years, I know we were sold a bill of goods in this instance.

We are interested in developing a full and complete understanding of these issues so that sound national policies in the area can be substituted for past mistakes.

As late as February 21, 1974, President Nixon concluded his drug abuse in America message to the Congress by saying in part:

"Drug abuse is a problem that we are solving in America. We have already turned the corner on heroin."

Now, even White House officials, as they announce that all the indicators of heroin abuse are up again, are cautioning others about claiming victory in the war against the poppy and heroin. In fact, on March 5, 1975, Dr. Robert Dupont then Director of the White House Special Action Office on Drug Abuse Prevention, told the subcommittee that "we can no longer talk about having turned the corner on heroin anywhere."

Similar discouraging observations were contained in the recently released National Institute on Drug Abuse publication "Heroin Indicators Trend Report." Director Dupont reiterated the mistake that was made in interpreting what proved to be a regional temporary down-trend in usage in 1973 as a turning point in the national antidrug fight and revealed that the evidence is now clear that since 1973 the heroin use problem in the United States had deteriorated.

Maps provided for the subcommittee use in December 1974 by GAO graphically illustrate the source of what Dr. Dupont termed the deteriorating heroin problem; Mexico.

Mexico has become a significant supplier of the heroin reaching United States markets for illicit distribution. DEA statistics show that in the year ending June 30, 1972, 8 percent of the heroin seized in the United States was Mexican. By June 30, 1973, the amount of seized heroin from Mexico had more than quadrupled and accounted for 37.2 percent of all heroin seized in the United States. In March of 1975 DEA informed the subcommittee that 65 percent of the heroin reaching the United States comes from Mexican peoples.

By last fall Mexico had taken over as the dominant or nearly exclusive source for illegal heroin throughout the Nation, overshadowing Europe, the Near East, and Southeast Asia. According to a special October 19, 1975, DEA report to the subcommittee during the first months of 1975, 90 percent of 305 heroin samples confiscated in 13 major cities by the DEA were Mexican processed.

The special DEA report confirms the view that the route that brought French-processed Turkish heroin has been effectively blocked. Less than 2 percent of the

confiscated heroin analyzed between January and June 1975, came from Europe or the Near East. In 1972, 44 percent of the sample came from those areas. During the period, Turkey halted the growing of the opium poppy from which heroin is made. Earlier last year, Turkey resumed cultivation. Let us hope that the use of the poppy-straw process of harvesting the opium will effectively prevent resurrection of the infamous "French Connection".

Thus I am extremely concerned that all necessary steps be taken to prevent the diversion and traffic in Turkish opium that has formerly contributed so heavily to the destruction of so many thousands of lives and was so intimately linked to the ever-escalating levels of violent crime.

The Turkish Government claims that it will prevent the new opium crop from getting into criminal channels. The resort to the poppy straw method of processing will help to assure the desired objective, but much more is necessary. To date slightly more than 300 agents are reportedly available to monitor 50,000 acres of poppies being cultivated in small plots. The jeeps necessary to reach remote areas as I understand it have not yet arrived. To get the job done will require a dedicated and committed effort by the Turkish Government.

I urge the President to monitor the harvesting and processing of the new crop very carefully, so that if necessary he can take appropriate action under the Foreign Assistance Act to suspend economic and military aid.

When drastic action was taken to rescue American seamen seized by Cambodia, the President stressed the importance of showing that the United States intends to remain strong. If and when the lives of thousands are threatened by diverted Turkish opium, I hope that the President is at least equally committeed and willing to show the strength of the United States.

Already the Turkish decision to again cultivate the poppy has made some impact on the illicit market. In Seattle, for instance, the resumption reportedly prompted many distributors to release "stockpiled" Mexican heroin which had been withheld from the market in an attempt to force the price up. This surge to supply has led to more narcotic seizures in January of this year than in all of 1974 in that area. Similar reports are being received from around the Nation.

Whether the Turkish Government fails to hold to their commitments or not, we are again confronted with a horrendous heroin trafficking problem.

The increasing flow of Mexican heroin toward the major cities of the Northeast and the drying up of the European supply are the most starting aspects of the first half of 1975 DEA figures. A survey completed early in 1972, showed that the furthest penetration of Mexican-processed heroin eastward was an irregular line running from Detroit to the Florida Panhandle. The GAO maps supplied to the subcommittee also illustrate the significant Mexican heroin market during the same period.

For instance, in Boston 100 percent of all confiscated samples came from Mexico in 1975 and none from Europe. In 1974, 50 percent of the Boston samples had come from Mexico and 17 percent from Europe.

In New York City, 83 percent of the samples were Mexican-processed in the first half of 1975 compared with 10 percent from Europe. In 1974, 21 percent of the samples were Mexican and 67 percent were European.

For Philadelphia, 83 percent of the samples were Mexican in 1975 and none were from Europe in 1975. In 1974, 50 percent of the samples were Mexican and 17 percent were from Europe.

The new figures show that Mexican-processed heroin has even established itself for the first time in the Pacific Northwest, replacing heroin from Southeast Asia.

The already entrenched position of Mexican-processed heroin in the Middle West and the Southwest was further confirmed by the new figures. For instance. Detroit samples were 93 percent Mexican in 1974 and 94 percent in 1975, while Chicago remained at 100 percent Mexican for both years.

However, in 1972, Detroit samples showed 58 percent of the heroin was processed in Europe and 30 percent in Mexico. For Chicago, 44 percent in 1972 was European and 33 percent was Mexican.

The Midwest, and the Chicago area in particular, has become the main line of distribution for the Mexican brown heroin. The DEA deputy regional director in Chicago relates that "we are up to our ears in Mexican heroin". It is estimated that between 3.8 and 7.5 tons of heroin arrive in this principal U.S. marketplace for Mexican brown.

Renewed diplomatic steps are required. Mr. Bensinger, the DEA Administrator and Executive Director of the New Cabinet Committee for Drug Law Enforcement, and U.S. Ambassador Sheldon Vance, Senior Adviser and Coordinator

for International Narcotics Matters to the Secretary of State, have kept the subcommittee apprised of important diplomatic efforts, including the recent June 8, 1976, meeting between Attorney General Pedro Oeda-Paullada on the apparently successful opium poppy eradication program, but much more must be done.

I ask unanimous consent that four charts illustrating the extensive impact of Mexican heroin be printed at this point in the Record.

There being no objection, the charts were ordered to be printed in the Record, as follows:

HEROIN SOURCE IDENTIFICATION FOR THE U.S. HEROIN MARKET, JANUARY TO JUNE 1975[1]

DEA region headquarters	Number of samples	Origin							
		Europe/Near East		Southeast Asia		Mexico		Unknown	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1. Boston	10					10	100		
2. New York	30	3	10	2	7	25	83		
3. Philadelphia	18			3	17	15	83		
4. Baltimore	29	1	3	9	31	19	66		
5. Miami	10			2	20	8	80		
6. Detroit	34			2	6	32	94		
7. Chicago	25					25	100		
8. New Orleans	16			3	19	13	81		
10. Kansas City	17			2	12	15	88		
11. Dallas	36					35	97	[2]1	3.0
12. Denver	28	1	4	1	4	26	93		
13. Seattle	15			2	13	13	87		
14. Los Angeles	37					37	100		
U.S. total	305	5	2	26	9	273	90	1	.3

[1] Estimate based on 305 in depth analyses, which constitute a 10.5 percent stratified sample of 2,893 DEA heroin records for the first half of 1975.

[2] Sample contained both Mexican type and Southeast Asia #3 type heroin.

HEROIN SOURCE IDENTIFICATION FOR THE U.S. HEROIN MARKET IN 1974[1]

DEA region headquarters	Number of samples	Origin							
		Europe/Near East		Southeast Asia		Mexico		Unknown	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1. Boston	6	1	17	2	33	3	50		
2. New York	24	16	67	2	8	5	21	1	4
3. Philadelphia	18	3	17	3	17	9	50	3	17
4. Baltimore	27	10	37	9	33	8	30		
5. Miami	12			1	8	11	92		
6. Detroit	30			2	7	28	93		
7. Chicago	24					24	100		
8. New Orleans	21			6	29	15	71		
10. Kansas City	18			3	17	15	83		
11. Dallas	39					39	100		
12. Denver	28			1	4	27	96		
13. Seattle	18	1	6	7	39	10	56		
14. Los Angeles	36			1	3	35	97		
U.S. total	301	31	10	37	12	229	76	4	1

[1] Estimate based on 301 indepth analyses, which constitute a 7 percent stratified, sample of 4,216 DEA heroin records for 1974.

HEROIN SOURCE IDENTIFICATION FOR THE U.S. HEROIN MARKET, 1973[1]

DEA region headquarters	Number of samples	Origin							
		Europe/Near East		Southeast Asia		Mexico		Unknown	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1. Boston	12	9	75	2	17	1	8	----	----
2. New York	36	20	56	11	30	3	8	2	6
3. Philadelphia	18	12	67	----	----	4	22	2	11
4. Baltimore	24	9	38	5	20	10	42	----	----
5. Miami	12	2	17	4	33	5	42	1	8
6. Detroit	34	1	3	1	3	32	94	----	----
7. Chicago	21	1	5	10	48	10	48	----	----
8. New Orleans	10	----	----	2	20	8	60	----	----
10. Kansas City	18	1	6	----	----	17	94	----	----
11. Dallas	33	1	3	2	6	30	91	----	----
12. Denver	27	----	----	----	----	27	100	----	----
13. Seattle	15	----	----	6	40	9	60	----	----
14. Los Angeles	39	----	----	6	15	33	85	----	----
U.S. total	299	56	19	49	16	189	63	5	2

[1] Estimate based on 299 indepth analyses, which constitute a 6-percent stratified, sample of 1 973 DEA heroin records.

HEROIN SOURCE IDENTIFICATION FOR U.S. HEROIN MARKET, 1972[1]

DEA region headquarters	Number of samples	Origin							
		Europe/Near East		Southeast Asia		Mexico		Unknown	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
1. Boston	15	10	67	----	----	1	7	4	27
2. New York	51	26	51	15	29	4	8	6	12
3. Philadelphia	9	6	67	----	----	----	----	3	33
4. Baltimore	18	15	83	1	6	2	11	----	----
5. Miami	27	17	63	3	10	3	11	4	15
6. Detroit	31	18	58	1	3	12	39	----	----
7. Chicago	18	8	44	1	6	6	33	3	17
8. New Orleans	18	10	56	----	----	4	22	4	22
10. Kansas City	27	3	11	----	----	24	89	----	----
11. Dallas	16	3	19	1	6	12	75	----	----
12. Denver	20	2	10	----	----	18	90	----	----
13. Seattle[2]	----	----	----	----	----	----	----	----	----
14. Los Angeles	30	5	17	----	----	25	83	----	----
Total	280	123	44	22	8	111	40	24	9

[1] Estimates based on a random sampling of 280 indepth analyses which represent a 6-percent.
[2] No exhibits available for Seattle region, stratified, sample of 1972 DEA heroin records.

Mr. BAYH. Since the subcommittee's extensive hearings on "poppy politics" in March 1975, I have been encouraged by the work of the Domestic Council Drug Abuse Task Force. In the fall of 1974 and early 1975 the subcommittee staff had detected signs of enlightenment regarding Federal drug enforcement policy in the approach of several individuals, including the chairman of the White House Opium Policy Task Force, Mr. Johnson, who in turn became the Director of the Working Group that developed the "White Paper on Drug Abuse." At our March 1975 hearings we were pleased to learn that this important project was well underway and that they intended to give special attention to the lack of Federal drug law enforcement coordination.

The widely publicized "tug of war" between DEA or its predecessor BNDD and the Bureau of Customs regarding jurisdiction on narcotics investigation has

been at best a grave disappointment. I am confident that my colleague, Senator Nunn, and others on the Senate Government Operations Committee are dedicated to assuring that the proper governmental structure is devised to assure integrity and streamlined narcotics law enforcement.

The Government Operations Committee Interim report, "Federal Narcotics Enforcement," raises important issues regarding the respective DEA-Customs roles. It concludes that reorganization plan No. 2 of 1973, which created DEA "caused a break in the jurisdictional authority of this Government to combat drug smuggling." This less than satisfactory result followed after the approval of plan No. 2. The interim report leaves the impression that Congress had little or nothing to do with the approval of the reorganization plan No. 2, and that its role was "sharply limited," because if after 60 days from the date of submission of the plan, Congress had done nothing, the plan would be implemented.

My recollection was that another lengthy discussion and debate accompanied the consideration of reorganization plan No. 2—the vehicle that created DEA and a review of the record supported this view.

A Senate Government Operations Committee Report entitled "Reorganization Plan No. 2 of 1973, Establishing a Drug Enforcement Administration in the Department of Justice" documents the extensive review given the proposed plan No. 2. It reveals that "nearly 3 months before the President submitted reorganization plan No. 2, this committee's Subcommittee on Reorganization, Research, and International Organizations began an investigation of Federal drug law enforcement" and that they conducted "more than 100 staff interviews of current and former law enforcement officials and prosecutors at the Federal, State, and local levels, of other present and past Government officials, including former Cabinet Officers and White House aides, and of drug abuse prevention and treatment specialists."

A central aspect of this inquiry was the "uncontrolled bitter feuding and the actual sabotaging of each other's investigations" by BNDD and Customs. The report notes that "by mid-March representatives of the Nixon administration informed * * * the * * * members of the subcommittee that the President would soon submit a reorganization plan to bring the primary drug enforcement efforts together in a single agency in the Justice Department."

According to the report, testimony was taken regarding plan No. 2 in Washington from Mr. Kleindienst, Attorney General; Roy Ash, Director of the Office of Management and Budget; John Ingersoll, Director of BNDD; Vernon Acree, Commissioner of Customs; Miles J. Ambrose, Director of ODALE and Special Consultant to the President for Drug Abuse Law Enforcement. When coupled with field hearings held around the country on plan No. 2 "a total of 158 witnesses were heard in 11 hearings."

The report on plan No. 2 reveals that the Government Operations Committee found that there was a strong need for the new superagency and it endorsed the reorganization plan and cited, among several, the following advantage expected to be derived from the reorganization:

"(1) It will put on end to the interagency rivalries that have undermined Federal drug law enforcement, especially the rivalry between BNDD and the Customs Bureau."

It is interesting to note that the actual plan No. 2 submitted by the President to the Congress (H. Doc. No. 93-69, March 28, 1973) stressed the need to strengthen our narcotics law enforcement effort at our borders. It proposed in fact, in order to reduce the possibility that narcotics will escape detection at ports of entry because of divided responsibility, and to enhance the effectiveness of the DEA that all functions vested in the Justice Department respecting the inspection of persons or the documents of persons be transferred to Treasury to augment the effort of the Bureau of Customs at our borders.

According to the 1973 committee report, the hearings on plan No. 2 "did not dwell on the BNDD-Customs dispute because the chairman and members felt that no legislative purpose would have been served in as much as the plan acknowledged and remedied the problem by uniting the rival agencies." Apparently because President Nixon proposed the transfer of Immigration and Naturalization Service inspectors to Customs to accomplish the renewed focus at the border—thus possibly jeopardizing the rights and benefits of the inspectors—Customs lost out.

The new agency—DEA—would absorb virtually all of the Customs Service's drug enforcement functions except at the border and ports of entry. It would appear that no attention was given to beefing up Customs in a manner consistent

with the rights of the Immigration and Naturalization inspectors, for example providing Customs with 1,000 additional positions. Consistent with such an approach former Assistant Secretary of the Treasury Mr. Eugene Rossides in a memorandum he submitted for my review, April 2, 1974, recommended the return of antidrug-smuggling responsibilities, including related intelligence collection, to Customs. The Government Operations Committee should give serious consideration to this recommendation.

Thus the reorganization plan No. 2 apparently did not resolve the "tug-a-war" between DEA and Customs. The Domestic Council in the white paper, however, has called for a settlement of the jurisdictional disputes between DEA and Customs. At the subcommittee hearing last week, both Administrator Bensinger and Commissioner Acree expressed strong support for the December 11, 1975, memorandum of understanding between their two agencies. I ask unanimous consent that the memorandum and attached guidelines be printed at this point in the Record.

There being no objection, the report and guidelines were ordered to be printed in the Record, as follows:

"MEMORANDUM

"To Principal Field Offices (U.S. Customs Service/Drug Enforcement Administration).

"From Commissioner of Customs/Acting Administrator, Drug Enforcement Administration.

"Subject Memorandum of Understanding Between U.S. Customs Service/Drug Enforcement Administration.

"As the Commissioner of Customs and the Acting Administrator, Drug Enforcement Administration, we wish to assure all personnel of both agencies that this Memorandum of Understanding was signed in good faith by both parties and it is our intention to insure that the relationships between our agencies are conducted according to these operational guidelines in both a coordinated and professional manner.

"It is of the utmost importance that the U.S. Customs Service and the U.S. Drug Enforcement Administration work together in an atmosphere of harmony and efficiency in combating the illegal importation and trafficking in illicit drugs. It is essential that each agency complement and support the other in fulfilling their respective obligations.

"The attached policy guidelines have been established betwen the Drug Enforcement Administration and the U.S. Customs Service for the purpose of clarifying the respective operations of each agency in regard to drug related enforcement activities. It is anticipated that the guidance established in this agreement will promote and insure that the inter-agency relationships are in the best interests of the United States and will result in effective and efficient law enforcement.

"A copy of this memorandum and the attached Memorandum of Understanding is being sent directly to all field offices of both agencies so that all personnel will be immediately aware of the agreed upon operational guidelines. We expect all principal field offices to insure that meetings are arranged at the earliest date between U.S. Customs Service and Drug Enforcement Administration counterparts at the various managerial and working levels to develop the closest possible working relationships within these operating guidelines.

"VERNON D. ACREE,
"Commissioner of Customs.
"HENRY S. DOGIN,
"Acting Administrator, Drug Enforcement Administration.

"MEMORANDUM OF UNDERSTANDING BETWEEN THE CUSTOMS SERVICE AND THE DRUG ENFORCEMENT ADMINISTRATION ON OPERATING GUIDELINES

"The purpose of this memorandum is to emphasize and clarify the roles and the need for cooperation between the respective agencies. Under the broad guidelines of Reorganization Plan No. 2, the Drug Enforcement Administration has been assigned the primary responsibility for '. . . intelligence, investigative and law enforcement functions . . . which relate to the suppression of illicit traffic in narcotics, dangerous drugs or marihuana. . . .' Under the plan and delegations, Customs retains and continues to perform those functions '. . . to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, marihuana or to the apprehension or detention of persons in connection therewith at

regular inspection locations at ports-of-entry or anywhere along the land or water borders of the United States . . .'

"Both agencies have vital roles to perform within the Federal drug enforcement program. Customs, as part of its overall responsibility for interdicting the smuggling of contraband, retains the full responsibility for searching, detecting, seizing smuggled narcotics, and arresting suspected smugglers of any contraband. DEA has the full responsibility for any narcotic-related follow-up investigation as well as for providing Customs with information related to narcotics interdiction. Clearly, for the Federal effort to accomplish its enforcement goals related to reducing narcotics trafficking, both agencies must cooperate and provide appropriate mutual assistance in performing their respective functions. It is mutually agreed that an employee who willfully violates the intent and conditions of this agreement will be subject to firm disciplinary action.

"To implement the above, the Commissioner of Customs and the Administrator of the Drug Enforcement Administration jointly approve the following guidelines for dealing with specific operational problems.

"(1) Operational Roles of Customs and DEA.

"Customs is the agency with primary responsibility for interdiction of all contraband, including all drugs at the land, sea, and air borders of the United States.

"DEA is the agency with primary responsibility for investigation and intelligence gathering related to drug smuggling and trafficking.

"The Drug Enforcement Administration will notify the U.S. Customs Service of information from its narcotic investigations which indicates that a smuggling attempt is anticipated at or between an established port-of-entry as soon as possible after the information is received. Such information may result in a cooperative joint interdiction effort but shall in no case result in uncoordinated unilateral action.

"Within the limitations of its resources, Customs will cooperate when requested to support DEA operations and ongoing investigations, including interception of aircraft suspected of drug smuggling and convoys.

"For purposes of this agreement an ongoing investigation includes only those cases in which information indicates a seizure and/or arrest should not occur at the initial point of contact in the United States, but should continue as a convoy to the final delivery point. The mere fact that a suspect or vehicle is known to DEA does not constitute an ongoing investigation.

"(2) Law Enforcement Coordination.

"Whenever Customs has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in drug smuggling or trafficking, DEA will be the first agency contacted by Customs. DEA will then have primary responsibility for the coordination of all investigative efforts.

"Whenever DEA has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in the smuggling of contraband, Customs will be the first agency contacted by DEA. Customs will then have primary responsibility for interdiction if a seizure or arrest is to occur at the initial point of contact in the United States except in those cases under the control of DEA.

"(3) Placing of Transponders on Aircraft and Transponder Alerts

"Transponders will not be utilized by Customs in drugs related activity without prior advice to DEA of the aircraft's identity and suspects involved. If DEA has an ongoing investigation, DEA will make the tactical decision as to the course of action to be taken.

"Both agencies will expeditiously advise each other of all transponders placed on aircraft, and immediately upon receiving signals therefrom.

"Customs will normally respond to all specially coded transponder alerts crossing the border. DEA will be given immediate notification whenever Customs responds to a drug-related transponder alert.

"(4) Combined Seizures of Narcotics and Other General Contraband

"Where both narcotics and general contraband are seized in the same case, the Customs Office of Investigations is to be notified and they will coordinate with DEA on a joint investigation.

"Investigative efforts will be dependent upon the magnitude of the violations and/or the value of the general merchandise seized.

"(5) Violations to be Reported to the U.S. Attorney

"DEA case reports will include any customs reports related to the drug violation. Customs will furnish their reports to DEA in an expeditious manner. DEA will present the violations to the concerned prosecutor for determination of charges.

"(6) International and Domestic Drug Intelligence Gathering, Coordination

"DEA is the agency with primary responsibility for gathering intelligence on drug smuggling and trafficking, including air trafficking.

"Customs has primary responsibility for intelligence gathering of smuggling activities and also a supportive role to DEA in drug smuggling and trafficking. Nothing in this agreement precludes Customs from gathering information from the air and marine community related to the smuggling of contraband. Customs will continue to maintain liaison and gather information from foreign Customs services on all smuggling activities.

"Customs will expeditiously furnish all drug-related information to DEA. DEA will expeditiously furnish drug smuggling intelligence to Customs. Unless immediate action is required, such drug smuggling intelligence collected will not be subjected to enforcement action prior to coordination between Customs and DEA.

"DEA and Customs will refrain from offering or lending support to any derogatory remarks regarding the other agency. When dealing with other law enforcement agencies, Federal, state and local officials should not be misled as to DEA and Customs respective responsibilities.

"Neither Customs nor DEA will discourage potential sources of information from working for the other agency. The promising of rewards to informants for intelligence shall not be competitively used to increase the price of information and knowingly encourage the source of information to "Agency Shop."

"Under no circumstances will Customs officers employ a participating informant for drug-related matters unless prior agreement and concurrence is obtained from DEA. Both agencies recognize that the identity of an informant may have to be revealed in court and that the informant may have to testify.

"In those drug smuggling cases involving a DEA confidential source, Customs will be promptly notified of the role of the informants so that the safety of the cooperating individual is not jeopardized. Customs officers will not attempt to debrief DEA informants.

"None of the foregoing is intended to limit total resource utilization of DEA and Customs law enforcement capabilities, but rather to insure coordination, elimination of duplication of effort, and prevention of counter-productive or potentially dangerous enforcement activities.

"At the field level, Customs and DEA offices will identify specific persons or organizational units for the purpose of information referral and to coordinate enforcement matters.

"(7) Procedures to be Followed When DEA has Information that an Aircraft, Vehicle, Vessel, Person, etc., will Transit the Border Carrying Narcotics.

"For criminal case development purposes, DEA may request that such persons or conveyances be permitted to enter the United States without enforcement intervention at that time. These requests will be made by DEA supervisory agents at the ARD level or above to District Directors or their designated representative. Such requests will be rare and made only when DEA intends to exploit investigations of major traffickers.

"Customs officers will participate in the enforcement actions until the initial seizure and arrest. The number of Customs personnel and equipment needed will be decided by the Customs supervisor with input from the DEA Case Agent, subject to the limitations of available Customs resources, not to exceed the number recommended by the DEA Case Agent.

"On drug-related joint enforcement actions, no press releases will be made by Customs or DEA without the concurrence of each other.

"(8) Drug Seizure Procedures

"Customs responsibility for interdiction of contraband, including illegal drugs, remains unchanged. Using every enforcement aid and technique available to them, Customs officers will continue to search for illicit drugs. Each time any drugs are discovered, they will be seized and the nearest DEA office will be immediately notified unless otherwise locally agreed upon. Questioning of arrested violators will be limited to obtaining personal history and seizure information for Customs forms. Further questioning is the responsibility of DEA. Chain of custody forms or receipts are required for transfers, of all seized items.

"Customs will take every step possible to preserve all evidentiary material and not remove suspected drugs from original containers when such action compromises evidentiary and investigative potential.

"In these instances where DEA will not accept custody of detained persons or seizure of drugs due to U.S. Attorney prosecutive policy, EDA will notify local enforcement authorities for prosecutive consideration. Otherwise DEA will

request Customs to notify these authorities. When local enforcement authority declines, Customs will proceed to assess administrative and civil penalties, as appropriate. Otherwise, administrative and civil penalties should be held in abeyance until local prosecution is completed.

"(9) Convoy Operations After Customs Seizures

"In those instances where DEA decides to convoy the contraband seized by Customs to the ultimate consignee, Customs personnel will fully cooperate, and will withhold publicity. All seized vehicles or conveyances will be included in a chain of custody receipt.

"The weighing of the contraband may be waived when the method of concealment makes it impractical. At the termination of the convoy, an accurate weight will be supplied by DEA to the originating district director, and the chain of custody will be annotated with the correct weight. Customs officers will not normally participate in this type of convoy operation.

"At the termination of this type convoy operation, involved vehicle or conveyance shall be released to the custody of the nearest district director of Customs.

"(10) Disposition of Vehicles, Vessels, Aircraft and Seizures in Joint Enforcement

"All vehicles, vessels, and aircraft involved in joint smuggling cases will be seized and forfeited by Customs. Final disposition of the conveyance will be determined by a joint Headquarters review board comprised of Customs and DEA personnel. Guidelines governing disposition will be developed.

"Upon prior DEA request in writing, Customs will not administratively dispose of seized aircrafts or other conveyance until it is no longer required for evidence by the courts or termination of DEA investigation.

"(11) Referral to Other Agencies (Chain of Custody and Laboratory Sampling)

"Customs will continue, in the case of seized heroin and cocaine, weighing two ounces or more, to make samples not to exceed 7 grams. However, the Customs laboratory will not perform the quantitative and qualitative analysis until completion of the prosecuting action, except for special contingencies.

"(12) DEA Access to Customs Personnel and Controlled Areas

"Designated Customs areas are not normally accessible to others. Access to Customs controlled areas and Customs personnel on an as needed basis will be obtained from the officer-in-charge of the Customs facility in each instance. Customs will honor such requests, provided that DEA personnel in no way interfere in examination and inspection processes.

"(13) Procedures When Discovery of Drugs is Made Before Actual Violators Have Been Identified and Goods or Conveyances are Still in Customs Custody

"When Customs officers discover the presence of concealed drugs in imported goods, and the goods or conveyances are still under Customs custory or control, and they have been claimed by a consignee or reached their ultimate destination, Customs shall maintain control of the drugs, but DEA will be notified immediately. Customs officers will cooperate with DEA and be guided by DEA's tactical decisions regarding investigative development, arrest and seizure.

"(14) Any representation made to Federal, State or local prosecutors for mitigation of sentence or other consideration on behalf of a defendant who has cooperated in narcotic cases or investigations will be made by DEA. DEA will bring to the attention of the appropriate prosecutor cooperation by a narcotic defendant who has assisted Customs.

"There are existing DEA/Customs agreements not covered in this document that pertain to cross-designation of DEA agents, mail parcel drug interdiction and other matters. DEA and Customs mutually agree to review each of these and amend where appropriate for consistency with the cooperative intent of this agreement.

"No guidelines are all encompassing and definitive for all occasions. Therefore, the appropriate field management of both agencies are directed to establish counterparts to better coordinate their respective operations. Similar cooperation and harmonious working relationships should be implemented at all subordinate levels. It must be recognized that good faith as well as mutual respect for the statutory responsibilities of our agencies and for the employees are the cornerstone upon which full cooperation must be established. To this end, Customs and DEA personnel must take the appropriate affirmative actions to minimize conflict

and develop a combined program which adequately serves the interests of the United States of America and its citizenry.

"HENRY S. DOGIN,
"Acting Administrator, Drug Enforcement Administrator.
"VERNON S. ACREE,
"Commissioner, U.S. Customs Service."

Mr. BAYH. I was impressed by the sincerity of these two men at our hearing last week, but in light of the failure of a similar prior agreement to resolve jurisdictional problems, I urge the President to clearly delineate a White House level monitoring system to assure that our drug law enforcement agencies get on with their mandates namely to curb the flow of heroin and other dangerous drugs into this country.

Whatever agency or agencies are eventually assigned the drug law enforcement responsibilities it is my subcommittee's mandate to assure that the Controlled Substances Act and the Controlled Substances Import and Export Act, that were drafted by the subcommittee after extensive hearings in 1969 and enacted in 1970, provide the Nation's drug law enforcement officers and our criminal justice system with the most effective constitutionally sound tools to help take the profit out of heroin and other illegal dangerous drug traffic.

Through our 1975 hearings on opium policy and presently on legislation introduced by the President the subcommittee intends to develop a better understanding of the ramifications of the public policy developed by the Nixon administration to curb heroin traffic and abuse and whether or not the current administration has learned from their mistakes.

I agreed with the President when he stressed in his April 27, 1976, message that "drug abuse constitutes a clear and present threat to the health and future of our Nation" that we must "refocus and revitalize the Federal effort," especially with regard to those who accumulate substantial wealth through such tainted trade.

This is not the first time, since 1968 that the administration has expressed support for congressional effort to curb drug traffic. Earlier proposals lacked focus and did not reflect the judicious use of limited public resources. Thus, although I am encouraged by some recent remarks, I would be less than candid if I did not admit that earlier rhetoric and indifference about these important issues only reaffirms former Attorney General Mitchell's rejoinder that it was more important to watch what is done than what is said. You do not help take the easy profits out of drug traffic with tough talk and hollow promises.

MANDATORY PENALTIES

I believe that firm and certain punishment must be the response to drug traffickers. Because of the understandable concern and debate regarding Senate bill 1, a rewrite of the entire Federal Criminal Code, I agree with the President and the distinguished Senator from Nebraska (Mr. HRUSKA) that we not delay the enactment of appropriate measures to curb narcotics traffickers. Thus I intend to report a separate drug bill this year.

Although there seems to be a bandwagon syndrome regarding the application of mandatory minimum penalties to all crimes I agree with Prof. James Vorenberg "that the rush to mandatory minimum sentences distracts attention from a general restructuring of sentencing laws as well as from the futility of efforts to run our criminal justice system 'on the cheap' ". But I concur with the distinguished executive director of the American Civil Liberties Union, Mr. Aryeh Neier, that:

"Some people who have committed very serious crimes of violence should be given incapacitating sentences to protect everyone else."

The 1970 act eliminated most mandatory sentences. As the former President said in his June 17, 1971, drug abuse message to Congress:

"The act contains credible and proper penalties against violators of the drug law. Several punishments are invoked against the drug pushers and peddlers while more lenient and flexible sanctions are provided for the users."

The President continued:

"These new penalties allow judges more discretion, which we feel will restore credibility to the drug control laws and eliminate some of the difficulties prosecutors and judges have had in the past arising out of minimum mandatory penalties for all violators."

The only provision of the 1970 act providing minimum mandatory sentences is the continuing criminal enterprise provision, section 408, which was intended to serve as a strong deterrent and to keep those found guilty of such violations out of circulation.

It provides that persons engaged in continuing criminal enterprises involving violations of the bill, from which substantial profits are derived, shall, upon conviction, be sentenced to not less than 10 years in prison, and may be imprisoned up to life, with a fine of up to $100,000, plus forfeiture of all profits obtained in that enterprise. A second conviction under this section will lead to a mandatory sentence of not less than 20 years and up to life imprisonment, a fine up to $200,000, and forfeiture of all such profits.

Except when continuing criminal enterprises serve as the basis for an indictment, manufacture, sale, or other distribution of controlled drugs will carry penalties which vary, depending upon the danger of the drugs involved. If the drugs are narcotic drugs listed in schedules I or II, which have the highest probability of creating severe physical as well as psychological dependence, the penalties which may be imposed are up to 15 years imprisonment and a fine of up to $25,000 for a first offense. If the drug involves nonnarcotic substances listed in schedules I or II, or any substance—whether or not a narcotic—included in schedule III, the penalties for a first offense are up to 5 years imprisonment, plus a fine of not more than $15,000. If the drug is a schedule IV substance, the penalty is up to 3 years imprisonment and a fine of $10,000, and if a schedule V substance is involved, the penalty is up to 1 year imprisonment, plus a fine of not more than $5,000.

Where a violation of the bill involves distribution to a person below the age of 21 by a person who is 18 or more years of age, the penalty authorized is twice the penalty otherwise authorized for a first offense, with substantially increased penalties for second and subsequent violations.

The President's proposed legislation would require mandatory minimum sentences for all persons convicted of trafficking in heroin and similar narcotic drugs. It calls for a 3-year mandatory sentence for the first offense, and at least 6 years for any subsequent offenses or selling illegal drugs to a minor, subject in each instance to exceptions.

This approach does not focus on the financier, importer, or organized criminal leaders who control drug traffic—it does not focus on these kingpins. What we need is meaningful sentencing for major traffickers. The problem with current Federal policy and focus was clearly presented to the subcommittee last week by Hon. Sheldon B. Vance, Senior Adviser to Secretary Kissinger for International Narcotics Matters, when he told the subcommittee that—

"While we can point with some satisfaction to our efforts toward improving the effectiveness of international narcotics control over the past several years, our own efforts to deal with traffickers has acquired a reputation of leniency. Minimal sentences, liberal parole policies and prosecutorial bargaining with cooperating defendants have caused some foreign officials to criticize the United States judicial system, often referring to it as a 'revolving door.' Specific complaints have been registered, primarily from Latin American countries, about low bail, release on personal cognizance, plea bargaining lenient sentences, and early paroling of traffickers apprehended following close collaboration with foreign law enforcement officials."

Ambassador Vance cited an especially illustrative case. He explained that—

"It concerned two individuals arrested in November 1972 in New York subsequent to their delivery from Singapore of 2.5 kilos of # 4 heroin to Special Agents of the Drug Enforcement Administration. The exhibit was delivered as a free sample toward a 23 kilo delivery scheduled for the future. They were tried without a jury in the Southern District of New York and in March 1973 were given sentences of 15 years for each of two counts, to run consecutively. On June 26, 1974, the judge reduced their sentences pursuant to their motions, making them eligible for parole."

"On August 30, 1974, one of them filed an application for parole. His application was heard on October 16, 1974. An Institutional Review Hearing was held in March 1976 and parole was granted. He was delivered to the U.S. Immigration and Naturalization Service Authorities on July 15, 1976 for deportation.

"On July 17, 1976, upon his arrival in Singapore, he was arrested by officers of the Singapore Central Narcotics Bureau. On July 20, 1976, the Assistant Director, Central Narcotics Bureau requested the High Court Magistrate to order his detention for the remainder of his U.S. prison sentence."

Ambassador Vance commented that—

"These developments have caused the Singapoe authorities seriously to question the commitment and sincerity of the United States in its efforts against the international trafficking of narcotics."

And that—

"Such cases and other indicators clearly show a soft and imprecise handling of narcotics offenders. This inhibits our ability to obtain cooperation from foreign governments."

We need to restore credibility to the sentencing process to assure that the "kingpins" are disrupted. I endorse the Domestic Council White Paper recommendation regarding sentencing of drug traffickers to require "minimum mandatory sentences for persons convicted of high-level trafficking in narcotics and dangerous drugs." I took particular note of the task force recommendation that the President's proposal be expanded to include high-level traffickers of barbiturates and amphetamines.

The most effective way to curb the flow of illicit drugs is to immobilize substantial trafficking networks through the prosecution and conviction of their leaders. I concur in the White Paper recommendation that:

"Federal law enforcement efforts should focus on the development of major conspiracy cases against the leaders of high-level trafficking networks, and should move away from 'street-level' activities."

In calendar year 1974, DEA special agents in the United States spent 28 percent of their time in pursuit of class I violators, or those at the high level of traffic; 19 percent investigating class II's; 45 percent of their time on class III's; and 8 percent of their time on IV's. Even fewer of the arrests made were class I or II violators.

According to DEA Administrator Bensinger, however, the trend has improved. He told the subcommittee last week that class I, major, heroin violator arrests have increased by 106 percent in the 9-month period ending March 31, 1976, and class IV street-level arrests have decreased significantly.

These are encouraging signs but only time will determine whether DEA has finally focused its limited resources on the class I violators. The New York Drug legislation was recently amended to reflect this priority. The so-called Rockefeller shotgun approach clogged the courts but failed to sharpen the system's focus on major traffickers. To help assure this long-term objective the subcommittee is considering provisions that would restrict Federal drug control jurisdiction and authority to major interstate and international cases.

In 1973, the subcommittee desired ot significantly strengthen the hand of our law enforcement officials in dealing with one of the most dangerous types of criminals in our society—major dealers who are the purveyors of heroin to our young people. This concern was reflected in the public menace amendment to S. 800, introduced by Senators BAYH and TALMADGE. This amendment was aimed at the backbone of heroin trade and distribution in this country, not addicts who are supporting a habit, for whom current laws are adequate. but the high-level traffickers who hook others. The Senate passed this amendment on April 3, 1973. It was not favorably reported from the House Judiciary Committee before the close of the 93d Congress. Similar provisions are included in S. 1880, the Violent Crime and Repeat Offender Control Act of 1975, which I introduced last June.

There is no criminal element in this country which is more dangerous and despicable than those who are the purveyors of heroin to our young people. My approach is not aimed at addicts who are already hooked and who are trying to support their habits. For such people laws already on the books and adequate-treatment—together with the capture and imprisonment of big time dealers—offer the best hope. My target is those who have hooked others and not themselves.

Under my bill persons convicted of manufacturing, distributing, or dispensing heroin or morphine in amounts equal to or in excess of one-tenth of an ounce of pure narcotic would receive, on the first offense, a mandatory minimum sentence of 10 to 30 years. For second convictions, these pushers would get a mandatory life sentence. In neither case would the offender be eligible for probation, suspended sentence, or parole—except after serving 30 years of a life sentence. In both cases the mandatory minimum sentence would have to be imposed in addition to the sentence provided under existing law; and in both cases the

additional sentence would have to be consecutive to, not concurrent with, the existing punishment.

One-tenth of an ounce of heroin or morphine may seem to be a tiny amount, Mr. President, but it is as deadly as it is small. It can and is turned into a large number of bags of heroin on the street, and is worth a handsome sum. As a measure of the seriousness of the criminal conduct it is preferable to the President's bill which applies to any detectable amount of opiate. It best assures that we reach the high-level dealers who handle very pure and very valuable heroin. This test also assures that we do not bring under these very severe penalties a person with a mixture which contains only traces of a narcotic. Under this approach the volume of the material sold or manufactured would not matter; the only question would be whether it contained the equivalent of one-tenth of an ounce of pure heroin or morphine.

The following table, prepared by subcommittee staff, illustrates graphically the amount of heroin involved in the application of my bill:

Estimates of heroin dosage units derived from 1/10 ounce of pure heroin or morphine

Total units:	*Unit size (milligram bags)*	*Percent of heroin or morphine*
a. 2,835	100	1
b. 1,417.5	100	2
c. 945	100	3
d. 708.7	100	4
e. 567	100	5
f. 472.5	100	6
g. 405	100	7
h. 354.3	100	8
i. 315	100	9
j. 283.5	100	10

Note: 0.1 ounce equals 28.35 grm. or 28,350 mgms. 0.2 ounce equals 2.835 grm. or 2,835 mgs.

Any nonaddict who manufactures, distributes, or dispenses one-tenth of an ounce of heroin or morphine is, we can be confident, a high-level trafficker who is rationally and for profit pushing drugs. Such a person deserves no quarter.

The President's bill neither distinguishes as to amount or purity of the drug involved, it would even mandate a 3-year jail term for one who illegally transfers a portion of a methadone maintenance patient's average 100 milligram dosage. Although we have not received an assessment from the Bureau of Prisons as to the impact of the President's proposal we can rest assured that multimillions if nonexistent dollars would be required for new prisons. This shotgun-nonspecific approach should be rejected.

While, I believe present statutes are adequate for addicts, the subcommittee is considering an amendment to the 1970 act to include an "attempt" section punishable by up to 5 years imprisonment, that would apply to nonaddict traffickers; such provision may provide the necessary impetus for such nonaddicts to cooperate in the prosecution of major trafficking cases.

A sound drug enforcement policy must reflect the reality that all drugs are not equally dangerous, and all drug use is not equally destructive. The Domestic Council White Paper on Drug Abuse stresses this theme when it concludes that enforcement efforts should therefore concentrate on drugs which have a high addiction potential, and treatment programs should be given priority to those individuals using high-risk drugs, and to compulsve users of any drugs.

I ask unanimous consent that chart 12 from the Domestic Council's White Paper, A Summary of Drug Priorities and accompanying text—pages 32–34—be printed at this point in the Record.

There being no objection, the chart and text were ordered to be printed in the Record, as follows:

"SUMMARY: DRUG PRIORITIES

"Chart 12 ranks the various drugs according to the following criteria: (1) likelihood that a user will become physically or psychologically dependent; severity of adverse consequences, both (2) to the individual and (3) to society; and (4) size of the core problem.

SUMMARY OF DRUG PRIORITIES

	Dependence liability	Severity of consequences		Size of core problem
		Personal	Social	
Heroin	High	High	High	High/400,000.
Amphetamines:				
Needle	High	High	High	High/500,000.
Oral	Low	Medium	Medium	
Barbiturates:				
Mixed	High	High	High	Medium/300,000.
Alone	Medium	High	Medium	
Cocaine	Low	Low	Medium	Low.
Marihuana	Low	Low	Low	Low.
Hallucinogens	Medium	Medium	Medium	Low.
Inhalants	Medium	High	Medium	Low.

"Though the data are flawed and the rankings therefore imprecise, a clear pattern emerges.

"Heroin ranks high in all four categories;

"Amphetamines, particularly those injected intravenously, also rank high in all four categories;

"Mixed barbiturates rank high three out of four categories;

"Cocaine,* hallucinogens, and inhalants rank somewhat lower; and

"Marihuana is the least serious.

"On the basis of this analysis, the task force recommends that priority in Federal efforts in both supply and demand reduction be directed toward those drugs which inherently pose a greater risk to the individual and to society—heroin, amphetamines (particularly when used intravenously), and mixed barbiturates—and toward compulsive users of drugs of any kind.

"This ranking does not mean that *all* efforts should be devoted to the high priority drugs, and none to the others. Drug use is much too complicated and our knowledge too imprecise for that. Some attention must continue to be given to all drugs both to keep them from exploding into major problems and because there are individuals suffering severe medical problems from even a low priority drug, such as marihuana.

"However, when resource constraints force a choice, the choice should be made in favor of the higher priority drugs. For example:

"In choosing whom to treat, we should encourage judges and other community officials not to overburden existing health facilities with casual users of marihuana who do not exhibit serious health consequences. (But, a person who is suffering adverse consequences because of intensive marihuana use should have treatment available.)

"In assigning an additional law enforcement agent, preference might be given to Mexico, which is an important source of both heroin and 'dangerous drugs', rather than to Miami, where an agent is more likely to 'make' a cocaine or marihuana case.

"This drug priority strategy is essential to better targeting of limited resources and it will be further addressed in relation to supply and demand reduction activities in chapters 3 and 4. Further, the process of assessing the current social costs of drug abuse should be a continuing one, to ensure that resources are allocated on the basis of priorities which reflect current conditions and current knowledge.

Mr. BAYH. Our priorities in drug law enforcement must reflect reasoned judgments based on the facts. The fact is that nationally, arrests for marihuana violations have escalated from 188,682 in 1970 to 450,000 in 1974. This is not nearly as dramatic as the 1,000-percent increase between 1965–70 from 18,815 to 188,682, but it is rather astonishing that this 4-year increase is more than 12 times the total marihuana arrests just 10 years ago.

The fact is that the number of marihuana arrests as a percentage of all drug arrests has increased substantially. In 1970 these arrests amounted to 45.4 percent of total drug arrests. During the 1970–73 period 1,127,389 of the total 2,063,900 drug arrests were for marihuana. And in 1974, the most recent year for which records are available, 70 percent of all drug arrests were for marihuana.

* This ranking is on the basis of current patterns. As mentioned earlier, if intensive use patterns develop, cocaine could become a considerably more serious problem.

Available studies and research to date have found that the majority of those arrested are otherwise law-abiding young people in possession of small amounts of marihuana. In fact, a Presidential commission found that the vast majority of users are essentially indistinguishable from their nonuser peers by any criteria other than its use.

In 1969 and 1970 the subcommittee considered the adequacy of penalties for marihuana with the result that the new Controlled Substances Act provided that simple possession or distribution of a small amount of marihuana for no remuneration were both designated misdemeanors, not felonies, punishable by up to 1 year in jail and/or up to a $5,000 fine. It was the view of many Members that the sanctions should be further reduced. Some suggested that the sanction be eliminated for such conduct.

In order to permit a thorough assessment of these issues the subcommittee recommended the creation of a Presidential commission. The Congress agreed and provided for the establishment of the Commission on Marihuana and Drug Abuse in part F of the Controlled Substances Act.

This body, known as the Shafer Commission, after its distinguished chairman, conducted an in-depth study of the issues and concluded that marihuana was not dangerous enough to the user or to the general public for its private possession and use to remain a criminal offense.

In the last several years a growing list of States, organizations, and individuals have endorsed and adopted approaches comparable to the Shafer Commission recommendations.

Rather than ignore the law on marihuana or prosecute possession cases selectively as some would suggest, I believe that: We must recognize that the $600 million invested annually to prosecute marihuana cases can be used in a manner more consistent with the protection of property and safety of the taxpayers who must sustain our severely overburdened criminal justice agencies; we must recognize that public interest is not served by arresting annually 500,000, mostly young people, for simple possession of small amounts of marihuana and thereby assuring that they are inhibited for life—in their education and careers—by the unrelenting stigma of a criminal record; and we must recognize that the public is not going to get the highest return on their tax dollars in the national effort to curb drug traffic and drug-related crime when 7 in 10 drug arrests are for predominantly simple marihuana possession. We must reject such counterproductive drug law enforcement policy.

Thus an integral title of the bill we plan to report from the subcommittee will provide for the decriminalization of marihuana. I will recommend an approach similar to that undertaken by the State of Oregon which abolished criminal penalties for simple possession and substituted a civil fine up to $100 for possession and nonprofit transfers of up to 1 ounce of marihuana. Criminal penalties for the sale of the drug for profit would remain intact. This approach maintains a policy of discouragement toward marihuana use while recognizing the current inappropriate use of law enforcement resources and the destructive impact of potentially 30 million criminal records for such common conduct.

The fact of the matter is that if the American public knew that more dollars are spent each year to prosecute marihuana cases than the Federal Government expends on its combined drug law enforcement and drug treatment program with the results I have outlined, I would speculate that rather than the near deadlock of opinion reflected in the most recent Harris poll—January 26, 1976—on decriminalization showing 43 percent in favor and 45 percent opposed a clear majority would support my approach. Concentrating our Federal drug enforcement resources on high-level heroin and dangerous drug traffickers is sound policy, but will call for a shift in the standards for measuring success. We in Congress should deemphasize the number of arrests as a criterion of success. And as the Assistant Attorney General for the Criminal Division concluded in his July 22, 1976, speech before the fifth Controlled Substances Conference in Minneapolis, Minn.: "No statistical striving or" seizure syndromes can or will substitute for the quality, prosecution of those cases which place behind bars for extended jail sentences individuals responsible for the plan of illegal drugs into American communities. Such a strategy applies limited public resources more judiciously and simultaneously reflects sensible priorities.

REFORM OF BAIL LAWS FOR DRUG TRAFFICKERS

Another serious problem with current Federal law and practice is that even the most notorious drug traffickers are often released on bail. I agree with the

President's concern about bail jumpers. He emphasized in the April 22, 1976, message one aspect of the problem when he stated:

"These offenders simply flee to their homelands upon posting bail. Then, they serve as walking advertisements for international traffickers attempting to recruit other couriers."

Yet, title II of the President's legislation, S. 3411, would enable judges to deny bail to almost anyone arrested for a drug offense if otherwise suspected, such as nonresident aliens. Thus, the nearly 7 million aliens admitted last year under nonimmigrant status whether foreign government officers, temporary visitors for business, or pleasure, and a myriad of other bases for admission become suspect under S. 3411.

Rather than resort to preventive detention which would reverse the basic tenet of our criminal justice system—the presumption of innocence—what we lack today is a realistic application of bail within the confines of the constitutional protection of the eighth amendment. We need full and expeditious implementation of the Speedy Trial Act to assure that justice is not only fair but swift and certain.

Incidentally, I recently reviewed the status of the 540 Americans in Mexican jails, mostly on drug offenses, with an eye to numerous allegations of torture and police brutality and general outrage at the fact that these Americans were "languishing" in foreign jails. The impact and significance of our cherished presumption of innocence was unmistakably clear when juxtaposed to the plight of these persons. The reliance in Mexico on the Napoleonic Code's "guilty until proven innocent" had assured that some innocent persons could be held as long as a year and that many would not be able to prepare an adequate defense. It is ironic that the White House is recommending a similar denial of basic rights for suspected citizens and nonresident aliens.

Aside from constitutional and humanitarian objections, preventive detention has failed to accomplish its goals in the District of Columbia. The 1972 Vera Institute-Georgetown University Law Center Study as well as testimony before the subcommittee last week supported this conclusion. Earl Rauh, the Chief Assistant U.S. Attorney, testified that of the more than 30,000 felony cases handled by the District of Columbia criminal justice system the preventive detention procedure has been used only 70 times in the last 5 years. Even on practical grounds such a track record hardly bespeaks adoption of this approach on a national basis.

The subcommittee will carefully consider for incorporation in the drug legislation, however, provisions that mandate the denial of bail when necessary to prevent the flight of major drug traffickers. These provisions will include specific judicial guidelines. DEA Administrator Bensinger discussed what appeared to be an appropriate case for the mandatory denial of bail with the subcommittee last week. He set out the case as follows:

"In Miami in 1975, two defendants were arrested at the Miami International Airport for smuggling 13½ pounds of pure Asian heroin. Initial bond was set at $500,000 surety bond for each defendant, but was later reduced to $100,000 surety bond each despite the following facts: (1) At the time of their arrest, each defendant possessed false identification; (2) they were operating a smuggling conspiracy bringing in 35–40 kilos of Asian heroin per month; (3) they had access to Swiss bank accounts of several million dollars; (4) one defendant was under a murder indictment in Southern California, and both were under Federal narcotic indictments in California; (5) they were extensive international travelers. Both defendants posted the surety bonds by paying a $10,000 premium. Both are now fugitives, and have since withdrawn $400,000 from their Swiss bank accounts."

An additional reform under consideration by the subcommittee concerns major narcotics traffickers who jump bail.

To help remedy this growing problem we may amend the Federal law to make the penalty for bail jumping equal to that of the underlying substantive offense.

These are the type of realistic changes we need to more effectively combat those who accumulate incredible profits from the misery of hundreds of thousands.

NARCOTICS AND PROFITS

A primary premise of the legislation that the subcommittee intends to report is that the Federal Government must act more decisively to attempt to take the easy profits out of major drug trafficking. I support provisions that would re-

quire the forfeiture of the proceeds used or intended to be used in illegal narcotic or dangerous drug transactions.

These forfeiture provisions should apply to subsequent profits or value generated by the investment of the tainted proceeds. We must disrupt major narcotic distribution lines and attempt to provide a greater degree of deterrence and risk for these kingpins.

As policymakers we must place the nature and extent of heroin traffic in perspective. As Assistant Secretary of the Treasury David Macdonald told the subcommittee last week, it is important to recognize that what we are talking about "is big business. In terms of dollars, it is one of the larger industries in the United States and exceeds the gross sales of many multinational corporations."

The Treasury Department estimates that the retail value of heroin sold in the United States each year is in the neighborhood of $7 billion. In my view this is a conservative estimate. Others speculate that the domestic heroin market sales are in excess of $10 billion annually. In 1972, the entire domestic prescription drug industry accounted for $5.4 billion in sales, or significantly less than the domestic heroin industry, which incidentally pales by comparison with our legitimate domestic narcotic market. The drug industry employed 143,985 persons in the United States and in the latest year for which data are available paid a total of nearly a billion dollars in taxes. The outlaw drug industry paid negligible taxes, if any.

What does it mean when one says that high level drug dealing is very profitable? According to analysis of the distribution hierarchy gross profits are considerable at every level. At the higher levels of the distribution systems, however the operating costs—basically wages and stock financing costs—are claimed to be a larger percentage of the value added than at lower levels. So-called average profits in this market would be considered astronomical in most market with which I am familiar. The rate of return on investment is approximately as follows: 300 percent for the importer; 100 percent for the kilo connection; 145 percent for the connection—or ounce man; 114 percent for the weight dealer; 124 percent for the street dealer; and 50 percent for the juggler or the seller from whom the average street addict buys heroin.

According to Sterling Johnson, Jr., Special Narcotics Prosecutor for New York City, an active seller at a level comparable to the street dealer—one-eighth ounce of diluted heroin selling for an average price of $55—can clear $500 to $1,000 profit a day. A key dealer in the Baltimore, Md., area was recently sent to prison for a 15-year term. As the No. 2 person in Baltimore heroin trade he was clearing $140,000 a week in 1973. Kilo importers in Harlem are reportedly clearing $150,000 a week and their distributors a paltry $50,000 a week. It is estimated that these dealers take home more than $4 million every week in this one community. These figures are all "before taxes" for little revenue is collected from this multibillion-dollar-a-year business.

Obviously these illicit activities generate large flows of money, both domestically and internationally. Secretary Macdonald reported to the subcommittee that "hundreds of millions of dollars, usually in the form of currency, are moved out of the United States annually to pay foreign producers and processors for their services." He went on to say that "within the United States, drugs are also a cash-and-carry business." In a recent case a major trafficker was arrested with $1 million in cash in his possession.

I believe that as a basic theme of our drug law enforcement strategy we should attack drug smugglers and traffickers through the currency and profits generated by their illegal activity.

High-level traffickers, who may be insulated from the illegal merchandise and consequently cannot readily be convicted for drug violations are often vulnerable to financially oriented investigations. As Secretary Macdonald pointed out last week such an approach "could have greater impact than by concentrating solely on the drug transactions themselves." In this connection the United States-Swiss Mutual Assistance Treaty in Criminal Matters, recently ratified by the Senate should help to expedite the exchange of informtion relative to the international aspects of this dirty, tainted trade. By carefully monitoring the vast flow of currency and monetary instruments important information is developed with respect narcotics trafficking.

To help facilitiate the prosecution of major trafficker couriers, I intend to amend current law to clarify the time frame for violations relating to traffickers' proceeds and by granting additional authority to search persons suspected of smuggling tained drug proceeds in excess of $5,000 out of the country. These

provisions will include fines that are far more than those under present law which any major traffickers could assume as a cost of doing business.

The subcommittee is concerned that DEA reliance on techniques in which their agents and informants use Federal moneys to purchase illegal narcotics or information may be far too costly and even counterproductive. There is some evidence that these practices, known as PE—purchase of evidence—and PI—purchase of information—may actually expand the narcotic trade.

We intend to address this problem, to the extent necessary, in the subcommittee legislation.

To even the casual student of the activities of those who control the flow of heroin and other dangerous drugs in the United States one thing is strikingly clear: they take in exorbitant profits and pay no income tax.

I was especially pleased that the President stressed, in his April drug message, the need to reestablish the Internal Revenue Service tax enforcement program aimed at high-level drug traffickers. In reaffirming his support for this vital program the President said:

"We know that many of the biggest drug dealers do not pay income taxes on the enormous profits they make on this criminal activity. I am confident that a responsible program can be designed which will promote effective enforcement of the tax laws against these individuals who are currently violating these laws with impunity."

The IRS program aimed specifically at major drug traffickers was announced by the former President in June 1971, and the Congress then voted emergency funds for this vital and worthwhile initiative. Though a recent review of the impact of this program by the Domestic Council Drug Abuse Task Force characterized it as "extremely successful," all is not well with this special attempt to tax narcotics merchants. In fact, since 1973, after an impressive 18-month track record, the current IRS Commissioner downgraded and eventually deemphasized—some would assert dismantled—the program.

An especially articulate supporter of this innovative program, who played a major role in its establishment is former Assistant Secretary of the Treasury, Mr. Eugene Rossides. In the past we have worked together to help curb the unrestricted availability of nonsporting handguns as well as on efforts to curb drug traffic. I recall that my good friend Congressman PAUL ROGERS, chairman of the House Interstate and Foreign Commerce Subcommittee on Public Health and Environment, brought to my attention the impressive and persuasive October 27, 1971, testimony of Mr. Rossides regarding the narcotics trafficker tax program. He set out the program for tax investigators of major narcotics traffickers as follows:

"Included in the June 17, 1971, Presidential message, which announced the administration's expanded effort to combat the menace of drug abuse, is a high priority program to conduct systematic tax investigations of middle- and upper echelon narcotics traffickers, smugglers and financiers. These are the people who are generally insulated from the daily operations of the drug traffic through a chain of intermediaries. This program will mount a nationally coordinated effort to disrupt the narcotics distribution system by intensive tax investigations of these key figures. By utilizing the vivil and criminal tax laws, our objective is to prosecute violators and drastically reduce the profits of this criminal activity by attacking the illegal revenues of the narcotics trade.

"Reflecting the high priority given this program by the President, Congress has provided financial support for the program amounting to $7.5 million in fiscal 1972 and authorization for 541 additional positions—200 special agents, 200 revenue agents, and 141 support personnel.

"Certain major features of this program should be noted:

"(1) Treasury will not only coordinate its efforts with all other interested Federal agencies, but will actively seek the maximum cooperation of State and local enforcement agencies as well. This is a vital feature of this program;

"(2) With the manpower provided, our goal is to have at least 400 full-scale ongoing IRS investigations;

"(3) In line with the high priority given this program by the President, the Internal Revenue Service has already assigned more than 100 experienced special agents and more than 100 experienced revenue agents, full time to this program. Additional experienced agents are presently being phased into the program."

Mr. Rossides has recently expounded upon the need to revitalize this effort to remove the capital and the profit from the drug trafficking business by utilizing

the Federal tax laws, and I ask unanimous consent that these pertinent and timely remarks regarding the IRS NTTP be printed at this point in the Record.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

"REMARKS OF EUGENE ROSSIDES

"It seemed clear to me in 1969 that from an enforcement point of view the Achilles heel of the illicit drug trafficking business was its financing and its illegal but taxable income or profits.

"Obtaining evidence against major drug dealers on drug charges is one of the most difficult law enforcement jobs. They can easily insulate themselves from the street-level pusher and minor dealers. It is a rarity to catch them in possession of drugs. The crime is victimless in the enforcement sense in that the addicts and users are not interested or willing to give evidence. They don't consider it a crime. They want the drugs. They want to protect their source of supply, not turn him in.

"This is the key reason why I felt it was a necessity to develop a tax enforcement program against the illicit drug traffickers.

"I tried unsuccessfully in mid-1969 to get the Organized Crime Strike Forces to accept illicit drug traffic trafficing as a priority item, if not the priority item. I then recommended that Treasury initiate its own special Narcotics Trafficker Tax Program for two reasons: (1) jurisdiction over the tax laws was in Treasury, and (2) from the time of Al Capone, the tax laws have proven to be an effective tool to put major crime figures out of business.

"In the short period the Treasury IRS Narcotics Trafficker Tax Program* was active—from July 1, 1971 to early 1974, it proved to be one of the most successful enforcement efforts in Federal history. (I happen to believe it is the finest from the point of view of results, professionalism, and costs.)

"The NTTP was designed to take the illegal profit out of drug trafficking and to disrupt the distribution system. In the short period of its active existence, the IRS initiated full tax audit investigations of over 1800 upper and middle level drug traffickers and dealers; found tax deficiencies totaling $200 million; it paid for it self or practically paid for itself in taxes and penalties collected; and its impact put drug dealers out of the illicit drug business.

"The essence of the NTTP was (1) the careful selection of targets utilizing the talents and information of Federal, state and local enforcement agencies, and (2) the use of both the criminal and civil sections of the IRS Code against major drug distributors and financiers who are often insulated from the traffic and, therefore, in effect, immune from prosecution under the drug laws.

"The Treasury Department developed through the target selection system of the NTTP a comprehensive nationwide list of over 1800 major drug traffickers and financiers who were put under full tax audit investigations; gathering information from the then BNDD. Customs, IRS, the Bureau of Alcohol, Tobacco & Firearms, and of substantial importance, from state and local police.

"The importance of this substantial list of major drug dealers cannot be overemphasized. While DEA and its predecessors tried, with little success, to bring drug cases against major drug dealers (there were not more than a handful of successful cases), the NTTP, within its first twelve months, identified and put under tough tax investigation 793 major targets in 53 metropolitan areas in 40 states!

"State and local police agencies and personnel welcomed the NTTP because it helped them get immediate, short-term, and long term results, they could see and feel the almost immediate effect of their activities, and of great significance, the NTTP did not encroach on their jurisdictions.

"The NTPP was downgraded by IRS Commissioner Donald Alexander shortly after he assumed his duties in mid-1973 and by 1974 it was gutted, despite the clear Congressional and Executive policy, and specific earmarked appropriations. Although Commissoner Alexander has unjustifiably criticized the NTTP, the fact remains it was a most successful tax program which had an extraordinary impact on the illicit drug traffic, Fortunately, the NTTP has now been revived by Presidential directive.

"The importance of NTTP to our nation's efforts to reduce the illicit drug traffic and bring it within manageable proportions is overriding and requires a detailed analysis of the program.

*The abbreviation most often used is NTP. I prefer NTTP because it emphasizes that it is a tax program.

"I state to this Subcommittee and to the Congress that without an effective Treasury/IRS Narcotics Trafficker/Tax Program we will fail in our efforts to reduce the illicit drug traffic. In view of the overriding importance of this program, I would like to describe in some detail its theory and practice.

"The NTTP was initiated as part of the overall effort to crack down on the illegal traffic in narcotics. Recognizing that the huge profits of the drug trafficking business are largely unreported and therefore untaxed, in late 1969 I recommended to the Secretary of the Treasury, David M. Kennedy, and to Under Secretary Charles E. Walker, who had the responsibility for direct supervision of IRS, that the Treasury develop a tax program aimed at the drug trafficking business.

"Preliminary surveys in 1970 showed that among a group of suspected narcotics traffickers several patterns could be observed. First, there was a high incidence of nonfiling of income tax returns. Second, a large number appeared to have life styles which would require income far in excess of that on which taxes were being paid.

"As a result of these findings and our general studies and review, in the late spring of 1971, Secretary John B. Connally obtained White House and Congressional approval for the program and $7½ million in appropriations for the first year of operation.

"Thus, this program had the full backing of the Congress and the Executive Monies were appropriated specifically for the NTTP—monies and manpower which would not have been authorized or appropriated but for this program and were not authorized and appropriated for any other IRS activity.

"The Narcotics Trafficker Tax Program is an income tax program. The goal of the NTTP is to tax the illegal profits of the drug trafficking business, a major area of tax noncompliance. The program was carefully developed over a two-year period and the results during the short time it was active—from July 1, 1971, to some time in 1974, including substantial start-up and training time—demonstrate that it was extremely successful.

"It is important and central to the NTTP program to understand that the income from the illegal narcotics traffic business is taxable. And it is the responsibility of the Treasury Department to go after this taxable income. Drug trafficking is a business. It is not some isolated activity.

"It is damaging to the "voluntary compliance" concept of tax administration to suggest that income from illegal activity should be given a lower priority than income from lawful activity. The narcotics trafficking business is a highly organized criminal activity which requires a sophisticated and comprehensive program to identify the individuals involved and to determine the income which is taxable. Are we to encourage unlawful activity of the most serious kind by our failure to enforce the tax laws against the narcotics traffickers?

"The enormous profits of the narcotics trafficking business constitute taxable income to traffickers. To develop a program to identify major narcotics traffickers and tax them is part of administering the tax laws. There is no meaningful distinction between this type of activity and the ordinary IRS methods of identifying what is referred to as "pockets of noncompliance."

"There is no difference in concept in deciding to select suspected major drug traffickers for tax audit and in deciding to select waitresses and taxicab drivers regarding gratuities income, corporate executives, individuals regarding interest and dividends payments or tax resister groups, and other classifications of taxpayers. Indeed, the incidence of tax noncompliance by drug traffickers is, I submit, higher than other noncompliance groups.

"The significant point with respect to the NTTP was that under such a tax program we were able for the first time on an organized and comprehensive basis to get at major drug traffickers, persons who use intermediaries to insulate themselves from the day-to-day operations of the drug traffic. In this way, they achieve virtual immunity from prosecution under the substantive narcotics laws. The Narcoitcs Trafficker Tax Program was able to get at many of the 'Kingpins' of the traffic.

"In developing the original program and thereafter while I served at the Treasury, the program had the full bipartisan support of the Congress; the full support of three Secretaries of the Treasury, David M. Kennedy, John B. Connally, and George P. Shultz; the excellent cooperation and leadership of two Commissioners of IRS, Randolph Thrower and Joanne M. Walters; and the full support of the Tax and Criminal Divisions of the Department of Justice and the various U.S. Attorneys.

"Important and central to the NTTP was the policy decision to stress civil as well as criminal enforcement. This policy decision was a significant improvement on previous uses of tax administration to go after profits from criminal activity. It was our position that the illegal profits must be taxed and should be attacked either by civil enforcement or criminal enforcement. If a criminal case could be made, fine. If not, then the decision should be made as soon as possible and appropriate civil action pursued vigorously. It can be argued that in many cases the greater punishment and deterrent is taking the illegal profits from the illicit drug trafficker.

"A critical innovation in federal law enforcement, and essential to the success of NTTP, was the development of the major drug traffickers target selection procedure—a coordinated and cooperative selection of persons to be audited.

"As of July 1, 1971, the paucity of information identifying known major drug traffickers was appalling.

"We developed a program for selection of targets, which once selected would be turned over to the IRS for audit. We organized field target selection committees throughout the country and developed guidelines for target selection. The persons selected had to be considered major traffickers and there had to be an indication of assets to warrant a full audit.

"The field target selection committees were composed of professional career personnel from federal, state and local agencies. On the federal level, the committees included personnel from IRS, the then BNDD, and Customs. On the state and local levels, it included representatives from the local and state police. The committees would meet periodically and pool their knowledge.

"Targets selected would then be sent to Washington, D.C. for review and final selection by an inter-agency target selection committee composed of personnel from IRS, BNDD and Customs and supervised by the Deputy Assistant Secretary for Enforcement. This Treasury committee would meet periodically to review the field recommendations and decide to accept, reject, or hold for further consideration each field recommendation.

"Once a person was accepted the file would be sent to IRS and from that point on in the investigative process, it was an IRS tax case and handled in accordance with IRS operating procedures. After investigation if the decision was that the evidence justified a criminal prosecution it was referred to the appropriate U.S. attorney's office. Otherwise it was pursued civilly by IRS.

"Important byproducts of multi-agency analyses and review of potential targets, supervised by the Office of the Secretary and not at IRS or other agency level, are that it ensures selection of high-level targets, increases cooperation and efficiency, and reduces the possibilities of corruption in the selection process to a minimum. I want to stress my belief that this interdepartmental and interagency activity must be supervised by the Office of the Secretary of the Treasury and not at an agency level.

"We also developed a minor drug trafficker tax program designed to go after the profits of the minor dealer and pusher. The individuals involved were primarily lower-level drug traffickers—dealers and pushers—who were arrested by state, local and federal officials on substantive drug charges and where there was cash found. We decided against a full audit of these individuals but instead we took tax action; we stressed a tax check type of investigation—did they file a return—and the use of tax year termination and jeopardy assessment procedures on these individuals to reach their large, conspicuous assets. Such tax action was taken on over 3,300 minor dealers and pushers.

"This part of the program achieved outstanding success in taxing and reducing the working capital and street-level profits and, thereby, in disrupting the distribution system.

"A monthly report system was developed to monitor the progress of this tax program. That report system enabled the Secretary and me to follow the progress of each element of the program. The monthly report listed the number of cases by states and metropolitan areas and the status of the cases.

"Within the first twelve months of the NTTP, 793 major targets in 53 metropolitan areas in 40 states were selected for intensive tax investigation and 565 minor traffickers were put under tax action. Within seventeen months 1,175 major targets were selected for intensive tax investigation and 1,239 minor traffickers were put under tax action * * *.

"The extraordinary success of the program stems from three groups of dedicated personnel: (1) the target selection efforts of Federal, state and local officials; (2) the several hundred men and women in IRS—tax specialists performing a tax function—who took this program to heart and dedicated themselves

to it; and (3) the attorneys in the Department of Justice and the U.S. attorneys' offices throughout the country.

"I strongly recommend that the NTTP be reactivated quickly and given the highest priority possible under the overall supervision of the Assistant Secretary of the Treasury for Enforcement, Operations and Tariff Affairs.

"This highly successful program was unique in the spirit of cooperation it engendered among state, local and Federal officials and among Federal agencies. No jealousies and no infringement of jurisdiction existed among the various agencies cooperating in the NTTP. I submit that it ranks as one of the finest, if not the finest, cooperative law enforcement programs in our history from the point of view of results, professional performance, and costs. It can be put back in operation and effective within months with strong supervision from the Office of the Secretary of the Treasury."

Mr. BAYH. It appears that the Internal Revenue Service is in the processes of reconsidering the viability of the NTTP. Whether this apparent reassessment was voluntary or not should be left to the speculators; but, coincidentally, the day before our first hearing on the President's drug message, July 27, 1976, the Administrator of DEA and the Commissioner of the Internal Revenue signed a memorandum of understanding regarding the Presidential directive to reestablish a tax enforcement program aimed at high level drug trafficking. Though the ink had actually dried when the memorandum was presented in testimony to the subcommittee by DEA Administrator Bensinger, the Executive Director of the newly appointed Presidential Cabinet Committee for Drug Law Enforcement—members are the Secretary of Treasury, the Attorney General, and the Secretary of Transportation—we did not have the opportunity to inquire as to the details of this July 27, 1976, agreement.

The ostensible objectives of the new agreement as well as the development and track record of the NTTP will be diligently assessed at the subcommittee hearing on August 5, when IRS Commissioner Donald Alexander and others will appear before the subcommittee.

NARCOTICS SMUGGLING

In addition to provisions which will assist the detection of couriers smuggling tainted proceeds out of the country, the subcommittee legislation will incorporate sections to facilitate the detection and prosecution of narcotics smugglers who use seagoing vessels, including private yachts and pleasure boats. This so-called deep-six connection has developed into an integral conduit for major narcotics smugglers and distributors.

The Commissioner of Customs, Mr. Vernon Acree, explained this growing problem to the subcommittee, in part as follows:

"The high speed and fuel carrying capabilities of today's small boats permits them to travel distances which were not envisioned when the vessel reporting requirements were enacted in 1930. Thus, a small boat can journey from our eastern coast to larger vessels hovering off-shore outside the 12 mile Customs waters, or to the Bahamas or other nearby foreign islands for the purpose of picking up narcotics. They may then return to the U.S., pull into a small cove or marina and unload the drugs. Some of these boats will then call Customs to report their arrival, while others will ignore this requirement. In either case, the present reporting requirements are virtually useless since any contraband will have been removed before Customs officers arrive to inspect the vessel.

"This problem has become particularly acute in Florida where private yachts and pleasure vessels, with easy access to nearby foreign islands, the high seas and the United States' inland waterways, complicate detection. Further magnifying the problem is the fact that hard evidence has been developed establishing that foreign flag vessels are moving multi-ton loads of marijuana and smaller portions of hashish to positions on the high seas adjacent to the United States eastern and gulf coasts. At a position usually between 40 and 60 miles offshore, the mother ship—or hovering vessel—is met, under cover of darkness, by small vessels that take on a portion of the load for introduction into the United States. The mother ship then moves to the next rendezvous point where similar discharges are made. When the mother ship is empty it returns to its country of origin without ever having entered U.S. waters."

To respond more effectively to these special distribution channels and to address the fact that many vessels consistently ignore current law the subcommittee intends to amend the relevant reporting requirements.

As I mentioned earlier we are concerned that the reorganization plan No. 2 processed by the Government Operations Committee in 1973, though not without merit, has resulted in the under utilization or misdirection of intelligence gathering and dissemination, especially at our borders and most importantly our Southwestern border. The full utilization of Customs intelligence and investigative resources is a necessary step in bringing Federal narcotics enforcement effectiveness to its highest possible level. It should be recalled that narcotics traffic is a giant, incredibly profitable industry. Even if it were taxed comparable to the level of our domestic prescription drug industry—it would owe the American taxpayers at least $1 billion or every American citizen $5 each year. Thus these merchants of death—by the most conservative and cautious assessment—would owe more in taxes than the combined Federal drug abuse law enforcement and Federal drug abuse prevention budgets. I ask unanimous consent that two tables prepared by Peter Goldberg of the Drug Abuse Council be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record, as follows:

TOTAL FEDERAL DRUG ABUSE PREVENTION FUNDING

[In millions of dollars]

	Fiscal year—								
	1971 actual	1972 actual	1973 actual	1974 actual	1975 actual	1976 estimated	TQ estimated	1977 estimated	Total 1971–77
SAODAP		1.5	39.9	27.3	13.0				81.7
DHEW	69.7	193.1	255.1	349.4	320.1	338.4	46.4	359.0	1,931.2
NIDA	56.2	116.7	181.4	[1] 272.9	220.1	232.2	21.2	247.8	1,348.5
NIMH				4.5	5.2	4.2		4.3	18.2
NIH				3.3	3.0	3.2		3.5	13.0
SRS	3.6	58.0	53.0	54.0	79.0	88.0	23.0	94.0	452.6
OE	5.4	13.0	11.9	5.7	4.0	2.0			42.0
OHD	4.5	5.4	8.8	9.0	8.8	8.8	2.2	9.4	56.9
OEO	12.8	18.0	[2]						30.8
VA	1.1	16.2	27.7	30.3	33.2	36.7	9.4	38.0	192.6
DOD	1.1	58.7	73.0	68.6	64.0	61.3	14.3	57.8	398.8
Justice	40.3	36.5	33.5	34.5	26.6	46.4	6.7	24.3	248.8
State		1.0	1.0	.9	.7	.8		.8	5.2
HUD	8.7	13.0	6.3	1.6	2.9	4.0	.9	4.8	42.2
USDA		2.5	1.9	1.8	1.6	1.6		1.0	10.4
Other Federal [3]	.2	1.4	2.9	2.8	9.0	3.5	1.3	4.0	25.1
Total	133.9	341.9	441.3	517.2	471.1	492.7	79.0	469.7	2,966.8

[1] High because of supplemental received in fiscal year 1973, and not obligated until fiscal year 1974.
[2] Total of $23,000,000 included in NIDA funds.
[3] Includes amounts of less than $1,000,000 each year in DOL, DOC, CSC, DOT, ACTION, other.

As I indicated, in the discussion of Federal drug control jurisdiction, the subcommittee will consider restricting Federal enforcement agencies statutorily to interstate and international major trafficking cases. While we are concerned that Federal efforts do not erode local initiative and accountability, we believe that the Federal Government should expand its programs of assistance to State and local drug enforcement officials. The controlled substance units and diversion investigation units should be expanded to assist State and local investigation and prosecution of major diversion and trafficking cases.

The subcommittee is exploring the possible use of forfeited assets of drug traffickers and moneys collected by IRS under a revitalized NTTP to support the expansion of these successful efforts to assist State and local governments.

I intend to incorporate other salutory provisions in the legislation which I will soon ask the subcommittee to consider, including crucial enabling legislation to permit Senate ratification of the psychotropic treaty and sections addressing the problem of pharmacy related crime and more adequate controls for some barbiturates. I especially appreciate the enthusiastic support of the Senate leadership for our efforts and invite my colleagues to assist us in the enactment of a sensible statutory response to high risk drugs and to major drug traffickers. It is about time and it is clear that the taxpayers of this country demand and deserve no less.

CONSOLIDATED DRUG ABUSE LAW ENFORCEMENT BUDGET, IN OBLIGATIONS

[In millions of dollars]

	Fiscal year—		
	1975	1976	1977
SUPPLY REDUCTION			
Justice:			
Drug Enforcement Administration	139.4	[1] 156.4	160.8
LEAA and other Justice	62.2	43.6	40.9
Treasury:			
Customs	39.1	[1] 43.2	43.4
IRS	20.0	20.0	15.0
State	32.0	43.4	34.0
Other	1.9	2.1	2.1
Total	294.6	308.7	296.2

[1] Both DEA and Customs have applied for a supplemental appropriation in fiscal year 1976. DEA asked for $2,200,000, primarily for salary and insurance increases. Customs asked for $4,000,000, $2,000,000 of which would be carried over into fiscal year 1977. These funds are for the Customs' drug interdiction program.

Source: OMB, Federal Drug Management Division.

Mr. BAYH. There is little doubt that the drug law enforcement task at hand is substantial. Thus, it is even more essential than ever to focus resources at our borders where high purity narcotics are traded in volume. It is with this focus that we can most effectively disrupt key distribution networks.

Another unfortunate aspect of Reorganization Plan No. 2 is that though the Government Operations Committee cited the benefit of a single focal point for coordinating Federal drug enforcement with that of State and local authorities, the plan as approved did not contain stipulations to prevent Federal interference with State and local drug law enforcement activities.

[Testimony continued from p. 4.]

Senator BAYH. Now Commissioner Alexander, I will delay your testimony no longer. You may wish to introduce your assistants for the record.

Mr. Alexander.

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE, U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY THOMAS CLANCY, DIRECTOR, INTELLIGENCE DIVISION; SINGLETON WOLFE, ASSISTANT COMMISSIONER (COMPLIANCE); THOMAS GLYNN, ASSISTANT TO THE COMMISSIONER; ANITA F. ALPERN, ASSISTANT COMMISSIONER (PLANNING AND RESEARCH); AND MEADE WHITAKER, CHIEF COUNSEL

Mr. ALEXANDER. Thank you, Mr. Chairman.

First I would like to introduce those at the table with me.

On my immediate left is Mr. Meade Whitaker, the Chief Counsel of the Internal Revenue Service.

On Mr. Whitaker's left is Ms. Anita Alpern, our Assistant Commissioner for Planning and Research.

On Ms. Alpern's left is Mr. Thomas Glynn, Assistant to the Commissioner.

On my immediate right is Mr. Thomas Clancy, the Director of our Intelligence Division.

And on Mr. Clancy's right is Mr. Singleton Wolfe, our Assistant Commissioner for Compliance.

With your permission, Mr. Chairman, I would like to submit my prepared statement for the record and summarize it, in view of the demands on your time.

Senator BAYH. Please do so. Your entire statement will be put in the record. Also, we will follow it, as an exhibit, the Treasury Department organizational chart and information on the IRS from the U.S. Government manual.

Mr. ALEXANDER. Thank you, sir.

[The prepared statement follows, testimony continued on p. 37.]

PREPARED STATEMENT OF DONALD C. ALEXANDER

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you this morning and join with those urging favorable action on S. 3411, the Narcotic Sentencing and Seizure Act of 1976. I wish to direct my comments to those provisions of the bill which have some impact on the activities of the Internal Revenue Service—Title III dealing with the forfeiture of the proceeds of illegal drug transactions and cash used in the illegal drug business, and Title IV dealing with the illegal export of cash.

One of the principal efforts against narcotic traffickers has been the attempt to confiscate the financial resources that are necessary to bankroll these criminal operations. One of the most inviting targets has been the cash found in the course of arrests for narcotic violations.

Section 881 of Title 21 now provides for the forfeiture of controlled substances, raw materials, containers, conveyances such as aircraft, vehicles or vessels, and all books, records, and research used or intended to be used in violation of the control and enforcement provisions of Title 21. However, present section 881 does not provide for the forfeiture of cash, even though that cash may have been used directly in the illegal drug business. Title III of the bill under consideration would amend section 881 to provide for the forfeiture of cash in these circumstances.

It is obvious that those engaged in the illegal narcotics business reap huge profits. We believe that it is an important part of our job to see to it that those who are engaged in this occupation and who are evading their lawful tax responsibilities are called to account. We are convinced that we can discharge this obligation in a responsible manner and that if we do it in accordance with our established controls and procedures, we can do it without having an adverse impact on our ability to carry out the balance of our responsibilities to administer and enforce the tax system.

Section 6851 of the Internal Revenue Code provides for the immediate termination of a taxpayer's taxable period if the taxpayer intends to commit any act which would prejudice the collection of his or her income tax, and section 6331 provides for the seizure of a delinquent taxpayer's property to satisfy an assessment. Although these provisions permit the seizure of cash in the hands of a narcotics trafficker, under the law they are available only if a tax liability can be established with a reasonable degree of accuracy.

On some past occasions there have been applications of these provisions in the pursuit of narcotic traffickers without adequate evidence of tax liability, probably due in part to the belief that these provisions were the only available tools to "get the cash off the streets." This use of our termination powers has met with strong judicial and public criticism in some cases and has resulted in legislative proposals to curtail the use of our powers. We are now developing administrative procedures to ensure that these powers are used in accordance with law, as contrued by the courts.

The judicial criticism culminated in the recent Supreme Court decision in *Laing* v. *United States* [44 LW 4065 (1976)]. That decision fulrther reinforced the conclusion that the procedures for enforcing collection of civil tax liabilities are not an appropriate substitute for a cash forfeiture provision in dealing with narcotics traffickers. In that opinion, the Court held that a taxpayer, suspected of being a narcotics trafficker and who was subject to a jeopardy termination, is entitled to certain procedural safeguards which include the right to petition the Tax Court for a redetermination of his tax liability. Thus, although the termination procedures may not be used as a tool to "get the cash off the streets", they can (and will) be properly used to complement a forfeiture pro-

vision, such as S. 3411, in cases where the tax liability can be calculated with a reasonable degree of accuracy.

The principal legislative restriction, which is in H.R. 10612, the "Tax Reform Act of 1976", has passed the House, has been favorably reported by the Senate Finance Committee and has been agreed to by the Senate during its present consideration of the Bill. Section 1204 of that Bill, as reported to the Senate, would require the Internal Revenue Service to provide the taxpayer with a written statement of the information on which it relied in making a jeopardy or termination assessment, within five days after the assessment was made. That section of the Bill would provide the taxpayer with quick access to the District Court for a review of the issue whether the making of the assessment was reasonable, and the issue whether the amount of the assessment was appropriate under the circumstances. Under the Bill, if the Court holds against the Service on either issue, the Court would be empowered to order the assessment abated or redetermined. A similar provision is contained in H.R. 9599, Congressman Vanik's "Federal Taxpayer's Rights Act of 1975".

The Service has recognized that its termination and jeopardy assessment powers must be used in accordance with the law, and has taken steps to ensure that they are so used. However, we also recognize the need for the Federal Government to deal directly with the resources available to drug traffickers. For that reason, in 1974 the Service recommended that the forfeiture provisions of 21 U.S.C. section 881(a) be amended to permit the forfeiture of cash. The Ways and Means Committee did include such a provision in its tentative proposals in May 1974, but later deleted the provision after deciding that it lacked jurisdiction over Title 21.

Within the framework of our mission to enforce and administer the Federal tax laws, the Internal Revenue Service is continuing to work toward the apprehension and conviction of narcotics traffickers for violations of these laws. As a part of the Executive action which the President outlined in his Special Message on Drug Abuse, the Service, in cooperation with the Drug Enforcement Administration, has developed a tax enforcement program directed at high-level drug traffickers who may have violated the tax laws.

DEA Administrator Bensinger and I met shortly after the President sent his drug message to Congress on April 27 and began discussions that culminated in a memorandum of understanding signed on July 27. While the terms of the memorandum were being worked out, the Service was developing guidelines and procedures that would be used to handle the information to be obtained from DEA and the investigations that would result from that information. DEA has already provided us with a selected list of approximately 200 Class 1 narcotics violators—high-level traffickers and financers. These names will be sent to our field officials, who will establish liaison with appropriate DEA field officials and obtain from DEA all available financial information concerning these individuals.

We are confident that the program and procedures that we are developing will enable us to conduct a responsible program that will promote effective enforcement of the tax law against high-level drug traffickers. However, we also believe that the Government does not have all the tools it needs to get the cash off the streets and that there should be an expanded forfeiture provision to permit the seizure of cash found in the possession of narcotics traffickers, without regard to their tax liability. Title III of the Bill under consideration would accomplish this objective by amending section 881(a) of Title 21 of the Code to permit the forfeiture of the proceeds of illegal drug transactions and cash used in the illegal drug business.

We strongly urge the adoption of this provision.

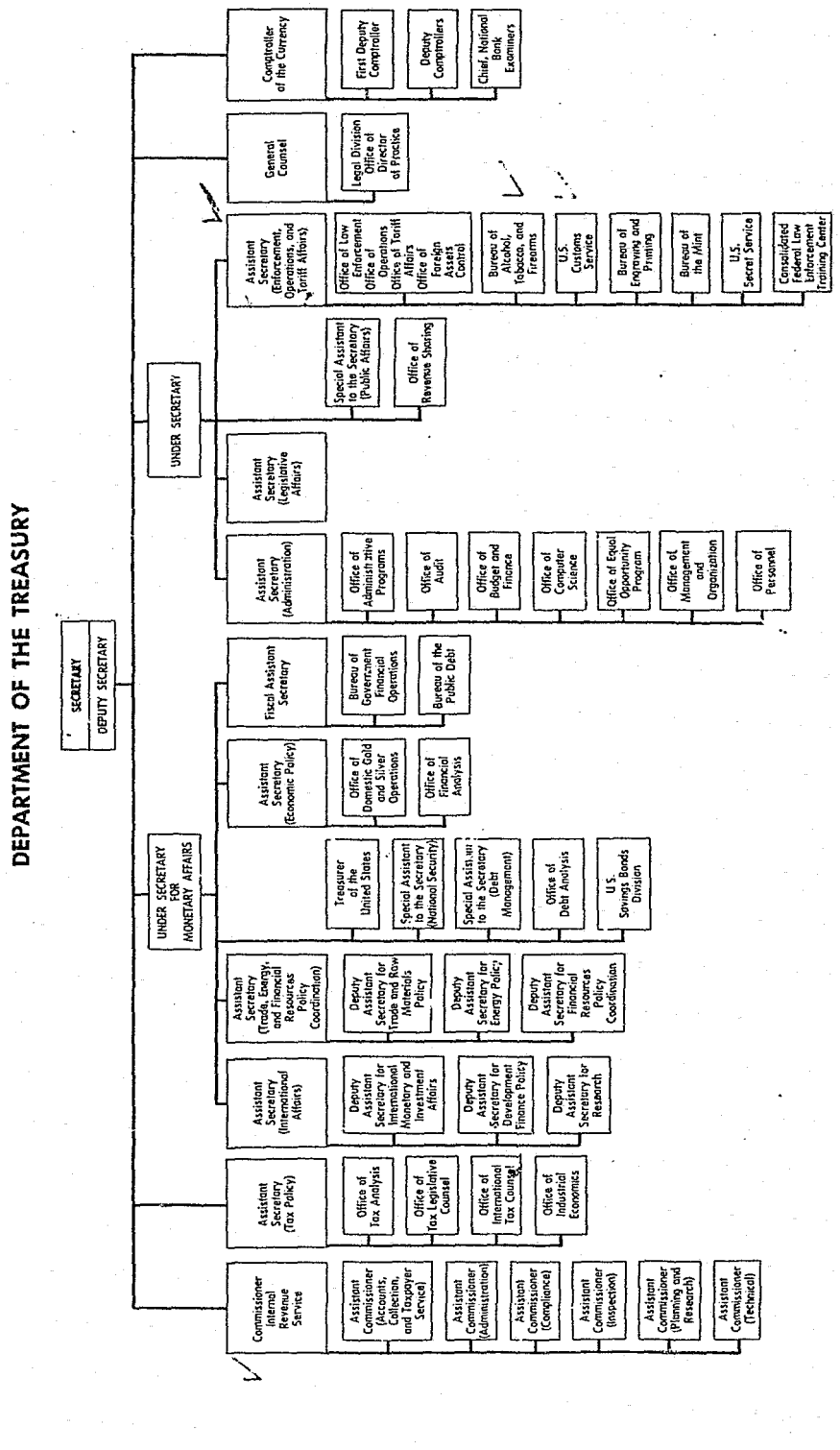
Title IV of the Bill would amend the Currency and Foreign Transaction Reporting Act. Certain provisions of that Act have improved the Service's ability to reconstruct financial transactions, to establish audit trails, and to monitor major currency flows within the United States. Strengthening the provisions of this Act should further improve our ability to monitor international financial transactions.

Though the U.S. Customs Service is the agency responsible for enforcing the reporting requirements regarding the international transportation of currency, we expect that Customs will begin shortly to provide that data to the Service in computerized form as part of an interchange of information gathered under the provisions of this Act. Accordingly, the Service's compliance activities should benefit from any new enforcement authority conferred upon Customs by Title IV of this bill.

I believe that it may be appropriate to raise one further point that is relevant to this area, although not contained in the bill under consideration. Frequently the proceeds of illegal narcotics traffic will be hidden in foreign tax haven countries. Our experience indicates that the principal barriers in the successful prosecution of tax evasion schemes involving overseas institutions and transactions are the limitations placed upon us by foreign secrecy laws. While there has been increasing cooperation on the part of certain foreign governments, the high standards of admissibility imposed upon us by the laws of evidence of the United States often makes prosecution impossible on the basis of information which is available to us. For example, a certification by a government official is adequate under Swiss laws. Therefore, the Swiss officials cannot understand why we need something which would be the equivalent of a deposition of the government official in order to admit the evidence in this country. I believe this problem could best be corrected by providing in the Federal Rules of Evidence for the presumptive admissibility of evidence officially furnished by a foreign government, thus placing the burden of refuting this presumption on the taxpayer, who is the only party who has full access to all the information.

Mr. Chairman, I appreciate your inviting me to appear before you today, and I would be pleased to respond to any questions that you or the other Senators may have.

(Exhibit No. 1)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UNDER SECRETARY
UNDER SECRETARY FOR MONETARY AFFAIRS
Comptroller of the Currency
First Deputy Comptroller
Deputy Comptrollers
Chief, National Bank Examiners
General Counsel
Legal Division
Office of Director of Practices
Assistant Secretary (Enforcement, Operations, and Tariff Affairs)
Office of Law Enforcement
Office of Operations
Office of Tariff Affairs
Office of Foreign Assets Control
Bureau of Alcohol, Tobacco, and Firearms
U.S. Customs Service
Bureau of Engraving and Printing
Bureau of the Mint
U.S. Secret Service
Consolidated Federal Law Enforcement Training Center
Special Assistant to the Secretary (Public Affairs)
Office of Revenue Sharing
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Administration)
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For further information, contact the Office of the Commissioner, Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226. Phone, 202–964–5294. Requests for information relating to holdings of all series of savings bonds and savings notes should be addressed to: Bureau of the Public Debt, 536 S. Clark St., Chicago, Ill. 60605.

Internal Revenue Service

1111 Constitution Avenue NW., Washington, D.C. 20224
Phone, 202–964–4021

The Office of the Commissioner of Internal Revenue was created by the act of July 1, 1862 (12 Stat. 432; 26 U.S.C. 3900).

The Internal Revenue Service (IRS) is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, and explosives. The IRS mission is to encourage and achieve the highest possible degree of voluntary compliance with the tax laws and regulations and to maintain the highest degree of public confidence in the integrity and efficiency of the Service. Accomplishment of this mission involves communicating requirements of the law to the public, assisting taxpayers in complying with the laws and regulations, and taking those enforcement actions necessary for fair, effective, and impartial tax administration.

Basic IRS activities include providing taxpayer service and education; determination, assessment, and collection of internal revenue and other miscellaneous taxes; and preparation and issuance of rulings and regulations to supplement provisions of the Internal Revenue Code. The source of most revenues collected is the individual income tax and the social insurance and retirement taxes, with other major sources being the corporation income, excise, estate, and gift taxes.

IRS organization is designed for maximum decentralization, consistent with the need for uniform interpretation of the tax laws and efficient utilization of resources. There are three organizational levels: the national office, the regional office, and the district offices and service centers. Districts may have local offices, the number and location of which are determined by taxpayer and IRS needs.

HEADQUARTERS ORGANIZATION

The national office, located in Washington, D.C., develops nationwide policies and programs for the administration of the internal revenue laws and provides overall direction to the field organization. The National Computer Center, Martinsburg, W. Va., and the

Regional Offices—Internal Revenue Service

Region	Regional Commissioner	Address
CENTRAL—Michigan, Indiana, Ohio, Kentucky; West Virginia.	Patrick J. Ruttle, Acting	550 Main St., Cincinnati, Ohio 45202.
MID-ATLANTIC—Pennsylvania, New Jersey, Delaware, Maryland, Virginia.	William D. Walters	2 Penn Center Plaza, Philadelphia, Pa. 19102.
MIDWEST—North Dakota, South Dakota, Nebraska, Minnesota, Missouri, Iowa, Wisconsin, Illinois.	Edwin P. Trainor	35 E. Wacker Dr., Chicago, Ill. 60601.
NORTH ATLANTIC—Maine, Vermont, New Hampshire, New York, Massachusetts, Connecticut, Rhode Island.	Elliott H. Gray	90 Church St., New York, N.Y. 10007.
SOUTHEAST—Tennessee, North Carolina, Mississippi, Alabama, Georgia, Florida, South Carolina.	Edmund J. Vitkus, Acting	275 Peachtree St. NE., Atlanta, Ga. 30303.
SOUTHWEST—Wyoming, Colorado, Kansas, New Mexico, Oklahoma, Texas, Arkansas, Louisiana.	Walter T. Coppinger	1114 Commerce St., Dallas, Tex. 75202.
WESTERN—Washington, Idaho, Montana, Oregon, California, Nevada, Utah, Arizona, Hawaii, Alaska.	Thomas A. Cardoza	525 Market St., San Francisco, Calif. 94102.

Internal Revenue Districts—Internal Revenue Service

District	Address	Director
Alabama 35203	2121 8th Ave., N. Birmingham	Dwight T. Baptist.
Alaska 99501	5th and H Sts., Anchorage	Charles Roddy.
Arizona 85025	230 N. 1st Ave., Phoenix	Robert M. McKeever.
Arkansas 72201	700 W. Capitol Ave., Little Rock	Emmett E. Cook.
California:		
Los Angeles 90012	300 N. Los Angeles St.	Warren A. Bates.
San Francisco 94102	450 Golden Gate Ave.	Francis L. Browitt.
Colorado 80202	1050 17th St., Denver	Gerald L. Mihlbachler.
Connecticut 06103	450 Main St., Hartford	Joseph J. Conley, Jr.
Delaware 19801	844 King St., Wilmington	James E. Quinn.
District of Columbia (Part of Baltimore District).		
Florida 32202	400 W. Bay St., Jacksonville	Andrew J. O'Donnell, Jr.
Georgia 30303	275 Peachtree St. NE., Atlanta	John W. Henderson.
Hawaii 96813	335 Merchant St, Honolulu	Robert M. Cutts.
Idaho 83702	550 W. Fort St., Boise	Howard T. Martin.
Illinois:		
Chicago 60602	17 N. Dearborn St.	Charles F. Miriani.
Springfield 62704	325 W. Adams St.	Leon C. Green.
Indiana 46204	46 E. Ohio St., Indianapolis	James W. Caldwell.
Iowa 50309	210 Walnut St, Des Moines	James T. Rideoutte.
Kansas 67202	412-418 S. Main, Wichita	Maurice E. Johnson.
Kentucky 40202	601 W. Broadway, Louisville	Paul F. Niederecker.
Louisiana 70130	600 South St., New Orleans	Roger F. Shockcor.
Maine 04330	68 Sewall St. Augusta	Whitney L. Wheeler.
Maryland 21201	31 Hopkins Plaza, Baltimore	Gerald G. Portney.
Massachusetts 02203	John F. Kennedy Federal Bldg., Boston	John E. Forristall.
Michigan 48226	65 Cadillac Sq., Detroit	Roger L. Plate.
Minnesota 55101	316 N. Robert St., St. Paul	C. Dudley Switzer.
Mississippi 39202	301 N. Lamar St., Jackson	William Daniel.
Missouri 63101	1114 Market St., St. Louis	Richard C. Voskuil.
Montana 59601	W. 6th St. and Park Ave., Helena	Nelson L. Seeley.
Nebraska 68102	106 S. 15th St., Omaha	Everett Loury.
Nevada 89502	300 Booth St., Reno	Gerald F. Swanson.
New Hampshire 03801	80 Daniel St., Portsmouth	Frank Murphy.
New Jersey 07102	970 Broad St., Newark	Elmer H. Klinsman.
New Mexico 87101	517 Gold Ave. SW., Albuquerque	William B. Orr.
New York:		
Albany 12206	855 Central Ave.	Donald T. Hartley.
Brooklyn 11201	35 Tillary St.	Charles H. Brennan.
Buffalo 14202	111 W. Huron St.	Herbert B. Mosher.
Manhattan 10007	120 Church St., New York	Philip E. Coates.
North Carolina 27401	320 Federal Pl., Greensboro	Charles O. DeWitt.
North Dakota 58102	653 2d Ave. N., Fargo	Frederick G. Kniskern.
Ohio:		
Cincinnati 45202	550 Main St.	(Vacancy).
Cleveland 44199	1240 E. 9th St.	Robert J. Oath.
Oklahoma 73102	200 NW. 4th St., Oklahoma City	Clyde L. Bickerstaff.
Oregon 97204	319 SW. Pine St., Portland	Ralph B. Short.
Pennsylvania:		
Philadelphia 19106	600 Arch St.	Alfred L. Whinston.
Pittsburgh 15222	1000 Liberty Ave.	Cornelius J. Coleman.
Puerto Rico (Office of International Operations, National Office) 00917.	255 Ponce de Leon Ave., Hato Rey	Robert G. Lockrow (Director's Representative).
Rhode Island 02903	130 Broadway, Providence	John J. O'Brien.
South Carolina 29201	901 Sumter St., Columbia	Harold Bindseil.
South Dakota 57401	640 9th Ave. SW., Aberdeen	John B. Langer.
Tennessee 37203	8th Ave. and Broadway, Nashville	James A. O'Hara.
Texas:		
Austin 78701	300 E. 8th St.	Richard J. Stakem, Jr.
Dallas 75202	1100 Commerce St.	Alden W. McCanless.
Utah 84110	350 S. Main St., Salt Lake City	Roland V. Wise.
Vermont 05401	11 Elmwood Ave., Burlington	Carolyn K. Buttolph.
Virginia 23240	400 N. 8th St., Richmond	James P. Boyle.
Virgin Islands (Office of International Operations, National Office).	22 Crystal Gade, Charlotte Amalie, St. Thomas.	
Washington 98121	2033 6th Ave., Seattle	Michael D. Sassi.
West Virginia 26101	Juliana and 5th Sts., Parkersburg	(Vacancy).
Wisconsin 53202	517 E. Wisconsin Ave., Milwaukee	Lawrence M. Phillips.
Wyoming 82001	21st and Carey Sts. Cheyenne	T. Blair Evans.

IRS Data Center, Detroit, Mich., are also assigned to the national office.

Field Organization

As a decentralized organization, most of the IRS personnel and activities are assigned to field installations.

REGIONAL OFFICES

There are seven regions, each headed by a Regional Commissioner, which supervise and evaluate the operations of district offices and service centers. An appellate activity to hear disputes from district offices is assigned to the regional office. Also located there, but not supervised by the Regional Commissioner, are the Regional Counsel and Regional Inspector.

DISTRICT OFFICES

There are 58 Internal Revenue districts, each administered by a District Director. Districts may encompass an entire State, or a certain number of counties within a State, depending on population and geographic factors. Programs of the district include taxpayer service, audit, collection, intelligence, and administration. Functions performed are: assistance and service to taxpayers; determination of tax liability by audit of tax returns; conferences on disputed tax liabilities; collection of delinquent returns and taxes; certification of refunds; and investigation of criminal and civil violations of internal revenue laws (except those relating to alcohol, tobacco, firearms, and explosives). Directors are responsible for deposit of taxes collected by the district and for initial processing of original applications for admission to practice before IRS and renewal issuances for those practitioners already enrolled. Local offices may be established to meet taxpayer needs and IRS workload requirements.

SERVICE CENTERS

Also under the supervision of the Regional Commissioners are 10 service centers, located at Austin, Tex.; Chamblee, Ga.; Covington, Ky.; Kansas City, Mo.; Andover, Mass.; Ogden, Utah; Fresno, Calif.; Memphis, Tenn.; Brookhaven, N.Y.; and Philadelphia, Pa. Each service center processes tax returns and related documents and maintains accountability records for taxes collected. Programs include the processing, verification, and accounting control of tax returns; the assessment and refund of taxes; and the preparation of audit selection lists.

For further information, contact any District Office or the Public Affairs Division, Internal Revenue Service Headquarters, Department of the Treasury, 1111 Constitution Avenue NW., Washington, D.C. 20224. Phone, 202–964–4021.

[Testimony continued from p. 30.]

Mr. ALEXANDER. We appreciate the opportunity to appear before you to discuss with you the exercise of our responsibilities, Mr. Chairman, in striking that delicate balance that you mentioned. This is the balance between effective and comprehensive enforcement of the tax laws against those that you mentioned—they are a handful of citizens who are wreaking havoc upon this country—and due process, the guarantees of rights under the law and under the Constitution. And in striking that balance, Mr. Chairman, we strongly urge favorable action on S. 3411.

COCAINE BUST REVEALS REPEATERS AND BAIL JUMPERS

Senator BAYH. I visited with Mr. Bensinger yesterday—when he was here last week, I asked why cocaine had not received quite as high priority treatment as heroin—and yesterday morning, when we had rescheduled this meeting to discuss the problem, I'm sure you noticed a big headline about a cocaine bust. The relevance to what we are doing here is the fact that one of the persons involved—they finally found in the Baltimore jail—had been arrested several times and had not honored his commitment to stay in the jurisdiction and had flown his bail commitment. That kind of person is involved in this time and time again. It seems we are going to have to make some tough decisions to affect this type of criminal.

Mr. ALEXANDER. Mr. Chairman, we don't think that people in jail are immune from tax laws, and we surely don't think that drug traffickers, whether they are dealing in cocaine or any other type of drug, are immune from the tax laws, and we surely are trying and have been trying to meet our responsibilities, and we need some help in the law. And that is why we are here, to join with Mr. Bensinger and others in urging enactment of the bill before you and the supplementary legislation designed to carry out the administration's program. We think it is highly desirable, highly necessary, and will be quite helpful.

As to this particular case, cases are not made overnight. There may be coincidences in announcement, but cases are developed over a long period of time.

We have been working with the DEA, and the fruits of this effort were recently in the papers in a particular matter close to Washington.

Now, Mr. Chairman, my statement talks about the problem that you and others are concerned with, and that is doing something about the profitability of this traffic conducted by this vicious handful of citizens.

PROBLEM OF CASH ON THE STREETS

Let's put it in another context, though. Let's talk about the problem of cash on the streets. One of the principal efforts in the drive against narcotics traffic has been an attempt to confiscate financial resources, and one of the most inviting targets has been cash on the streets.

Section 881 of title 21, the forfeiture provision, provides for the forfeiture of controlled substances and automobiles and other things but does not provide for the forfeiture of cash used in or intended to be used as the illegal drug business. Title III of this bill would remedy this defect, and the Internal Revenue Service has been urging this, now, since May of 1974 and even earlier. We have been urging it

because there has been a hole in the law. That hole in the law has created strains on the system and created problems for the Internal Revenue Service that have found their way into the Supreme Court, in the *Laing* and *Hall* cases discussed in my statement, and the *Shapiro* case, also; created problems which have resulted in congressional action in the tax reform bill of 1976, passed by the House, and this portion of the bill also passed by the Senate, calling for limitations on our use of termination assessments and new limitations upon jeopardy assessments in an effort to strike this balance in the law, the balance you mention between due process and effective enforcement.

Section 6851 of the law prior to this proposed amendment provides for the immediate termination of the taxpayer's taxable period if the taxpayer intends to commit an act that would prejudice or impair the collection of a tax.

Section 6331 of the law provides for the seizure of a delinquent taxpayer's property to satisfy an assessment.

Now, these provisions are available only if there actually is a tax liability and only if that tax liability may be established with some reasonable degree of exactitude.

Senator BAYH. That would also apply to someone in legitimate business?

Mr. ALEXANDER. Legitimate or illegitimate.

Now, we know full well that those in illegitimate businesses are less inclined than those in legitimate businesses to meet their tax obligations. We are fully aware of that. We have been aware of that. We will continue to be aware of that. We are fully cognizant of the fact that if you take 100 kingpin narcotics traffickers, you are much less likely to find compliance with the tax laws than if you select 100 Franciscan monks. And we allocate our resources accordingly, and we have been doing that and will continue to do that. So we do have a disproportionate interest in this field—we have had and will continue to have it, but we will have a more effective program.

Effective, why? Because it will work. Effective, because we need in the fulfillment of our obligation to enforce the tax laws, to make completely certain that no one has a free pass.

We need to have a disproportionate effort, and we have had a disproportionate effort against this handful that you describe, because that handful is less likely, as is obvious to all of us, to fulfill their responsibilities than others. And if a narcotics trafficker who is also a tax evader is put in jail for tax evasion, that's one less narcotics trafficker out on the street—actually not out on the street as much as well removed from the street, someone that cannot be reached by direct investigative methods.

Resources are applied to the street when they should be applied to the major traffickers.

And the agreement that you mentioned that we have entered into with the DEA, we think, will serve to meet both your goal and that of the President to have a responsible and effective program against those who earn their living in this vicious trade and who refuse to meet their obligations as taxpayers.

That's what we're trying to do, and we need some help. We need some help in providing for the forfeiture of cash, title III. We need

some help in title IV which helps our sister bureau in Treasury, Customs, to obtain information which we will share for the benefit of the Treasury Department and for the benefit of the public.

BELIEVE ILLEGAL PROFITS HIDDEN IN TAX-HAVEN COUNTRIES

We also, Mr. Chairman, are having a problem that goes beyond the bill before you, S. 3411. It is mentioned at the end of my statement over on pages 11 and 12.[1] We believe that frequently the proceeds of the narcotics traffic are hidden in foreign tax-haven countries, countries with secrecy laws. We are trying to work out treaties with these countries. It takes time. It is very difficult to achieve. It goes against certain economic goals that some of these countries may perceive.

But the use of these termination powers met with very strong judicial and public criticism.

The article in the Wall Street Journal of April 10, 1974, is a prime example of media criticism.

In addition to the *Laing* and *Hall* cases that I have mentioned, there is a case called *Willits* v. *Richardson*, which made it clear that the fifth circuit court of appeals would not permit the use of our broad powers to take possession of the property of citizens by summary means that ignore many basic tenets of due process to be turned on citizens suspected of wrongdoing, not as tax collection devices, but as summary punishment. We cannot do it. The fifth circuit struck us down time and time again.

What does this make for? It makes for ineffective enforcement. It does not achieve the goal which you, Mr. Chairman, restated your dedication to a few minutes ago. Instead it detracts from the achievement of that goal, because resources are applied to cases that cannot be sustained.

We need to have a change in the law, and our chief counsel, Mr. Whitaker, can describe it in much more detail than I, which will reduce the very high standard now demanded with respect to certification by foreign officials of a fact that we need to establish. We need to have this evidence admitted and held to be presumptive of the fact.

This provision, if enacted, plus title III, title IV, and raising the now $2,500 limit on administrative forfeitures to $10,000, which we also strongly favor, will go far, together with a strong and effective and lawful effort by the Internal Revenue Service working with DEA, to enforce the tax laws against tax evaders who are narcotics traffickers, in meeting the goals and in striking that delicate balance that you described.

Mr. Chairman, I would like to submit for the record the Joint Committee on Internal Revenue Taxation Release of August 3 with respect to a GAO report, and that GAO report, as well, of July 16, 1976, discussing the use of jeopardy and termination assessments by the Internal Revenue Service.

GAO, having reviewed the prior program, which has been discussed before this committee and before other committees, found—looking from the standpoint of its fulfillment of its responsibilities—certain problems that had not escaped our attention.

[1] See prepared statement, p. 32.

Senator BAYH. We will insert them in the record at this point. As exhibits No. 2 and 3.

[Testimony continues on page 67.]

[EXHIBIT No. 2]

USE OF JEOPARDY AND TERMINATION ASSESSMENTS BY THE IRS

The Joint Committee on Internal Revenue Taxation announces the release of a report from the Comptroller General of the United States entitled "Use of Jeopardy and Termination Assessments by the Internal Revenue Service" (GAO Report No. GGD-76-14; July 16, 1976). This GAO report is in response to the December 1974 request by the Joint Committee for a review of the use by the Internal Revenue Service of jeopardy and termination assessments. This request was made because of concern that these extraordinary assessment and collection procedures be used only where appropriate and in a reasonable manner with adequate procedural safeguards against abuse. (A GAO report on IRS procedures regarding seizures and sales of property will be made later this year to the Joint Committee.)

GAO findings and conclusions

The GAO study of IRS use of jeopardy and termination assessments included a field review of jeopardy and termination assessments of two IRS districts and one IRS Service Center and a review of a sample of audit reports at the National Office. The assessments reviewed were initiated from January 1973 to June 1975.

The Internal Revenue Code provides that when the IRS determines that collection of a tax may be in jeopardy, it may be immediately assessed and collect the tax—through seizure of property, if necessary. If the date for filing a return and paying income tax has not passed, a "termination assessment" may be made of the tax liability before the end of the tax year (under section 6851 of the Code). If the due date for filing a return and paying the tax has passed, this is generally done pursuant to a jeopardy assessment. Jeopardy assessments are of two types: (1) when the tax involved is a tax which the Tax Court has jurisdiction to consider (income, estate and gift taxes, and the private foundation and pension excise taxes), the jeopardy assessment is made under section 6861 of the Code; and (2) where the tax liability is not subject to review by the Tax Court, the jeopardy assessment is made under section 6862 of the Code.

The GAO indicates that before fiscal year 1972, IRS made relatively few jeopardy and termination assessments. However, in response to the President's announcement of an expanded effort to combat drug abuse, the IRS in July 1971 established a high-priority project called the narcotics traffickers program. The purpose of the program was to make a systematic tax investigation of middle-and-upper-echelon narcotics dealers. IRS statistics show that after the trafficker program was initiated many of the jeopardy assessments and the majority of the termination assessments made were directed at individuals suspected of or arrested for drug law violations.

The GAO review of termination assessments (sec. 6851) used against suspected narcotic traffickers indicates that only a small portion of the original asssessments was upheld by later IRS review. Sixty-four of the 68 termination assessment cases covered by the GAO review involved alleged narcotics traffickers. Forty of these had been finalized as of March 1976. The original assessments in these cases totaled $1,254,233. The final assessment totaled $220,677. Jeopardy assessments (under sec. 6861) were also used against suspected narcotics traffickers but with much greater success. Twenty-one of these jeopardy cases were examined of which 12 involved suspected narcotics traffickers. Of these, nine were finalized as of March 1976. The original assessments for these cases totaled $353.210 and the final assessments totaled $342,105. At the time of the GAO review, termination cases were not afforded the same opportunities for judicial review as were section 6861 jeopardy assessments; and the GAO indicates that this may be the reason why the latter were better supported.

With respect to jeopardy assessments under section 6861 against taxpayers other than narcotics traffickers, the GAO indicated that it was satisfied that the use of jeopardy assessmens was reasonable. Also, with respect to jeopardy assessments under section 6862, the GAO indicated that it was satisfied that, in each instance, a tax deficiency existed and the taxpayer assessed was liable for

the deficiency. The jeopardy assessments under section 6862 were made against officers of insolvent corporations who were found by IRS to have been responsible for withholding taxes from employees' wages and for not paying the withheld taxes to the Government, against employers for taxes withheld from the wages of employees but not paid to the Goverment where the financial solvency of the employers appeared to be endangered, and against taxpayers for the nonpayment of wagering taxes. The GAO review also indicated that for the cases in which termination assessments were used against taxpayers other than narcotics traffickers, the use of termination assessments appeared to be reasonable.

The GAO also reviewed the existing law to determine the adequacy of the legal remedies of a taxpayer who is subjected to a jeopardy or termination assessment. In its September 1975 draft report to the Joint Committee (prepared at the time of the Ways and Means consideration of the tax reform bill), the GAO noted that the IRS had maintained that the only judicial remedy available to a taxpayer who had been subject to a termination assessment was to pay the assessed tax, file a claim for refund with IRS, wait 6 months (unless IRS denied the claim sooner), and file a refund petition with the Federal district court or Court of Claims. Because it was IRS practice not to consider a refund claim until after the end of the taxpayer's normal tax year, there could be considerable delay before the taxpayer obtained judicial review of his case. During this period the taxpayer would be deprived of the use and benefit of any property that IRS had seized. Consequently, the GAO recommended in the draft report that a taxpayer whose taxable period has been terminated under section 6851 should have a more timely right of judicial review and that his property should not be allowed to be sold until such review is completed. However, in view of two January 1976 Supreme Court decisions (*Laing* v. *U.S.* and *U.S.* v. *Hall*), which held that the IRS is required to issue a notice of deficiency—a jurisdictional prerequisite to litigation in the Tax Court—to a taxpayer whose taxable year is terminated pursuant to section 6851, this recommendation was deleted from GAO's final report.

GAO legislative recommendations

GAO recommends that the Congress amend the Internal Revenue Code to provide that, if a jeopardy assessment is made under section 6862, the taxpayer shall have a more timely right to judicial review than is currently provided under the Internal Revenue Code and that seized property shall not be sold until the judicial review process is completed.

GAO further believes that if legislation is enacted to carry out its recommendation, IRS procedures now applicable to section 6851 and 6861 assessments could be extended to section 6862 assessments with a minimum of administrative difficulties.

GAO also reviewed the provisions in the tax reform bill (H.R. 10612), as passed by the House, and concluded that such provisions (relating to assessments under sections 6851, 6861 and 6862) would meet the objective of its recommendation.

IRS comments

The GAO report includes a response from the Commissioner of Internal Revenue commenting on the GAO draft report. He stated that IRS had no objections to the GAO proposals for judicial review of jeopardy and termination assessments. However, he indicated at that time (December 9, 1975) that IRS could envision some tax collection problems created by delays which would develop.

GAO notes that the collection problems envisioned earlier by the IRS to a large extent are now moot since, in response to the Supreme Court decisions, the IRS has issued instructions to handle section 6851 termination assessments in a manner similar to the handling of section 6861 jeopardy assessments.

Availability of GAO report

Copies of this GAO report on IRS use of jeopardy and termination assessments may be obtained ($1.00 for the general public—those not associated with the press, the govenment, or an educational or nonprofit organization) from the U.S. General Accounting Office, Distribution Section, P.O. Box 1020, Washington, D.C. 20013.

CONTINUED

1 OF 8

(Exhibit No. 3)

REPORT TO THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION CONGRESS OF THE UNITED STATES

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

Use Of Jeopardy And Termination Assessments By The Internal Revenue Service

Department of the Treasury

GAO recommends legislative changes to more fully protect the rights of taxpayers by permitting timely judicial appeal.

GGD-76-14

JULY 16, 1976

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-137762

To the Chairman and Vice Chairman
Joint Committee on Internal Revenue
Taxation
Congress of the United States

This report discusses how the Internal Revenue Service collects taxes it believes would be jeopardized by delay if normal collection procedures were used. It is one of a series of reports your Committee requested.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretary of the Treasury; and the Commissioner of Internal Revenue.

Comptroller General
of the United States

Contents

ABBREVIATIONS

GAO	General Accounting Office
IRS	Internal Revenue Service

COMPTROLLER GENERAL'S REPORT TO THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

USE OF JEOPARDY AND TERMINATION ASSESSMENTS BY THE INTERNAL REVENUE SERVICE
Department of the Treasury

D I G E S T

NATURE OF JEOPARDY AND TERMINATION ASSESSMENTS

The Internal Revenue Code provides that when the Internal Revenue Service (IRS) determines that collection of a tax may be in jeopardy, it may immediately assess and collect the tax--through seizure of property, if necessary. If the due date for filing a return and paying the tax has passed, the action is commonly referred to as a jeopardy assessment. If the date for filing a return and paying the tax has not passed, the action is commonly referred to as a termination assessment.

There are three sections of the code involved.

Section 6861 jeopardy assessments

Section 6861 authorizes jeopardy assessments for income, estate, gift, and certain excise taxes. The judicial remedies available to the taxpayer are identical to the remedies available under normal assessment procedures. Upon receiving a notice of deficiency, the taxpayer may file a petition for redetermination in the U.S. Tax Court. Or the taxpayer may pay the full amount of the deficiency, file a claim for refund with IRS, wait 6 months (unless IRS denies the claim sooner), and then file a refund action in a Federal district court or Court of Claims. IRS cannot sell seized property during the period allowed for filing a petition for redetermination or while the case is before the Tax Court. (See ch. 3.)

Section 6862 jeopardy assessments

Section 6862 relates to jeopardy assessments for all taxes not covered by section 6861. It differs from section 6861 in that the

taxpayer does not have the right to file a petition for redetermination in the Tax Court. His only judicial remedy is to pay the tax deficiency, file for a refund, wait 6 months (unless IRS denies the claim sooner), and then file a refund action in the Federal district court or Court of Claims.

Unlike property seized under a section 6861 jeopardy assessment, property seized as a result of a section 6862 jeopardy assessment can be sold before the taxpayer has a right to contest the tax liability in court. (See ch. 4.)

Section 6851 termination assessments

At the time of GAO's review IRS contended that a taxpayer who had been subject to a termination assessment had the same right to judicial review as the section 6862 taxpayer. That is, he could only pay the assessed tax, file a claim for refund, wait 6 months (unless IRS denies the claim sooner), and then file a refund action in the Federal district court or Court of Claims.

However, he had an additional problem. It was IRS practice not to consider a refund claim until after the end of the taxpayer's normal tax year, thus extending the period before which the taxpayer could obtain judicial review of his case.

These problems were eliminated by the Supreme Court of the United States on January 13, 1976, when it held that a taxpayer is entitled to receive a notice of deficiency. This permits the taxpayer to petition the Tax Court for redetermination of his tax liability. (See ch. 5.)

CONCLUSIONS AND RECOMMENDATION

We believe that the taxpayer's right to judicial review under section 6862 should be similar to that provided for jeopardy assessments under section 6861 and for termination assessments under section 6851.

GAO recommends that the Congress amend the Internal Revenue Code to provide that, if a jeopardy assessment is made under section 6862, the taxpayer shall have a more timely right to judicial review and that seized property shall not be sold until the judicial review is completed. (See p. 14.)

The Commissioner of Internal Revenue on December 9, 1975, advised GAO that IRS has no objection to the proposed legislative action. (See app. I.)

House bill 10612 dated November 6, 1975, which is a broad tax reform bill, was passed by the House of Representatives and as of July 1, 1976, was pending in the Senate. The bill includes provisions which encompass GAO's recommendation. If those provisions are enacted, the rights of both the Government and the taxpayer should be protected. (See p. 15.)

80-321 O - 77 - 7

CHAPTER 1

INTRODUCTION

In a letter to the Comptroller General dated December 27, 1974, the Joint Committee on Internal Revenue Taxation asked that we review the procedures followed by the Internal Revenue Service (IRS) in making jeopardy assessments. Such assessments are made by IRS when it believes the collection of taxes is in jeopardy and that normal assessments and collection procedures will not safeguard the Government's interest. This report responds to the committee's request.

NORMAL TAX ASSESSMENTS

Assessment of a tax establishes the legal liability of a taxpayer for the amount of tax due and unpaid. IRS cannot take any forceable collection action against a taxpayer until after a tax has been assessed.

For most taxpayers, assessment is made when the taxpayer files a return stating his tax liability. In some cases assessment is made on the basis of an IRS inquiry or investigation showing that (1) a return as filed does not disclose the correct tax liability or (2) a required return has not been filed.

Where IRS makes an inquiry or investigation, agreement may be reached with the taxpayer on the proposed tax changes. IRS then assesses the tax and sends the taxpayer a bill which is required to be paid in 10 days. If the taxpayer then chooses not to pay, IRS may initiate action to collect the tax.

If no agreement is reached between the taxpayer and IRS on the proposed changes, a preliminary notice (30-day letter) is mailed to the taxpayer which advises him of his administrative appeal rights. If no agreement is reached upon appeal within IRS or if the taxpayer does not respond to the preliminary notice, IRS is required to send a statutory notice of deficiency to the taxpayer's last known address, informing the taxpayer that he has 90 days 1/ from the date of the notice to

--pay the deficiency and later file a claim for refund or

--file a petition for redetermination in the U.S. Tax Court.

1/If the notice of deficiency is mailed to a taxpayer outside of the United States, the taxpayer has 150 days to respond.

If the taxpayer chooses the first option and the claim for refund is denied or if IRS fails to act on the claim after 6 months, the taxpayer may bring suit for a refund in the Federal district court or in the U.S. Court of Claims. If the taxpayer chooses the second option and files a petition for redetermination in the Tax Court, he need not pay until the court has redetermined the deficiency. Should the taxpayer fail to petition the court within the 90-day period, this avenue of review is then closed. During this period IRS may not take any formal action to collect the tax, such as seizing the taxpayer's property or instituting a collection action in Federal court.

At the conclusion of the 90-day period, IRS may then assess the tax deficiency if the taxpayer has not petitioned the Tax Court or paid the tax in full. IRS is required to send a notice and demand for payment to the taxpayer within 60 days of the assessment, and the amount of the deficiency must be paid within 10 days of notice and demand for payment. If full payment is not received, IRS may initiate collection action.

JEOPARDY AND TERMINATION ASSESSMENTS

Jeopardy and termination assessments differ from normal tax assessments in that, when there is an indication that the collection of a tax may be in jeopardy, IRS may avoid the normal time-consuming assessment and collection procedures and immediately assess and collect the tax. Assessments made under the authority of sections 6861 and 6862 of the Internal Revenue Code are called jeopardy assessments, and those made pursuant to section 6851 are called termination assessments.

Jeopardy assessments are made when collection of any tax is in jeopardy after the due date for filing a return and paying the tax has passed. Jeopardy assessments under section 6861 are for income, estate, gift, and certain excise taxes, and jeopardy assessments under section 6862 are for all other taxes.

Termination assessments are made when IRS finds that the collection of income tax is in jeopardy before the expiration of a taxpayer's normal tax year or before the date the taxpayer is required to file a return and pay the tax. In such cases, IRS serves on the taxpayer a notice of termination of his tax year, or a segment of the tax year, and demands immediate payment of tax due for the period.

The IRS manual provides that jeopardy and termination assessments should be used sparingly, care should be taken to avoid excessive and unreasonable assessments, and such

assessments should be personally approved by the district director. In addition, the district director is not to approve a termination or jeopardy assessment unless at least one of three conditions is met:

--The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself.

--The taxpayer is or appears to be designing quickly to place his property beyond the reach of the Government either by removing it from the United States, or by concealing it, or by transferring it to other persons, or by dissipating it.

--The taxpayer's financial solvency is or appears to be endangered.

Criteria for assessments

The IRS manual lists the following eight situations that represent prima facie cases in which jeopardy and termination assessments should be made.

1. Major operators in the criminal field.

2. Gamblers who frequently wager large amounts.

3. Individuals engaged in taking wagers.

4. Individuals in activities, generally regarded as illegal, where there are possibilities of large unexpected losses or interference with their businesses or activities by others of the criminal element, such as hijackers and blackmailers.

5. Individuals with a background and history of activity in illegal enterprises, such as gambling, bootlegging, or narcotics, who are presently engaged in so-called legitimate business ventures.

6. Taxpayers in legitimate business who are consistently suffering business or personal losses.

7. Taxpayers known or suspected of having plans for leaving the United States without providing for tax payments.

8. Other taxpayers when the facts and circumstances indicate that the taxpayer's present financial condition or future possibilities are such as to make tax collection doubtful.

The IRS manual also cites two additional situations that represent prima facie cases in which jeopardy assessments should be made. These situations involve taxpayers (1) against whom large damage suits are pending or against whom such suits are threatened and (2) who have a past record for resisting or avoiding payment of their taxes.

SCOPE OF REVIEW

We reviewed pertinent sections of the Internal Revenue Code, its legislative history, and the IRS policies, regulations, and procedures applicable to jeopardy and termination assessments. We also reviewed all jeopardy assessments initiated from January 1973 to June 1975 for the two IRS districts included in our review, except for four cases that were in litigation. Our review included 21 jeopardy assessments under section 6861 of the Internal Revenue Code and 14 under section 6862. In addition, we reviewed 68 termination assessments under section 6851 of the Internal Revenue Code, including 59 randomly selected fiscal year 1973 and 1974 cases and 9 arbitrarily selected fiscal year 1975 cases. At the national office, we reviewed 19 internal audit reports relating to jeopardy and termination assessments.

We interviewed IRS supervisory and staff personnel who had responsibilities relating to the cases selected for review. Of the 103 jeopardy and termination assessment cases reviewed, 18 of the jeopardy assessment cases were not related to suspected illegal activities. We attempted to interview all 18 taxpayers but were successful in interviewing only 5 of them. The remaining 13 taxpayers either could not be located, did not respond to our requests for interviews, or refused to consent to interviews. We did not attempt to interview the 85 taxpayers (17 jeopardy and 68 termination assessment cases) who were thought to be involved in illegal activities.

We made our review at IRS headquarters in Washington, D.C.; district offices in Los Angeles, California, and Phoenix, Arizona; and the service center in Fresno, California. Because our review was limited to two IRS districts, we are not able to provide information on the procedures employed by IRS nationwide.

CHAPTER 2

JEOPARDY AND TERMINATION ASSESSMENTS USED ON NARCOTICS TRAFFICKERS

Before fiscal year 1972, IRS made relatively few jeopardy and termination assessments. However, in response to the President's announcement of an expanded effort to combat drug abuse, IRS in July 1971 established a high-priority project called the narcotics traffickers program. The purpose of the program was to make a systematic tax investigation of middle and upper echelon narcotics dealers.

IRS statistics show that after the trafficker program was initiated many of the jeopardy assessments and the majority of the termination assessments made were directed at individuals suspected of or arrested for drug law violations.

In March 1974 IRS revised the objective of the narcotics traffickers program to that of achieving maximum compliance with the internal revenue laws rather than disrupting the distribution of narcotics. Subsequently, in May 1974 IRS issued instructions emphasizing that the same selection criteria that are applied to other assessments should also be applied to jeopardy and termination assessments, regardless of the background or criminal history of the taxpayer. This was to assure that only cases with substantial and documentable tax violations were included in the program. As a result, the number of jeopardy and termination assessments against suspected narcotics traffickers was reduced drastically.

The following tabulation shows the impact of the narcotics traffickers program on nationwide IRS use of jeopardy and termination assessments during fiscal years 1972 through 1975 as well as the reduction in such assessments during fiscal year 1975.

	Fiscal year				
	1972	1973	1974	1975	Total
Jeopardy assessments (note a):					
Narcotics traffickers program	98	141	113	60	412
Other	200	358	413	150	1,121
Total	298	499	526	210	1,533
Termination assessments:					
Narcotics traffickers program	999	2,448	1,523	304	5,274
Other	73	143	125	34	375
Total	1,072	2,591	1,648	338	5,649
Combined assessments:					
Narcotics traffickers program	1,097	2,589	1,636	364	5,686
Other	273	501	538	184	1,496
TOTAL	1,370	3,090	2,174	548	7,182

a/A nationwide statistical breakdown of section 6861 jeopardy assessments and section 6862 jeopardy assessments is not available.

In a letter to the Deputy Secretary of the Treasury, dated June 7, 1975, the Commissioner explained the reorientation of the program. He said the narcotics traffickers program had raised significant operational issues. Because of the special nature of the cases involved, IRS had been called upon to make disproportionate use of jeopardy and termination assessments. He explained that these collection measures are powerful tools, originally intended for extreme exigencies.

The Commissioner stated that, after detailed full year followup examinations, such assessments have often resulted in substantial reductions and refunds. He further stated that this left IRS open to charges of improper behavior. Therefore, action was taken to insure that restraint and careful judgment were exercised and to avoid excessive and unreasonable jeopardy and termination assessments.

Our review of termination assessments used against suspected narcotic traffickers supports the Commissioner's findings in that only a small portion of the original assessments was upheld by later IRS review. Sixty-four of the 68 termination assessment cases covered by our review involved alleged

narcotics traffickers. Forty of these had been finalized as of March 1976. The original assessments in these cases totaled $1,254,233. The final assessment totaled $220,677.

Section 6861 jeopardy assessments were also used against suspected narcotics traffickers but with much greater success. Twenty-one section 6861 jeopardy cases were examined of which 12 involved suspected narcotics traffickers. Of these, nine were finalized as of March 1976. The original assessments for these cases totaled $353,210 and the final assessments totaled $342,105.

At the time of our review, termination cases were not afforded the same opportunities for judicial review as Section 6861 jeopardy assessments (See chapter 5). This may be the reason why the latter were better supported.

CHAPTER 3

USE OF SECTION 6861

JEOPARDY ASSESSMENTS

Under normal assessment procedures, there is considerable delay from IRS' first proposal of a tax adjustment through judicial review in the Tax Court before formal collection action is begun. Under a section 6861 jeopardy assessment, however, IRS may determine that a deficiency exists and immediately assess the tax, send a notice and demand for payment, and levy upon all the taxpayer's property whenever there is reason to believe that the assessment or collection of the deficiency would be jeopardized by delay. The 10-day waiting period normally required between demand for payment and seizure of a taxpayer's property does not apply to jeopardy assessments. If the jeopardy assessment is made before the statutory notice of deficiency is sent to the taxpayer, IRS is required to send the notice within 60 days after the jeopardy assessment is made.

The judicial remedies available to a taxpayer who has been subject to a section 6861 jeopardy assessment are identical to the remedies available for a normal assessment. Upon receiving a notice of deficiency, the taxpayer may (1) file a petition for redetermination in the Tax Court or (2) pay the full amount of the deficiency, file a claim for refund with IRS, wait 6 months (unless IRS denies the claim sooner), and then file a refund action in a Federal district court or the Court of Claims.

The taxpayer who has been subjected to jeopardy assessment under section 6861, however, does not have all the protection afforded the ordinary taxpayer during judicial review. In the normally assessed tax case, IRS is prohibited from taking collection action against a taxpayer's property or assets before the time allowed for filing a petition for redetermination and while litigation is pending in the Tax Court. In the case of section 6861 jeopardy assessments, however, IRS is authorized upon assessing the deficiency and demanding payment to take immediate collection action, including seizure of the taxpayer's property. Although IRS is precluded from selling any property seized before or during Tax Court litigation, the jeopardy taxpayer--unlike the ordinary taxpayer--loses the use and benefit of whatever property and assets are seized by IRS while his case is pending in the Tax Court.

The 21 section 6861 jeopardy assessments made by the IRS Los Angeles and Phoenix districts from January 1973 through June 1975 consisted of the following cases:

--12 suspected narcotics traffickers,

--3 parties (2 individuals and 1 corporation) involved in distribution of estate assets without estate taxes being paid,

--1 alleged embezzler who had a history as a con man,

--2 aliens who were under investigation for questionable practices in preparing tax returns and who could not be located by IRS, and

--3 salesmen with suspected involvement in fraudulent activities, including 1 who had fled to Canada and against whom extradition proceedings had begun, 1 who had attempted to flee the United States, and 1 whose assessment had been abated but who was being audited by IRS.

The 12 suspected narcotics traffickers cases are discussed in chapter 2. For the remaining nine cases listed above we are satisfied that the use of jeopardy assessments was reasonable.

CHAPTER 4

USE OF SECTION 6862 JEOPARDY ASSESSMENTS

As in the case of a section 6861 jeopardy assessment, IRS is authorized under section 6862 to determine that a tax is due and to immediately assess and levy upon all the taxpayer's property whenever it believes that the assessment or collection of the deficiency would be jeopardized by delay. A section 6862 jeopardy assessment, however, differs from a section 6861 jeopardy assessment in that section 6862 applies to taxes other than those covered by section 6861 and in that the taxpayer does not have a right to timely judicial review of his tax liability.

A taxpayer who has been subject to a section 6862 jeopardy assessment has no right to judicial review until after he pays the tax deficiency, files for a refund with IRS, and waits 6 months (unless IRS denies the claim sooner). The taxpayer may then file a refund action in the Federal district court or Court of Claims. In addition, property seized as a result of a section 6862 jeopardy assessment, unlike property seized pursuant to a section 6861 jeopardy assessment, can be sold before the taxpayer has had the opportunity to contest his tax liability in court.

Records for the 14 section 6862 jeopardy assessments made by the Los Angeles and Phoenix districts from January 1973 through June 1975 indicate that, in each instance, a tax deficiency existed and the individuals assessed were liable for the deficiency.

Of the 14 jeopardy assessments, 7 were for penalties which were imposed on officers of insolvent corporations. These officers were found by IRS to have been responsible for withholding taxes from employees' wages and for not paying the withheld taxes to the Government. The penalties were imposed under section 6672 of the Internal Revenue Code which provides that such persons are liable for a penalty equal to the total amount of the tax collected but not paid to the Government (normally referred to as a 100-percent penalty assessment).

Four of the jeopardy assessments were made against employers for taxes withheld from the wages of employees but not paid to the Government. The basic reason jeopardy assessments were made was because the financial solvency of the employers appeared to be endangered.

The three remaining assessments were made against taxpayers for the nonpayment of wagering taxes. These taxpayers were arrested by the local police departments for conducting bookmaking operations. IRS records indicated that they had not filed the appropriate wagering tax returns.

Jeopardy assessments appeared to be justified in 13 of the 14 cases. The file was incomplete for the remaining case. We, therefore, are unable to comment on the justification for jeopardy assessing this case.

CHAPTER 5

USE OF

TERMINATION ASSESSMENTS

If IRS finds that the collection of an income tax is in jeopardy, IRS is authorized under section 6851 to

--serve notice on the taxpayer of the termination of his taxable period,

--demand immediate payment of any tax determined due for the terminated period, and

--immediately levy upon all of the taxpayer's property if payment is not received.

Moreover, the 10-day waiting period normally required between demand for payment and seizure of property does not apply when a termination assessment is made.

At the time of our review, IRS maintained that the only judicial remedy available to a taxpayer who had been subject to a termination assessment was to pay the assessed tax, file a claim for refund with IRS, wait 6 months (unless IRS denied the claim sooner), and file a refund petition with the Federal district court or Court of Claims. Because it was IRS practice not to consider a refund claim until after the end of the taxpayer's normal tax year, there could be considerable delay before the taxpayer obtained judicial review of his case. During this period he would be deprived of the use and benefit of any property that IRS had seized.

On January 13, 1976, however, the Supreme Court decided two cases in which IRS' interpretation of section 6851 and the relationship between section 6851 and section 6861 were at issue. 1/ The question before the Court was whether IRS is required to issue a notice of deficiency--a jurisdictional prerequisite to litigation in the Tax Court--to a taxpayer whose tax year is terminated pursuant to section 6851. The Supreme Court held that such a taxpayer is entitled to receive a notice of deficiency affording him the opportunity to petition the Tax Court for review of his tax deficiency. Those taxpayers subjected to termination assessments now can obtain more expeditious judicial review of their tax liabilities.

1/Laing v. United States and United States v. Hall, 44 U.S.L.W. 4035 (U.S. Jan. 13, 1976).

The 68 termination assessments in our review consisted of:

--64 suspected narcotics traffickers,

--2 individuals suspected of taking wagers,

--1 alien who was under investigation for questionable practices in preparing tax returns and who could not be located by IRS, and

--1 individual who allegedly maintained a house for prostitution.

The 64 suspected narcotics traffickers cases are discussed in chapter 2. For the remaining 4 cases listed above we are satisfied that use of termination assessments was reasonable.

CHAPTER 6

CONCLUSIONS, RECOMMENDATION, AGENCY COMMENTS, AND PENDING LEGISLATION

CONCLUSIONS

Records of the 14 section 6862 jeopardy assessment cases indicated that in each instance the tax liability existed and the individuals assessed were liable for the tax. Nonetheless, it is disturbing that under section 6862 of the Internal Revenue Code, IRS may assess a tax and seize and sell a taxpayer's property before the taxpayer has the opportunity to contest his liability in court.

We believe that a taxpayer who is jeopardy assessed under section 6862 should have a more timely right to judicial review. The taxpayer's right to judicial review should be similar to that provided for jeopardy assessments under section 6861 and for termination assessment under section 6851. In addition, IRS should be precluded from selling taxpayer's property seized pursuant to a section 6862 jeopardy assessment until the judicial review process is completed.

RECOMMENDATION

We recommend that the Congress amend the Internal Revenue Code to provide that, if a jeopardy assessment is made under section 6862, the taxpayer shall have a more timely right to judicial review than is currently provided under the Internal Revenue Code and that seized property shall not be sold until the judicial review process is completed.

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In the draft of this report, which was submitted to IRS for review and comment on September 20, 1975, we also proposed that a taxpayer whose taxable period has been terminated under section 6851 should have a more timely right to judicial review. However, in view of the Supreme Court's recent decision, discussed on page 12, we have deleted this proposed recommendation from the report.

AGENCY COMMENTS

By letter dated December 9, 1975, the Commissioner of Internal Revenue commented on our draft report. (See app. I.) He said IRS had no objections to our proposals for judicial review of jeopardy and termination assessments. However, he

said IRS could envision some tax collection problems created by delays which would develop.

The collection problems envisioned by IRS to a large extent are now moot since, in response to the January 13, 1976, Supreme Court decision, the IRS national office issued preliminary instructions for handling section 6851 termination assessments in a manner similar to the handling of section 6861 jeopardy assessments. The preliminary instructions included procedures for issuing a statutory notice of deficiency providing the taxpayer with the right to file a petition for redetermination in the Tax Court. The notice must be issued within 60 days after the section 6851 termination assessment is made.

If legislation is enacted to provide taxpayers with a more timely right to judicial review under section 6862 and to prohibit the sale of seized property until the review process is completed, we believe that the IRS procedures now applicable to section 6851 and 6861 assessments could be extended to section 6862 assessments with a minimum of administrative difficulties.

PENDING LEGISLATION

On September 19, 1975, we provided a draft of this report to the Joint Committee on Internal Revenue Taxation to consider in developing tax reform legislation. The staff of the Joint Committee summarized the draft report--including our proposed legislative recommendations--and provided it to the House Committee on Ways and Means.

Subsequently, a broad tax reform bill (H.R. 10612, dated November 6, 1975) was introduced and passed by the House of Representatives. As of July 1, 1976, the bill was under consideration by the Senate Committee on Finance. The bill includes provisions that:

--Within 30 days after the day on which there is notice and demand for payment under section 6861(a) or 6862(a) or notice of termination of a taxable period under section 6851(a), the taxpayer may file a petition with the Tax Court.

--Within 20 days after a petition is filed, the Tax Court shall determine whether (1) reasonable cause exists for the assessment or termination of the taxable period, (2) the amount assessed or demanded was appropriate under the circumstances, and (3) reasonable cause exists for rescinding the action taken under section 6861, 6862, or 6851.

--Where a jeopardy assessment has been made under section 6861(a) or 6862(a) or a taxable period has been terminated under section 6851(a), the property seized for collection of the tax shall not be sold until after the period for filing a petition with the Tax Court has expired or, if the taxpayer files a timely petition, until the Tax Court makes its determination.

If these provisions of House bill 10612 are enacted, the Government will continue to be able to take immediate action to seize a taxpayer's property if collection of a tax is considered to be in jeopardy. Taxpayers, however, will be able to obtain prompt judicial review of jeopardy and termination assessments in the Tax Court, and the Government generally will not be authorized to sell the taxpayer's property until after the taxpayer is given an opportunity for judicial review. Thus, the rights of both the Government and the taxpayer should be protected, and the objective of our recommendation will be met.

80-321 O - 77 - 8

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

Commissioner

December 9, 1975

Mr. Victor L. Lowe
Director, General Government Division
General Accounting Office
Washington, D.C.

Dear Mr. Lowe:

We have reviewed your draft report to the Joint Committee on Internal Revenue Taxation concerning the Use of Jeopardy and Termination Assessments by the Service.

Generally, we have no objections to the proposals for judicial review of jeopardy and termination assessments; however, we can envision some tax administration (collection) problems created by the delays which would develop. As mentioned in the report, there are two cases pending before the Supreme Court relating to the judicial remedies available to taxpayers subject to termination assessments. The decision of the Court and the pending legislation in this subject should clarify the Service's authority in jeopardy and termination assessments.

GAO note: Technical changes suggested by IRS have been deleted from this letter. The suggested changes have been incorporated in the report.

Mr. Victor L. Lowe

Thanks for the opportunity to provide our comments on your report. We hope the delay in responding has not created any undue hardship. As requested, the copies of the report are enclosed.

With kind regards,

Sincerely,

Dale C Alexander

Commissioner

Enclosures

APPENDIX II

APPENDIX II

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
SECRETARY OF THE TREASURY:		
William E. Simon	Apr. 1974	Present
George P. Shultz	June 1972	Apr. 1974
COMMISSIONER OF INTERNAL REVENUE:		
Donald C. Alexander	May 1973	Present
Raymond F. Harless (acting)	May 1973	May 1973
Johnnie M. Walters	Aug. 1971	Apr. 1973
ASSISTANT COMMISSIONER (COMPLIANCE):		
Singleton B. Wolfe	Mar. 1975	Present
Harold A. McGuffin (acting)	Feb. 1975	Mar. 1975
John F. Hanlon	Jan. 1972	Jan. 1975
John F. Hanlon (acting)	Nov. 1971	Jan. 1972
ASSISTANT COMMISSIONER (ACCOUNTS, COLLECTION, AND TAXPAYER SERVICE):		
Robert H. Terry	Aug. 1973	Present
Dean J. Barron	July 1971	Aug. 1973
ASSISTANT COMMISSIONER (INSPECTION):		
Warren A. Bates	Jan. 1975	Present
Francis I. Geibel	Sept. 1972	Dec. 1974
Francis I. Geibel (acting)	May 1972	Sept. 1972

[Testimony continued from p. 40.]

Mr. ALEXANDER. Mr. Chairman, this completes my opening statement. We look forward to answering your questions about what we are doing and what we intend to do.

If questions arise as to the past, both the successes and the failures, Mr. Chairman, we look forward to answering those.

Senator BAYH. Mr. Alexander, I again want to express my appreciation for your presence. The IRS is a part, an important part, of the total effort that should be directed at solving these problems.

Let me address myself to some of the points that you have raised and then, also, to some concerns that have been expressed by others.

You endorse those sections of S. 3411 which would subject the proceeds of narcotics sales and illegal drug traffic to forfeiture. Is it your view that these proceeds should, and can, be forfeited if they are reinvested in legitimate businesses—whether it is in stock or a local laundry?

ILLEGAL PROFITS REINVESTED IN LEGAL ENTERPRISES SUBJECT TO FORFEITURE

Mr. ALEXANDER. I had understood, Mr. Chairman, although I am not in the practice of law now, that the forfeiture provision would be applicable if there were reason to believe that the proceeds were either used or intended for use in this traffic; so if proceeds were gained, if the cash in question was gained, by trafficking in an illegal substance, I suppose that the intent to invest the cash legally would not protect it from forfeiture.

Let me add one other thing.

One of the problems in the prior program in dealing with the street people was the fact that when a narcotics trafficker on the street was busted by the police and had some cash and they would tell us about it, then in certain instances there would be a quick determination of a tax equal to or larger than the amount of cash found, a determination on the basis of very hasty evidence, evidence which, unfortunately, did not always stand up in court. And the guy might actually owe a tax, and if we had time to find that out, then we could probably do something effective about it.

Now, with this new forfeiture provision remedying this hole in the statute that we have been trying to fill now for more than 2 years, the cash will be held, and maybe we can have that time. I believe we will have that time to make a proper and reasonable determination of tax liability, a determination that will stand the scrutiny required of us under section 1204 of the Tax Reform Act which filled what Congress, the House and the Senate, perceived to be a gap in the due process problem that you mentioned. And then we would not be hit in the head the way we were in the *Kabbaby* case in the fifth circuit on October 1, 1975, when the chief judge of the fifth circuit said this:

> This case presents once again a pattern we have seen too often recently: Arrest by local police, immediate notification of the IRS when drugs and a large amount of cash are found in the possession of the suspect, quick termination of the suspect's taxable years, followed by a jeopardy assessment based on a totally insupportable extrapolation of taxes due from the drug sale.

Looking back—hindsight is great—that is not what we should have been doing. That is what we cannot do because the courts have made it clear that we can't, and Congress is also making it clear that we can't. That is what we won't be doing, and that is why we need to have enactment of title III, because it will permit the agency that has the responsibility, the basic responsibility for enforcement of the drug laws to take their cash and retain that cash, and I hope the cash will be forfeited. If the cash cannot be forfeited, there will be time to meet the problems that Chief Judge Brown mentioned.

TAX THE REAPERS OF LARGE ILLICIT PROFITS

Senator BAYH. Realistically, you have emphasized the cash forfeiture quite a deal. That aspect of the problem seems rather simple. What we are after are those people who supply the peddlers, who are much easier to apprehend. We are trying to find a way to tax those people who provide the cash, the people who make the enormous profits. I think the suggested forfeiture provisions will help. But, it seems to me that if we do no more we are hitting on the tip of the iceberg.

Mr. ALEXANDER. I agree completely with that assessment, Mr. Chairman. Apparently, others do not. Apparently, others believe that this, perhaps the major portion of the whole program, was sound, effective, worked in every instance, and these court decisions never occurred. At least in some of the testimony that I've seen, there is no mention whatsoever of any of these court decisions. There is no mention whatever of section 1204 of the Tax Reform bill.

So I am delighted, Mr. Chairman, that your perception is so different from that of certain others, because you see it exactly the same way we do. Our effort, Mr. Chairman, is to enforce the tax laws against all of those who violate them, and surely not the least of the violators are this handful of kingpin narcotics traffickers, and we are doing just that, Mr. Chairman. We will do a better job of it under the agreement with DEA. They have already furnished us some 200 names of class 1 violators and information about them, and we have sent it out to the field.

But last year we had about 205 cases in active investigated status at the end of June 30, 1976. We instituted 171 new cases in that field. We had a total of 295 cases on which we had recommended prosecution. We obtained 56 indictments in fiscal year 1976 and 51 narcotics traffickers were convicted of income-tax violations. That is what we should do, instead of the type of thing, Mr. Chairman, that was recently condemned by Senator Buckley, hardly a bleeding heart, in the August 1976 Readers Digest illustrating a problem in the old program. We see it exactly the same way.

Senator BAYH. Could you tell us if your program—the Money, Intelligence and Narcotics Traffickers program—is still operating? How does it work? [1]

Mr. ALEXANDER. Mr. Chairman, I believe those best in a position to answer the question will be the two gentlemen on my right, career executives of the Internal Revenue Service who were here then and are here now and will be here in the future, Mr. Wolfe and Mr. Clancy.

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[1] See p. 106 et seq.

IRS SHOULD COOPERATE WITH OTHER AGENCIES

Mr. WOLFE. Mr. Chairman, I have served on the Task Force on Drug Abuse of the Domestic Council. I have attended every session. And we fully agree that the Internal Revenue Service should cooperate with the other agencies in its efforts, and strictly in accordance with the law. And I so reported to that council, and that was my theme, that we would cooperate, but we were going to do it legally.

We have just concluded an agreement with the DEA which provides that they will furnish to the Internal Revenue Service on a continuing basis the list of what they call all the class 1 violators. These are the big ones. These are the leaders in the drug area.

We have just received the first 200 names. Those 200 names have already been sent to the field for investigation. We are going to monitor this closely to see that we do a good job.

And so consequently, we believe that we have an effective program. We have issued instructions to our field people. We have insisted that all of our district directors and our regional commissioners visit and work closely with the DEA officials in the field so that they can give us all the information that they have.

Not only are we going to investigate tax returns of these people, those who have not filed tax returns, we are going to see that they do file them, or if there is any reason as to why there was an attempt to evade taxes by not filing, we are going to prosecute them. And we believe we have a strong program. We think in the past year, as the Commissioner has testified, we think we have had an effective program.

Senator BAYH. Mr. Wolfe perhaps there is inconsistency here, but I like what you say and I like what Mr. Alexander says. However, I find it difficult to reconcile some things that are said here with some things that have been said elsewhere. Perhaps you can help me.

I understand that you were the Treasury representative.

Mr. WOLFE. I was the Internal Revenue Service representative. Treasury also had a representative.

SUCCESSFUL TAX PROGRAM GIVEN LOW PRIORITY

Senator BAYH. All right. Can you tell me how the Domestic Council White Paper report is consistent with what Mr. Alexander stated. On page 43 of the White Paper [1] it says:

> The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement action. Recently the program has been assigned a low priority because of IRS concerns about possible abuses. A task force for safeguards against abuse can be developed, and it is strongly recommended to emphasize this program.

It seems to me you have come to the conclusion that the program worked, yet you backed away from it.

Mr. ALEXANDER. Let me try to clarify my views first.

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[1] White Paper on Drug Abuse, September 1975, A report to the President from the Domestic Council Drug Abuse Task Force. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Stock number 041-010-00027-4; price $1.55.

Senator BAYH. Please, I want to find out what we need to do. And if we have something that isn't being done properly, then I don't direct this as negative criticism, but positive criticism, to see what we can do better tomorrow.

Mr. ALEXANDER. Not all of the prior program worked, Mr. Chairman.

Senator BAYH. But here is one that seemed to by general assessment—that of the White House and others—has been working and it has been relegated to a low priority.

Mr. ALEXANDER. Mr. Chairman, let me make clear again not all of that program worked. Some things are relegated to low priority, sure. Neither the IRS nor any other Federal executive has the right and, thank God he and they don't, to decide they are going to keep on doing something when the Supreme Court says you can't do it.

Senator BAYH. The Supreme Court didn't hold that.

Mr. ALEXANDER. The Supreme Court said the prior way at getting at the street program which was part of the prior program was impermissible. Mr. Chairman, Congress is saying it's impermissible, the GAO is saying it's ineffective.

KINGPINS' ILLICIT INCOME AND PROFITS UNTAXED

Senator BAYH. I want to continue efforts aimed at these street people. But, I think we make a much greater impact on heroin traffic problem, in particular—and certainly it's more in your bailiwick to deal with the people who are not on the street and don't take the risk of being busted by the narcs—to attempt to prosecute those people who sit in their fancy plush offices, making money off those characters out on the street.

Now it seems to me there is the place the IRS needs to direct its attention. The illicit income and profit goes untaxed.

Mr. ALEXANDER. You're absolutely right, Mr. Chairman.

Senator BAYH. I'm not forgiving those on the street. I want to address them too, but more appropriately we should go after the people who provide the poison.

Mr. ALEXANDER. That's right. There are others who have responsibility with respect to the street people, have the resources to deal with them, and can better deal with them. Mr. Chairman, you're absolutely correct.

And the prior program, as has been made clear, I believe, by its architect, consisted of two aspects. One of the aspects caused real trouble. That trouble is not mentioned on page 43 in the White Paper.[1] However, the direction that you read on page 44 calls for the reinstitution of a responsible program under proper safeguards to strike that balance that you mentioned earlier, and to direct the effort at the right people. In accordance with what you stated a moment ago, the people that the IRS should be interested in have two things in common. One, they are tax evaders and two, in this program they are also narcotics traffickers. Narcotics traffickers are not immune from the tax laws. Cases are tough to make against them. They are tough to make because you have to make them by indirect means. You have to make a net worth case against one of these characters. And we need this additional help that I mentioned in helping us make these cases against

[1] Supra.

people that transport their illegal gains abroad. Now that is my answer. I interrupted Mr. Wolfe.

Senator BAYH. Let me interrupt here again. I'm sure you're the kind of person that doesn't like to mince words—I know what the Supreme Court held. I must say I don't think the Supreme Court did that program unnecessary harm. As I read it, it says that if you're going to hit somebody like this, it requires some basic opportunities for a hearing in the event that you seek to terminate a person's taxable period. That seems proper. Now that may make it a little more difficult, but here again we're basically talking about street people. We're really not talking about that other group of people—those kingpin purveyors—that we ought to be directing our attention.

What about criminal prosecution, beyond the seizure and the forfeiture effort?

HIGH-LEVEL PROGRAM WAS NOT AFFECTED BY COURT DECISION

Mr. ALEXANDER. Certainly one of the problems with the prior program was the effort at street people. Now, street people make numbers. You can add up a whole lot of numbers with street people, a lot of numbers in cases or a whole lot of numbers in forfeitures, you can make the assessments sound pretty big, and the GAO report that I submitted to you shows what happens to the assessments. The reason why I continue to emphasize this, Mr. Chairman, is that we are trying to achieve the goal that you set forth in the opening of these hearings. But there has been a lot of confusion spread, Mr. Chairman, a lot of confusion, by some who don't somehow recognize the fact that the fifth circuit has spoken numerous times, that the Supreme Court has spoken three times, and that we govern ourselves accordingly. Now, that does not affect the high-level program. It does undermine much of the old program.

Senator BAYH. Well, tell me how it undermines it. I don't want you, or I don't want to hide behind the Supreme Court when they hold that you have to have hearings, and you have to make sure you have a situation where confiscation is justifiable. We shouldn't let that serve as an excuse for not trying to find a legal way to skin the cat.

Mr. ALEXANDER. Well, I think the Chief Counsel can best describe the holdings of the *Laing* and *Hall* cases, Mr. Chairman. A basic facet of the old street program was, after notification by the police of two things—first, the arrest of a trafficker, and, second, the fact that the trafficker had some cash—was to construct a tax equal to the amount of the cash, then take the cash. The trafficker would have no right to get the cash back until at least the end of the year when he could file a claim for a refund. The Supreme Court said we can't do that. Now there is frankly no argument, I trust, with the Supreme Court's decision unless Congress wants to override it. Instead of Congress overruling it, they're going just the other way in section 1204 in preserving rights.

Senator BAYH. Let me get back to the question. You have a street program, and you also have had a program aimed at those Fancy Dans who provide the heroin to the street people; they are the people who are avoiding paying taxes.

Mr. ALEXANDER. And we kept on with that.

DEA/IRS AGREEMENT ON KINGPIN PROGRAM

Mr. WOLFE. Basically, Mr. Chairman, that's what we did here, and as a member of this we said we would have this program of the top violators, and this is exactly what happened in our meeting with DEA. We followed it through, we had the agreement with DEA, and we would be happy to submit to the committee a copy of that agreement, and this is precisely what we are going to do.

Senator BAYH. The agreement came up, when, last week? Just coincidentally, again, a day before the DEA people came up here to testify. I'm concerned not only about whether that agreement is worth while, but why it took so long to get any agreement on such an important matter. That is part of the problem.

Now, I notice figures here, they are IRS figures which document the decline of activity directed in untaxed narcotics income. If you look at the number of cases selected in 1972, there are 791; the number of cases selected in the first 6 months of 1975 is 99. So there has been a significant fall off there.

Why?

Mr. ALEXANDER. Well, Mr. Chairman, first I think I've already mentioned the numbers game, and I've already mentioned that you can make a lot of street cases pretty fast, and it takes time and effort and trouble to make a case against a major trafficker.

We can play a numbers game without delivering a sound program to the American people.

Senator BAYH. Can you please tell me then, under the old program, what percentage of your cases were directed at the nonstreet people as compared to street people, and how that percentage has changed if it has changed? I mean not only are the numbers declining from 791 to about 190 in that 3-year period, but the additional tax and penalties recommended has gone from $54 million to $8.1 million, and that would be $16 million for a whole year period.

CLAIMS GAO REPORT "ILLUSORY"

Mr. ALEXANDER. Well, that $8.1 million may be bigger than the $54 million. When you read the GAO report, you'll find that much of the dollars that have been mentioned to this committee as recommended, turned out to be completely illusory, and the GAO found that to be an inadvisable action.

Senator BAYH. Which numbers?

Mr. ALEXANDER. The $54 million.

Senator BAYH. Wasn't the $54 million IRS figures?

Mr. GLYNN. We did not submit the figures that you're reading from. I don't know what your source is, but we did not submit them. We were not asked about them, and we did not submit them.

Senator BAYH. We got them from Treasury.

Mr. GLYNN. Again, I don't know what the source of them is. We did not submit them directly or indirectly, and we were not asked for them.

Ms. ALPERN. There was a total of $54.2 million assessed in fiscal year 1972, one of the years in which this program was functional. And it may relate to that, but that is the assessed amount recommended, as the Commissioner has just indicated.

Senator BAYH. Well, what were the seizures. When you look at the figures in 1972, $54 million; in 1973, $94 million; in 1974, $75 million; and, suddenly you get to 1975 and there is a precipitious fall off there.

CLAIMS "LOT OF WATER" IN TREASURY REPORT FIGURES

Mr. GLYNN. The point is there is a lot of water in the earlier large figures because we had to give the money back. That is the point we are trying to make.

Senator BAYH. Well, what are the figures in the seizure then? Just to prod your memory, it was $8.5 million in 1972, $13.3 million in 1973, $8.4 million in 1974, and $1.4 million for the first half of 1975? Now, are those also watered figures?

Mr. ALEXANDER. Some of them are, Mr. Chairman. The aggregate turned out to be, and I thought we had this information, the aggregate through fiscal 1975 in real dollars turned out to be about $38 million.

Senator BAYH. I don't want to ask any improper questions. I see a lot of head-shaking here. These are figures we obtained from the Treasury Department.

Mr. ALEXANDER. Well, a figure can represent a recommended deficiency and another figure can represent what actually turned out to be the tax. And may I suggest that these figures are different, quite different. Recommended deficiencies were far different in this program from actual that is shown in the GAO report that I have given you and I appreciated it in view of the fact that there seems to be some question of fact here. If you could look at it.

MARKED DECLINE IN RESULTS—REGARDLESS OF STATISTICS USED

Senator BAYH. Well, the statistics bear out what you said that the initial recommendations are substantially higher than the actual collections and seizures that are held up. Whichever figure you use, you see a marked decline in results between 1971, 1973, 1974 and then zoom down in 1975. And that concerns me.

Mr. ALEXANDER. We went out of the street business, Mr. Chairman.

Senator BAYH. Well, that's why I asked the percentage.

Ms. ALPERN. Actually, Mr. Chairman, if I might inject myself into this, 1973 was the year, according to our records, where we had total recommended assessments of $94.4 million. Now, that is the largest figure that I have. Nevertheless, in 1973 when by everybody's account we had a very active program, the revenues actually collected were $10.9 million, which was less than the revenues collected in 1974, when the total figure assessed was some almost $30 million less than in 1973. Now, what happens between the time there is a recommended assessment until it goes through the system to final collection is that the

original assessment shrinks and can shrink dramatically. Other than our experience for fiscal year 1972 through fiscal year 1975 cumulatively, assessments and collections cannot be related. But, for that period of time, we had total recommended assessments of $240 million and actual collections of $38.3 million.

Senator BAYH. What about 1975?

Ms. ALPERN. In 1975 we had total assessments of $28.3 million and collections of $3.8 million.

Senator BAYH. Which is a significant falloff?

Ms. ALPERN. Yes; but the assessments were less also.

Senator BAYH. All right. Whatever yardstick you want to use in this area, whichever yardstick, the results in 1975 were less than they were previous.

Mr. ALEXANDER. That's right.

Senator BAYH. You say you are out of the street business. Okay, give me some figures that document this alleged change. I understand that Congressman Vanik has been trying to obtain recent figures and statistics from you but he's not had very much success in getting them. He can speak for himself when he appears later this afternoon.

What are the figures? What are the percentages? I asked the question a moment ago. Can you provide me with the percentage of cases that involved street peddlers versus more professional traffickers in that period of 1972, 1973, 1974, compared to 1975?

Mr. WOLFE. We were just discussing it. I think what we would like to do, Mr. Chairman, is to submit that for the record. I don't have that broken down between whatever we call a street and whatever we call a class I violator. We would like to have an opportunity to submit that for the record.

[Subsequent to the hearing the following information was received:]

[EXHIBIT No. 4]

Question. Senator Bayh: "Can you give me the percentage of cases that involves street peddlers and more professional kinds in that period of '72, '73, '74 compared to '75?"

Answer. Although we are unable to determine from our reporting systems whether individuals included in the former Narcotics Traffickers Program were classified as street peddlers, upper-echelon traffickers, or the classification referred to in our recent agreement with DEA as Class I violators, an analysis of termination assessments initiated as a result of the NTP program does give some insight into this question. Out of a total of 3,999 termination assessments processed, only 69 related to "targeted" NTP cases. In selecting targeted cases, the National Office NTP Case Selection Committee attempted to pick upper-echelon narcotic traffickers. The balance were nontarget cases, initiated primarily as a result of street arrest activities by local police which were brought to the attention of the appropriate Intelligence District. Recommended assessments relating to the 69 target cases amounted to $23.7 million, for an average assessment of $343,000 per case. Recommended assessments relating to the 3,930 nontarget cases amounted to $144.2 million, for an average of $37,000 per case. This supports the conclusion that the target cases were upper-echelon traffickers, while the spontaneous assessments of so called "street program" were principally directed at the small operator at the bottom of the distribution pyramid.

Details of these assessments for fiscal years 1972–75 are given in the attached table.

Attachment.

SUMMARY OF RECOMMENDED TAX ASSESSMENTS[1] FOR NARCOTICS TRAFFICKERS PROJECT BY FISCAL YEAR[2]

[Dollar amounts in millions]

	Fiscal 1972		Fiscal 1973		Fiscal 1974		Fiscal 1975	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Target cases examined by audit division[3]	73	$23.2	455	$26.6	570	[4] $26.3	554	$17.7
Related cases	4	----------	60	1.7	56	2.5	52	2.5
Total	77	23.2	515	28.3	626	28.8	606	20.2
Jeopardy assessments (included above)	35	18.8	53	6.3	22	9.0	4	1.1
Spontaneous assessments:								
Selected NTP target cases:								
Terminations	36	7.7	24	15.0	7	.9	2	.1
Nonselected NTP (nontarget) cases:								
Terminations	542	22.5	1,780	46.9	1,362	38.5	246	6.3
Jeopardy	34	.8	100	4.2	35	1.3	18	1.7
Total spontaneous assessments	612	31.0	1,904	66.1	1,404	40.7	266	8.1
Total assessments	689	54.2	2,419	94.4	2,030	69.5	872	28.3
Revenues actually collected[5]		7.1		10.9		16.5		3.8

Note: Details may not add to totals because of rounding.

[1] Includes additional taxes and penalties.
[2] Covers cases with over $2,500 in recommended assessments.
[3] Examinations completed through district audit review staff (not necessarily closed by the audit division).
[4] Amount previously reported ($32.4) adjusted to eliminate duplicate assessments.
[5] Amounts actually collected include the amounts of money actually received by the Service as a result of levy or seizure action.

MERGED INTO REGULAR SPECIAL ENFORCEMENT PROGRAM

Mr. CLANCY. I would like to clarify one thing. The street people we were referring to were not subject to this. The interesting thing about this, and the thing I'm interested in, is the prosecutions of the middle or upper echelon trafficker in the last program that we had, not the street people who were, if you will, taking the cash from then. And so we can, I think, show you the number of terminations of taxable years and jeopardies that were not subject also to criminal investigation and prosecution. Now, in the Intelligence Division we are charged with the responsibility to make the criminal investigations. Perhaps to explain what did happen in fiscal 1975, at the close of fiscal 1975 we did in fact merge the program, the former program, into our regular special enforcement program.

I think some testimony before this committee would indicate that we abandoned the program, we abandoned working traffickers, narcotic traffickers, and that simply is not correct. Perhaps the level of the cases that we were investigating during fiscal 1976 after it was merged into our regular special enforcement program was less than when it was at its height back in fiscal 1973, but during this current fiscal year which just concluded on June 30 we have in the pipeline, if you will, these are cases that the Intelligence Division has recommended prosecution on on people that have received illegal income from the narcotics business. We have 295 of those cases pending for some action.

Senator BAYH. 295 cases?

Mr. CLANCY. 295 cases pending.

Senator BAYH. How does that compare with previous years?

Mr. CLANCY. That I can't tell you offhand, but we can give you that.

Mr. WOLFE. Fiscal 1974 we had 245 pending, fiscal 1973 we had 217, and at the end of fiscal 1972 we had 54.

Mr. CLANCY. The point I'm trying to make is we have not abandoned the investigation of people who have received illegal income from narcotics.

Senator BAYH. Has the quality of cases changed? You don't see a significant increase in cases over the past 3 years, at least by numbers?

Mr. CLANCY. We would hope that the quality has improved.

Senator BAYH. I don't mean the quality of the work. I mean the nature of the seriousness of the violations involved.

Mr. CLANCY. The type of individuals we are investigating, the Commissioner referred to a case that was recently in the Washington Post newspaper, last week I believe, where the individual was indicted on charge of filing a false return. If you recall reading that article, it implied that substantial funds to the tunes of hundreds of thousands of dollars had been secreted in foreign bank accounts. I would say this is the type of person we are very much interested in investigating.

Senator BAYH. I have that article here. We will put it in the record.

[EXHIBIT No. 5]

[From the Washington Post, July 31, 1976]

ALLEGED DRUG DEALER HELD IN TAX CASE

(By B. D. Colen)

A former employee of the government of Thailand, alleged to be a large-scale heroin dealer in the Washington area, was arrested Thursday at his Silver Spring home and charged with filing a false 1975 income tax return.

Assistant U.S. Attorney Andrew Radding said in U.S. District Court in Baltimore yesterday that Suwan Ratana and his wife, Rebecca, who also is charged with one count of filing a false return, claimed a 1975 income of $14,000 when they "made deposits in their bank account of $669,000."

Radding told U.S. Magistrate Paul M. Rosenberg that the Internal Revenue Service had estimated that the couple owes $778,000 in taxes on their income for the first five months of this year. The couple would have needed an income of more than $1.5 million to owe that much in taxes.

"What I said at the hearing was that this has been a joint investigation between the IRS and the Drug Enforcement Administration," said Radding, "and that Ratana is a large-scale heroin dealer in the Washington area.

"He's involved with the smuggling of drugs from Thailand to the U.S. and the distribution of drugs in the District, Montgomery and Prince George's counties," Radding continued.

"We also said that in 1976 he transferred $1 million in cash from here to Swiss banks and $100,000 to a bank in Thailand," Radding added.

Radding told the court that Ratana claims to have been unemployed since 1972. He has been in this country since 1959, the prosecutor said.

Two Thai officials, who refused to give their names, said Ratana used to work for the Thai government student department, which aids Thai students in this country.

Radding said Mrs. Ratana was released without bond but her husband was held in lieu of $200,000 bond.

"We felt he was an extremely high risk for flight because he had drug connections and connections in Thailand. I'm told by the IRS agents this is the highest ever set in a tax case of this sort," Radding said.

Mrs. Ratana refused to comment on the case when reached by telephone at the family's home at 10502 Calumet Dr., Silver Spring.

Senator BAYH. What about the foreign tax aspect you mention in your prepared statement? Do you have any estimates relative to the total amount of illegal drug moneys that escape tax this way, and could you give us specifically what countries are utilized to illustrate the practice?

ILLEGAL MONEYS ESCAPING TAX THROUGH FOREIGN COUNTRIES

Mr. ALEXANDER. Well, they are tax havens, and I hesitate to mention the countries. We have had, however, a problem specifically with Switzerland in a case called "X" that I mentioned in some prior testimony before Chairman Rosenthal. On that occasion I specifically requested for some additional help here in the law. I don't have a dollar figure for you. I wish I did.

Mr. WOLFE. We have no way in the world of estimating.

Mr. ALEXANDER. We know it's very large. We don't know how big. Now, we will get a little help in coping with another side of this problem in this same tax reform bill, at long last. There is a provision which would tax the income of a foreign trust to the grantor of that trust even though somebody else was the U.S. beneficiary, as long as there is a present U.S. beneficiary. We really need this law because that has been a source of tax evasion. We need the help that the bill that I previously mentioned provides in title IV to help our sister agency, Customs, get some information that they need, and we will both benefit from getting it. I don't have a good figure for you. I don't like to just make wild guesses, Mr. Chairman, about figures.

This is a massive problem. We are doing our best to cope with it. Our resources have been reduced, and with these reduced resources we are going to try to deliver an effective and comprehensive program.

Senator BAYH. In your view, as a tax expert, is there anything that we can do in strengthening our laws to reach that foreign tax avoidance?

Mr. ALEXANDER. First, I will try to respond, and then I'll call on some other tax experts, Mr. Whitaker and Mr. Glynn, to respond. I'm sure there are efforts. We mentioned a couple of them in our opening statement. I mentioned another one a minute ago, the provision that would tax the income of a foreign trust to the U.S. grantor. We need to have this, and this is a matter not only of the law but a matter of law administration. We need to have better working relationships, cooperative assistance treaties, with more countries—the Bahamas, other countries in the Western Hemisphere, countries outside the Western Hemisphere. We need to have the right to call upon U.S. entities to produce in the United States for our review the books and records of foreign entities with respect to which the U.S. entities have tax relationships. Sections 905 and 964 of the Internal Revenue Code do give us some rights, but they are insufficient.

Now, Mr. Whitaker and Mr. Glynn.

Mr. GLYNN. We include in the opening statement a reference to the problems that we have in the rules of evidence because of our inability sometimes to get a certified copy of financial records from a foreign tax agency, and where that foreign country is willing to provide us with uncertified information. In an earlier draft of our opening statement we included a suggestion that perhaps the subcommittee

might help us out in that area but we were advised by OMB that it is under the jurisdiction of another subcommittee. But that is one area in which we need some help, and that is considering a change in the rules of evidence to provide that there will be a rebuttable presumption that the financial information provided to us in an official transmittal from the foreign government, pursuant to the treaty, would be admissible as evidence in the U.S. court proceeding.

NARCOTIC TRAFFICKERS TAX PROGRAM NOT SUCCESSFUL?

Senator BAYH. Well, here again, I don't want to be unnecessarily critical because I don't have the responsibility of running the IRS.

What concerns me is that we talk—all of us here, Mr. Alexander, you and I—about the need for special emphasis. And while I must say—and I don't want anyone to be hung on what he said back in 1974—that in preparing for this hearing I was trying to identify and understand the reasons that the NTTP has not been successful. Are we really putting special emphasis on it? In this process I ran across the statement you made to the tax section of the ABA[1] in which you stressed that the overall emphasis of IRS enforcement activities had been shifted away from special enforcement programs such as narcotics traffic, and was directed toward the taxpaying public in general. There are other instances[2] where you have, I think it is fair to say, been less than enthusiastic about using IRS as an enforcement tool against narcotics traffickers tax evaders because you said—and I understand this—that IRS is supposed to be a revenue-producing bureau. It seems to me there's a difference between how you get a return on the investment, how efficient it is if you try to determine success or failure based on the number of dollars you get per man or woman or whether you look at it in a more specific perspective of how many of these characters, who pay no tax on enormous incomes, you put out of circulation.

Mr. ALEXANDER. Mr. Chairman, you put it squarely in the right perspective when you put the emphasis on prosecutions. That is what the intelligence division is all about. The intelligence division is all about prosecution of tax evaders, however they make a living.

Now, the figures that Mr. Wolfe and Mr. Clancy have added, show that this program now should be more successful than it was in the past because putting it squarely the way that you just did in the right perspective on the prosecutions, we have more sound cases working now than we had in previous days. The problem with this entire program and my discontent with it—and I was discontented with it, and, Mr. Chairman, I'm still discontented with it—is the thing we have been beating to death this morning: this misdirection toward the street. This program should be directed just as you stated, Mr. Chairman, at the class 1 violators. That is exactly what we're doing. That is exactly what we are going to do with greater emphasis, with greater efficiency, through working with DEA.

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[1] See Appendix, Part 2—Remarks by Donald C. Alexander, Commissioner of Internal Revenue, prepared for delivery before the annual convention of the Tax Section of the American Bar Association, Honolulu, Hawaii, August 14, 1974.

[2] See Appendix, Part 2—"IRS Enforcement Policies", memo of Mar. 3, 1975, from David R. Macdonald, Assistant Secretary for Enforcement, Operations and Tariff Affairs, to Deputy Secretary Gardner, U.S. Department of the Treasury.

See also—Remarks by Donald C. Alexander, Commissioner of Internal Revenue, prepared for delivery before the Executive Committee of the Tax Section, New York State Bar Association, New York, N.Y., June 10, 1975.

And there's one other thing, Mr. Chairman, just a brief point: The prior program employed something called a National Office Selection Committee. We don't think that is necessary or advisable. The prior program was part IRS, part out of IRS.

Mr. Chairman, when I came into office, May 1973, something called Watergate was around and there was deep concern about the use of IRS for nontax purposes, political and otherwise. I shared that concern then and I share it now, Mr. Chairman.

ALEXANDER USES WATERGATE AS CRUTCH

Senator BAYH. Mr. Alexander, I don't know of a single word that has ever been written, and I have never had a thought, to suggest that Watergate is the reason to be tender on those nonrevenue characters that ought to be thrown in jail and kept there as tax evaders. That is an awfully weak crutch, isn't it?

Mr. ALEXANDER. That is precisely what I'm not suggesting.

Senator BAYH. I thought you were fairly close to that. If not, forgive me if I put words in your mouth.

CLAIMS CONGRESS AND COURTS CURTAILING POWER

Mr. ALEXANDER. Well, that is precisely what I'm not suggesting, Mr. Chairman. I'm simply suggesting in this way that the Internal Revenue Service has this awesome responsibility to administer and enforce the tax laws. It is given great authority, great powers, which are now being curtailed by Congress and by the courts, to try to fulfill that responsibility. It is accountable to you and to the American public, and I am just suggesting that another problem with the prior program, and I think we are correct, is who is in charge here, who is trying to make this work? The Internal Revenue Service is going to try to make it work.

Senator BAYH. Did I hear you say that Congress and the courts have curtailed your powers?

Mr. ALEXANDER. Yes, sir, you heard me say that.

Senator BAYH. Well, can you tell me how Congress has curtailed your powers?

Mr. ALEXANDER. Yes, sir. Under the provision I previously referred to, among others.

Senator BAYH. Well, how does that really curtail your powers? It may require you to use a little different procedure, but does it curtail your powers?

Mr. ALEXANDER. Sure it does. It curtails what they were doing in the street program. Of course, it does.

Senator BAYH. You told me you were getting out of the street business, and were now trying to get at those cases that were the most productive.

Mr. ALEXANDER. I'm telling you the Congress is curtailing our powers and that gives us greater incentive to get out of those street programs; sure, that's exactly what I'm telling you the fact is, and that's exactly what anybody reading title XII of the tax reform bill that passed the House would understand. I'd be glad to submit title XII for the record to show how it curtails our powers.

Mr. GLYNN. Section 1204 of H.R. 10612 which has passed the House, and was favorably reported by the Finance Committee and was agreed

to on the Senate floor in its consideration of the bill on a title-by-title basis, gives someone who is the subject of a jeopardy or termination assessment a quick route to court for a hearing on whether we had reasonable cause in making the jeopardy determination assessment in the first place, and for a hearing on the issue whether the amount of it is fairly reasonable. The effect of getting into court quickly is we have to step up to bat quickly with our proof, and in those cases involving the street person where our contact is merely a telephone call from the police that they have arrested someone in the possession of a large amount of cash, we do not have the time to develop that proof that there is a tax liability, that collection is in doubt, and a reasonable amount of tax liability. We will not have time to develop that proof before the time limits of the court hearing set forth in that bill. That is the reference that the Commissioner is making, one of the references to the termination of power by the Congress.

And I suppose another reference is, we had a huge whack taken out of our compliance budget last year in the Congress.

[Subsequent to the hearing the following information was received:]

(Exhibit No. 6)

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

Commissioner

October 15, 1976

Mr. John M. Rector
Staff Director and
Chief Counsel
Subcommittee to Investigate
Juvenile Delinquency
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Rector:

At the hearing on the Internal Revenue Service's effort in the overall Federal Anti-Narcotics effort, there was some discussion of the adverse impact on our ability to deal with this type of tax evasion that will flow from Section 1205 of the Tax Reform Act of 1976 (relating to administrative summons procedures). We also discussed section 1204 of that Act (relating to jeopardy and termination assessments). Enclosed for your information are some briefing papers on these two issues. It may be that some further attention will be paid to the administrative summons provision early in the next session and, if that is the case, I would hope that Senator Bayh and other members of the Subcommittee would consider favorably the Internal Revenue Service's arguments and, if they do so, that they would take an active part in getting us the relief that we need from the restrictions in Section 1205.

Please call me, if you have any questions about this.

With kind regards,

Sincerely,

Thomas V. Glynn
Assistant to the Commissioner

Enclosures

Drug Traffickers Program--Impact of the
Administrative Summons Provisions of
H.R. 10612 (Section 1205)

H.R. 10612 contains a provision imposing substantial limitations on the ability of the Internal Revenue Service to use an administrative summons to obtain information concerning the tax liability of any person. This provision (section 1205 of the bill) has the support of both houses of Congress. In general, this provision will apply whenever IRS serves a summons upon a bank or other financial institution, a broker, a consumer credit reporting agency, a person engaged in the business of giving credit via credit cards or other devices, an attorney, or an accountant, to obtain records pertaining to the business transactions or affairs of a third person (usually the taxpayer in respect of whose tax liability the summons was issued).

Within three days after service of such a summons, IRS will be required to send a notice to such third person (with a copy of the summons attached), notifying him that the summons has been served and instructing him that he has 14 days to object to the summoned party complying with the summons. During that 14-day period, IRS may not examine the summoned records. If the third party objects, he may stay compliance with the summons by sending a notice of stay to the summoned party and to IRS. If the Internal Revenue Service then wishes to enforce the summons, it will have to commence an action in court, in which action the third party may intervene and raise any objections he has to enforcement of the summons.

The procedure does not apply to a "John Doe" summons, but section 1205 does provide that a "John Doe" summons may not be issued except with the permission of a court upon a showing that there are reasonable grounds to believe that some person or group of persons is not in compliance with the internal revenue laws and the identity of such person or persons is not readily available from other sources.

There are several exceptions to all of the above. For example, none of it applies to a summons which merely seeks to ascertain whether the summoned pa. has certain records with respect to the taxpayer (as opposed to examining what is in those records). Also, the provisions do not apply if the summons merely seeks to identify the person maintaining a numbered account with the bank or financial institution. Finally, if the Service has reasonable cause to believe that the giving of the required notice will lead to destruction of records, collusion with or intimidation of witnesses, or flight, it can apply to a court for an order dispensing with the need to give the taxpayer notice of the summons.

Section 1205 will undoubtedly cause delay in obtaining information relevant to a tax investigation from those third parties described above. For one thing, although section 1205 does not preclude a bank, for example, from voluntarily disclosing information to IRS, the mere presence of section 1205 will no doubt prompt many banks to request the service of the summons in situations in which they had not required a summons heretofore. Second,

in those cases in which the taxpayer under investigation will be prone to seize upon any opportunity for a delay, he will no doubt take advantage of section 1205 to stay compliance by the summoned party with the summons, put the Internal Revenue Service to the necessity of commencing a summons enforcement action, and then intervene in that action to raise whatever defenses or objections he feels the court will listen to. He may also appeal a decision in that summons enforcement action which is adverse to him. Unless the District Court, and the Court of Appeals, refuses to grant a stay pending that appeal, IRS will not have access to the third party's records until final disposition of that appeal.

It is too early to tell how narrowly, or broadly, courts will interpret that provision which permits a court to relieve IRS of the necessity of giving notice upon a showing of reasonable cause to believe that the notice will lead to material interference with the investigation. A delay in obtaining information under the first summons will, of course, delay the discovery of leads to the second source of information, and since an investigation may require checking records of a number of different third parties affected by this legislation, years may be consumed before substantial progress is made via this route. It should be noted, however, that section 1205 does provide for a tolling of the statute of limitations on criminal and civil tax liability whenever the taxpayer takes action under the section to stay compliance with the summons.

It is difficult to judge the impact of section 1205 on Service investigations concerning the tax liability of drug traffickers. The potential for delay, extended investigations, (and in the meantime the disappearance of witnesses, leads, and other records) is obvious to the extent the investigations depend upon information or leads to be obtained from the classes of third parties described above, i.e., financial institutions, brokers, etc. The extent to which this potential will become a reality will, of course, depend upon the extent to which the subject of the tax investigation responds to the notices of summons and comes into court, via lawyer, to oppose the summons. Even if he does not, the requirement of a notice each time a summons is served will provide the taxpayer with leads as to the third party sources from which we are trying to obtain information, and thus will enable him to some extent to follow the investigation.

ADMINISTRATIVE SUMMONS

Summary of Provision

When the Service issues a third-party summons to obtain records or testimony pertaining to a taxpayer, the taxpayer must be notified within 3 days and has 14 days from the date of the notice to apprise the person summoned not to comply. The Service cannot examine the records until 14 days have elapsed. If the taxpayer stays compliance with the summons, the Service may seek enforcement in a Federal Court. The taxpayer has the right to intervene. During the period of court action, the civil and criminal statutes of limitation are suspended. Where a summons is issued solely to determine whether records exist or serve as an aid in the collection of an assessed tax liability, the taxpayer notice, and rights to intervene and stay compliance, would not apply. Also, if the court determines that there is reasonable cause to believe the giving of notice may result in a material interference in an investigation, the taxpayer notice and rights to intervene and stay compliance do not apply.

Before the Service can issue a John Doe summons, where the taxpayer is not identified, the Service must first establish reasonable cause for requesting such summons in a court proceeding.

There is also a provision for payment of third-party witness fees and costs incurred to produce summoned information.

These provisions will also apply to the investigative activities performed by the Internal Security Division.

These provisions will apply to summonses issued after December 31, 1976; however, an amendment to H. R. 1142, a minor bill now in the Senate, would extend the effective date to February 28, 1977.

Impact on the Service

These provisions require that administrative procedures be established to provide for:

(1) internal clearance and approval prior to issuing summons;

(2) taxpayer notification within 3 days after the summons is issued;

(3) control of notices from taxpayers exercising their right to stay compliance with the summons;

(4) suspending the statutes of limitation where court action is sought to enforce a summons, and

(5) payment of witness fees and costs in accordance with regulations to be issued.

We can expect --

(1) delays in completing examinations and investigations;

(2) additional staff-time to assure that notices are accompanied by a copy of the summons and directions to the taxpayer on how to stay compliance with the summons; that information has been properly prepared for court action to enforce a summons, to request a John Doe summons, or to by-pass the notice requirements; that notices from taxpayers exercising their right to stay compliance are associated with the appropriate file or that the examiner has been notified of the stay; and that any suspension of the statute of limitation has been coordinated with service centers; and

(3) significant costs for payments of witness fees and costs to produce summoned records, etc.

JEOPARDY AND TERMINATION ASSESSMENTS

Summary of Provision

New provisions relating to jeopardy and termination assessments provide for expedited administrative and judicial review. Under the new procedure, within five days after the date on which a jeopardy or termination assessment is made, the Service is required to give the taxpayer a written statement of the information upon which the Service relies in making the assessment. Upon request of the taxpayer and within 30 days after the statement is furnished, the Service is required to conduct an administrative review in order to determine whether the making of the jeopardy and termination assessment is reasonable under the circumstances and whether the amount assessed is appropriate under the circumstances. If not satisfied with the decision of the Service, the taxpayer may within 30 days after the Service makes a determination on his request (or, if earlier, within 30 days after the 16th day after the request for administrative review was made) bring an action in the U. S. District Court in which he resides. Within 20 days, the Court must make a decision on whether the jeopardy or termination assessment is reasonable and whether the amount is appropriate (but not the ultimate tax liability which may still be determined in a separate proceeding). The 20-day period may be extended by not more than 40 additional days at the request of the taxpayer (but not the Treasury Department or the court). There is no appeal of District Court findings. The Service bears the burden of proof in showing that the jeopardy or termination assessment is reasonable. On issues involving whether the amount assessed is reasonable, the burden of proof is on the taxpayer. Property seized pursuant to a jeopardy or termination assessment may not be sold prior to the applicable final determination and without the taxpayer's consent, unless that property is perishable or requires costly maintenance.

The amendment overrules one holding in Laing v. United States, et al., 423 U.S. 161 (1976), by specifically not requiring the Service to give a terminated taxpayer a notice of deficiency within 60 days of a termination assessment. Rather, the amendment provides that within 60 days after the later of the due date of the taxpayer's return for the full taxable year or the date on which the return is actually filed, if a deficiency exists, the Service must send the taxpayer a statutory notice. This notice of deficiency may be for an amount more or less than the amount assessed under the termination proceedings. Upon receipt of this notice, a taxpayer, who has been subjected to a termination assessment, is allowed to contest his tax liability in the Tax Court.

These provisons apply to jeopardy and termination assessments where the notice and demand takes place after December 31, 1976; however, an amendment to H. R. 1142, a minor bill now in the Senate, would extend the effective date to February 28, 1977.

Impact on the Service

To implement the new provisions on jeopardy and termination assessments, the Service will have to develop administrative procedures for:

1. providing the taxpayer with a statement of the information used to justify the assessment;

2. making administrative reviews of the assessments;

3. providing a written statement which proves the need for this special assessment that can be used in U. S. District Court proceedings;

4. providing procedures for keeping Collection Division apprised of the current status of cases, so that the sales date of seized assets can be determined; and

5. determining at the end of a tax year whether a deficiency exists, and thus, whether the Service must send a termination assessed taxpayer a notice of deficiency.

Mr. WHITAKER. There's a further aspect.

Senator BAYH. Compliance where?

Mr. GLYNN. Compliance has under their jurisdiction, and under Mr. Wolfe and Mr. Clancy, the division in which we do criminal investigations.

Senator BAYH. That provision you are talking about is in the pending tax bill.

Mr. GLYNN. That is correct.

Senator BAYH. It has not had a very significant impact on the business as of now, has it? [Laughter.]

Mr. ALEXANDER. No.

The problem we were talking about, I mentioned that the courts had curtailed our powers and that Congress was acting to curtail our powers. That was the point. That was the point I made in connection with section 1204.

Now, I guess Mr. Whitaker has an added point.

CURTAILMENT OF ADMINISTRATIVE SUMMONS AUTHORITY

Mr. WHITAKER. Mr. Chairman, you inquired a moment ago what could be done, what Congress could do, or maybe what Congress should not do, to help the significant high-level narcotics program that we are embarked on.

One of the aspects of the present tax bill which will tend to interfere to some extent with our program is the limitations on our use of the summons.

Senator BAYH. Which?

Mr. WHITAKER. The administrative summons to obtain evidence.

The big difficulty in this kind of a program on which you and the President have asked us to focus is that we have a very difficult job building a case, as the Commissioner pointed out. The tax case has to be largely built on indirect evidence. It is a net-worth type of case. We have to use every mechanism we possibly can to obtain evidence that will sustain either criminal prosecution or civil assessment in court.

This is very different from the type of a street program which was highly visible and was pursued in the past and was pursued successfully, although with a misuse of the tax laws.

The program that we are embarked on and are continuing to embark upon is a very, very difficult type of case to make. It is difficult for the special agents to develop the evidence; it is difficult for the lawyers to put the evidence together to get an indictment or to make a civil case, either one, because we are dealing with—as I said, with indirect evidence and in most cases with this type of person we're dealing with funds that travel back and forth between this country and foreign countries.

To get at these people we have got to have every investigatory tool we possibly can have. That is why these little bits and pieces that we have mentioned in the testimony today so far are very helpful to us. A matter of being able to introduce evidence in a civil case in court that is certified to us by a foreign official that we get through our tax treaties is something which will help us. It is not going to break the program for us, but it is something we need and will help us. Any curtailment of our administrative summons authority will, to some extent, make our job more difficult.

Senator BAYH. As far as criminal prosecutions are concerned?

Mr. WOLFE. Yes, sir.

For example, this case that was made last weekend, in order to get some of the evidence that we needed, we had to go to the banks. Under this current bill we would be required to notify the taxpayer that we had served, or were going to serve a summons on that bank to produce information on that taxpayer. That could alert that taxpayer and could then make whatever records or whatever evidence was available which related to those records and was in the procession of the taxpayer—he could dispose of it very quickly.

Mr. ALEXANDER. And the taxpayer would be given standing to come to court and block our summons. And suppose there was no grounds, no reasonable grounds, to support the taxpayer. There frequently won't be in these cases. Still, the taxpayer comes to court, ties up the case indefinitely, and, as you know, the staler and older a case gets, the more difficult it becomes.

INVESTIGATIONS MAY BE FOR CIVIL OR CRIMINAL CASES

Mr. WHITAKER. In the beginning of these cases, Mr. Chairman, there is really no basic difference between whether our focus is civil or criminal, because it is an investigatory focus, that is, trying to get at the accumulation of money that an individual has and compare it to what the individual has reported for tax purposes. So the initial focus is really—it is both civil and criminal. And we frequently need to use administrative summons to get at financial records, because that is what we are after, appropriate records, bank records. We know what the taxpayer has reported, but to find out what he actually has, we have got to analyze every transaction that the taxpayer has been through.

And, again, it is time consuming. It is a matter of 1 year or 2 years sometimes or more to make a case.

But this is what we need to do and this is what we are trying to do.

Mr. WOLFE. Mr. Chairman, one thing else, I think, needs to be said. I think it is possibly unfair and improper to judge the success of any program on dollars that may be recommended. I think the success of a program, from our point of view is, if these people have violated the tax law, they should be in jail. And that is the big emphasis that I think we should go after, is getting those people who violated the law and see that they pay their proper due to society.

And there are cases of violation of the tax law. And I think our effort on the class 1 violators is this. Now, that doesn't mean that if a class 2 or class 3 violator hasn't paid his taxes, we shouldn't go after him. But I don't think we should measure the success of the program on dollars that we may recommend as a result of a very quick determination of tax liability.

Rather interestingly, I was reviewing this GAO report, and GAO reviewed 64 termination cases involving narcotics. In those 64 cases we had originally set up $1.2 million. Because of the lack of sufficient records or evidence, we ended up disposing of those cases for $220,000, of those—just of those that GAO looked at—and it is spelled out in that report.

And so we can make a nice picture by saying this is what we are recommending. But I think you have got to look at the final results.

Senator BAYH. I concur. It seems to me the Federal agencies have two responsibilities: One, to put these characters in jail and, two, to make sure they pay their back taxes.

Mr. WOLFE. Absolutely. 100-percent correct.

Senator BAYH. Now, there's been a lot of reference to the emphasis on class 1 tax violators.

Of the cases that you just mentioned, Mr. Clancy, what percentage or what number are class 1 violators?

Mr. CLANCY. I can't tell you that at the present time.

Our internal instructions did not require the trafficker to be previously or currently listed as a class 1 by DEA. Our instructions do require, though, that it be a significant—either somebody that would fit into the strike force program—and many of these cases are being worked on in the strike force program in concert with the Department of Justice—or be a significant operator and a major influence in his area before they would be put into the special enforcement program.

This one example that I gave you, I can tell you, it does happen to be a class 1.

Senator BAYH. Could you get us those figures so we could have some idea whether they really are "exciting"?

[Subsequent to the hearing the following information was received:]

[EXHIBIT No. 7]

Question 2. Senator Bayh: "* * * what percentage or what number of them [narcotics traffickers] are Class I violators?"

Response. Class I violators is a classification developed by DEA for their own enforcement requirements as a means of identifying major narcotics traffickers. Under the NTP program, targets were selected by a selection committee. The former Bureau of Narcotics and Dangerous Drugs was relied on for potential target identification, but the ultimate selection was made by the committee. Names submitted by the Bureau of Narcotics and Dangerous Drugs were not classified as Class I violators. Although the plan was to select those targets who were believed to be middle or upper-echelon traffickers, subsequent investigations indicated that some targets did not qualify for this classification.

INVESTIGATIONS AND PROSECUTIONS OF TARGET CASE NARCOTIC TRAFFICKERS FOR CRIMINAL VIOLATIONS OF THE INTERNAL REVENUE CODE

	Fiscal year 1972	Fiscal year 1973	Fiscal year 1974	Fiscal year 1975	Fiscal year 1976	Cumulative
Investigations completed	143	503	663	398	317	2,024
Prosecutions recommended	54	217	245	136	111	763
Indictments	23	96	86	81	56	342
Convictions	6	45	88	83	51	273
Average jail sentence						(1)

[1] 29 months.

Mr. CLANCY. Now that we have sent out the 206 class 1 to our field people for evaluation and determination of which ones could be investigated for criminal prosecution, to also have them reassess the cases currently in inventory and classify those into our narcotics project that we will establish and are in the process of establishing. So I will find out how many of the current inventory are, in fact class I and then determine why the other ones—or how we would classify those.

It should be kept in mind that the individuals identified by DEA as class I violators are probably classified on the basis of DEA criteria, in that the subjects have either been arrested or are potential targets for arrest and either possess or are believed to deal in large quantities of narcotics. Our Intelligence Divisions will do an independent investigation and evaluation to determine whether the individuals identified are in fact upper echelon narcotic traffickers and justify being classified as class I targets.

Interim guidelines were transmitted to the Regional Commissioners, Service Centers and District Directors on August 4, 1976. What we are interested in is the individuals who finance narcotic trafficking—those who remain behind the scene—and are rarely in the hazardous position that would lead to their arrest for possession of narcotics. They are the ones we would classify as class I targets and we anticipate that our District agents will be able to determine whether those individuals identified by DEA qualify for inclusion as a class I subject. We want to avoid the pitfalls experienced in the old NTP program and stay away from the common street-peddler variety of taxpayer. However, where our investigations indicate that any trafficker is dealing in large quantities of narcotics and exhibits considerable financial profits, we will pursue criminally. A copy of our interim guidelines are attached.

[EXHIBIT No. 8.]

Internal Revenue Service memorandum.

AUGUST 4, 1976.

To: All Regional Commissioners, all Service Center Directors, and all District Directors:

From: Director, Intelligence Division.

Subject: High-level drug leaders tax enforcement project.

We are transmitting to the Chiefs, Intelligence Staff, under separate cover, a list of individuals who have been identified by the Drug Enforcement Administration (DEA) as DEA Class I violators, along with related information also furnished by DEA.

The material is being sent to the Chiefs, Intelligence Staff for processing in accordance with the interim guidelines contained in this memorandum. The interim guidelines, which are restricted to the processing of the information we received from DEA on Class I violators, also include instructions for the processing and evaluation of these items by the district Intelligence Division after the items are referred there by the service centers.

We ask that the Chiefs, Intelligence Staff give the highest priority to the processing of this information.

The interim guidelines, presented below, should be followed until the Memorandum of Understanding between DEA and IRS is implemented by instructions issued in an International Revenue Manual documet.

SERVICE CENTER PROCESSING OF DEA PROJECT INFORMATION ITEMS

(a) The information furnished by DEA concerning DEA Class I violators will be referred to in this memorandum as "DEA Project information items."

(b) The Chief, Intelligence Staff at the Service Center will:

(1) on a priority basis, process the DEA Project information items, transmitted by the National Office, in accordance with Manual Supplement 93G-164,[1] "Central Evaluation and Processing of Information Items," dated March 4, 1976;

(2) insert the words, "DEA I" in Item 6a. of each Form 3949, Intelligence Information Item; and

(3) on a priority basis, send a photocopy of the information item, without

[1] CR 1(15)G-103, 41G-108, 45G-250, 51G-132, 5(11)G-65, 71G-14, 92G-35, 95G-61.

initial evaluation, to the appropriate Chief, Intelligence Division, along with pertinent returns, transcripts, and other available data.

DISTRICT PROCESSING OF DEA PROJECT INFORMATION ITEMS

(a) The DEA Project information items will be evaluated by the Chief, Intelligence Division, using established IRS standards.

(b) To assist in the evaluation of the information item, the Chief, Intelligence Division may supplement the information furnished by DEA: by contacting the local DEA office; by making other limited inquiries described in IRM 9311.2:(3); or by gathering information on the individual in accordance with Manual Supplement 93G-152,[2] Information Gathering Guidelines.

(c) The items evaluated as lacking criminal potential will be returned to the Chief, Intelligence Staff or referred to the district Audit or Collection function, as appropriate.

(d) It is contemplated that the final Project instructions will require the Chief, Intelligence Division, to notify the Director, Intelligence Division, through channels of any DEA Project information item that is lacking criminal potential. This determination would not be finalized until any authorized Information Gathering was completed. The notification will provide sufficient data to the Director to explain why the individual was not selected for Intelligence investigation. However, such reports should not be submitted until the final Project instructions are issued.

INTELLIGENCE DIVISION RECORDKEEPING REQUIREMENTS

(a) All Project activity will be considered as within the Special Enforcement Program (SEP).

(b) A special program code is not being assigned to this Project. Instead, the appropriate existing SEP program code will be used. (See B.(6) of Exhibit 400-3 of IRM 9570, Case Management and Time Reporting System Handbook.)

(c) National Office Project Number 21 has been assigned to track Project activity under the Case Management and Time Reporting System. Accordingly, each region and each district will establish a project number, using National Office Project Number 21 as the first two digits. (See 300 of IRM 9570, Case Management and Time Reporting System Handbook.)

The above instructions will be reissued in the Internal Revenue Manual in accordance with IRM 1254.

THOMAS J. CLANCY.

[2] CR1(15)G-91, 41G-105, 42G-328, 45G-231, 51G-118, 5(12)G-25, 71G-9, 94G-57.

Senator BAYH. Has IRS been working with DEA before last week on these matters?

IRS AND DEA COOPERATION ON CASES

Mr. CLANCY. Yes, sir; we certainly have. We've got projects around the country that DEA has let us into. They are turning out to be very successful.

In some cases DEA recognized that some people were amassing wealth. They suspect part of that may be from narcotics. We have gotten involved in that, and it appears that a good deal of it is, in certain areas of the country.

Yes, sir; we are working with DEA.

This example of the case that you put into the record, the newspaper, I believe also came with discussions with the local DEA office here in the area. The information concerning this case which was received from the Montgomery County Police was invaluable to the outcome.

Mr. WOLFE. Again, Mr. Chairman, in the Southwest we have a very important project going on with DEA. It's been going on for months. And it is also being worked in coordination not only with DEA but

the Justice Department, and that is a very important project. But, again, it is going to take time. These people don't keep records. You've got to go out and establish income before you can even recommend prosecution. You've got to show, and, for example, if they build new homes, swimming pools, buy jewelry, whatever it is, and you've got to go and not only find out what they do, but you've got to document it and you've also got to get a list of witnesses to testify that they did buy this in order to prove a tax evasion case.

Senator BAYH. It's fair to say that it requires very intensive effort and very specialized emphasis, doesn't it.

Mr. WOLFE. It absolutely does.

Senator BAYH. I could not agree with you more. I don't envy you your task, and I'm sure you need very sophisticated and professional people trying to do it.

But what concerns me, and I get back to it, have you changed your idea, Mr. Alexander, that you expressed in Hawaii to the ABA that you are going to change the emphasis away from those special programs?

[EXHIBIT No. 9]

EXCERPT FROM REMARKS BY DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE, BEFORE THE ANNUAL CONVENTION OF THE TAX SECTION OF THE AMERICAN BAR ASSOCIATION, HONOLULU, HAWAII, AUGUST 14, 1974[1]

As regards our intelligence operations, the overall emphasis of our criminal enforcement activities has been shifted away from special enforcement programs such as Narcotics Traffickers and Strike Forces, and have been aimed more directly toward the taxpaying public in general. This shift in emphasis has enabled us to achieve greater occupational and geographic coverage in our criminal tax sanctions are more equitably applied—reaching the broadest possible spectrum of society within our resource limitations. I believe that our revised enforcement philosophy and not only achieves this goal, but more fully meets the intent of Congress in that our resources are being used for the enforcement of tax statutes, rather than as alternative methods for the prosecution of violators of laws normally enforced by other Federal or local agencies.

Mr. ALEXANDER. I found one situation, as I have tried to describe several times this morning, Mr. Chairman, and faced with that fact situation, it seemed to me that certain actions should be taken. Disproportionate to what is the question. If we had the small number, the insufficient number, of our special agents working only on narcotics traffickers, we would have a greater effort against them than if we had a lesser number working such cases but we would have a lesser effort to deal with corporations that are tax evaders, to deal with white-collar tax evaders, to deal with organized crime figures who are not narcotics traffickers who are tax evaders, and to deal with corrupt politicians who are tax evaders. And we need to deal with all of those, and I am sure you agree with that.

Senator BAYH. Well, I'm surely not suggesting anything counter to that.

I think you are evading the question. I want to get to where we are today.

In 1974 you said—and I want to repeat it—that you are shifting away from the special enforcement programs, one of which we are talking about here—the NTTP.

[1] See Appendix, Part 2 for complete text of Mr. Alexander's remarks, pp. 306 et seq.

Mr. ALEXANDER. Mr. Chairman, there is no doubt that I thought the situation I found in 1974 did have too much of our limited manpower assigned to certain narrow areas—you mentioned a handful this morning—and not enough assigned to such things as major corporate crime. That is quite clear.

INVESTIGATIONS AGAINST NARCOTIC TRAFFICKERS NOT MAINTAINED

Mr. CLANCY. Mr. Chairman, I don't want to mislead you. We are giving you some figures of what we have been doing in the past current year in the narcotic area, and I'm sure if you compare that to the high year back in 1973, perhaps, our level of activity will not be as high in fiscal year 1976 as it was previously. That is correct. I would not want to mislead you or imply that we have maintained our investigations against identified narcotics traffickers at the same level in fiscal 1976 that we did in prior years.

But it is important, I think, for you to have heard from us, because I think there have been some misstatements from people who really don't know that indicated that we canceled investigations against traffickers, and that certainly is not true.

Let me build a little bit upon the Commissioner's comment about allocation of resources.

The Intelligence Division is taking a 10-percent cut in resources in fiscal 1977, and we will do the best we can with what we have remaining, and I think we can do a good job with it. But when I became an Assistant Regional Commissioner for Intelligence in the Mid Atlantic Region in July of 1973, I looked at what we had been doing with our resources in that region, and one-half, 50 percent of our intelligence resources had been allocated and spent in special enforcement.

Now, there is no question in my mind that we definitely want to have programs to investigate those people that are deriving illegal income and not paying their fair tax on it. We do and we have the special program. I believe, though, that 50 percent was a much too high percentage of our total limited resources to allocate and leaving only 50 percent, of course, on the other side for the great problem that we have in tax administration to utilize the criminal sanctions of the tax law, to try to achieve compliance to the extent we can.

Senator BAYH. Well, I am sure you get frustrated in your inability to communicate, and some of us may get the wrong conception; but we have a particular problem, and I cannot imagine that anybody in this Congress wants to make a smaller effort in this area. I think a lot of people get very frustrated with the lack of results. I'm not trying to oversimplify the problem, but I think anyone who understands its complexity knows that it means you are going to have to spend more dollars per unit of result than other more simplified tax problems.

You know, back in 1971, the President and the Congress together provided special earmarked resources for this purpose. There has been significant concern expressed that one of the reasons you haven't had more results is that for some reason or another some of these earmarked resources and positions—as I recall, it was $15 million and 598 positions—a significant number of both of these have been shifted off into other areas.

Is that true?

Can you tell the subcommittee how many positions and how many dollars you are spending, of this earmarked money, in the area for which it was designated?

Mr. ALEXANDER. Do you have that, Mr. Wolfe?

Mr. WOLFE. Well, actually, we exceeded those expenditures in that first year, Mr. Chairman. We expended more money in this area than the Congress appropriated.

Senator BAYH. Well, how about this last year?

Mr. ALEXANDER. Mr. Chairman, there is no doubt that the Internal Revenue Service did once get a supplemental appropriation for this program. There is also no doubt that the Intelligence Division's appropriation, as a whole, went up from $86.8 million to over $100 million, and I am very sorry to see it reduced. It went up to $100.4 million in fiscal year 1975. And there is no doubt—and we would be glad to submit this for the record, our submissions to the Appropriations Committees and what they acted on—that there was no earmarking, Mr. Chairman, in fiscal 1975, in fiscal 1976, none whatever.

Now, that we have talked about the question of earmarking and, I hope, straightened it out—if not, it is a matter of record rather than argument, and I would like to go to the record rather than argue about it—let's talk about resources.

Senator BAYH. Well, before we get there, let's make sure we are talking about the same thing.

When was the earmarking?

Ms. ALPERN. Fiscal years 1972 to 1974, I believe.

Mr. ALEXANDER. I though it was two years. I though it was fiscal 1972 which included some of calendar 1971, and also fiscal 1973.

Senator BAYH. Was there any earmarking in fiscal 1974?

Mr. ALEXANDER. Perhaps so, Mr. Chairman. I am convinced there was none in 1975 and 1976.

Senator BAYH. My figures of $15 million and 598 positions, are those accurate as far as the earmarked funding?

Mr. ALEXANDER. The original—the first figures—I think, were about $7.5 million, and actually we spent——

Mr. WOLFE. $10.5 million.

Mr. ALEXANDER. And I think also exceeded appropriations the second year, and then this was accounted for as a separate program until, as I recall, June 30, 1975, internally.

But the question you have raised goes to the action of the Congress, in saying you have given this money for this purpose, and what I am saying is that that action was not taken recently and the record will show what was done and what was not, and I would like to submit that to you for the record, sir, to try to clarify it.

[Subsequent to the hearing the following information was received.]

(Exhibit No. 10)

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

Commissioner

August 9, 1976

Mr. John M. Rector
Subcommittee to Investigate
Juvenile Delinquency
Room A-504, Senate Annex II
119 D Street, N.E.
Washington, D. C. 20510

Dear Mr. Rector:

This is to provide you with information concerning the budget for the Internal Revenue Service's Intelligence program. The following table shows staffing and related dollars at the various levels of budget review for fiscal year 1976, the transition quarter, and fiscal year 1977.

IRS BUDGET REQUESTS FOR INTELLIGENCE (dollars in thousands)

	FY 1976	Transition Quarter	FY 1977
To Treasury			
Special Agents	3,021		2,837
Other	1,634		1,523
Total Ave. Pos.	4,655		4,360
Total Cost	$121,985		$115,472
To OMB			
Special Agents	2,897	724	2,743
Other	1,613	403	1,469
Total Ave. Pos.	4,510	1,127	4,212
Total Cost	$112,221	$28,055	$108,342
To Congress			
Special Agents	2,668	667	2,444
Other	1,429	357	1,231
Total Ave. Pos.	4,097	1,024	3,675
Total Cost	$103,408	$25,852	$ 98,539
Congressional Action			
Special Agents	2,645	661	2,444
Other	1,417	354	1,231
Total Ave. Pos.	4,062	1,015	3,675
Total Cost	$104,773	$26,193	$ 98,539

NOTE: "Other" category includes supervisory, clerical support and temporary personnel. There were no transition quarter estimates in the request to Treasury. Dollar amounts enacted by Congress in FY 1976 exceed those originally submitted due to pay increase.

I hope that this information will at least in part meet your request. I will, of course, be happy to provide you with whatever additional data we have on this subject.

With kind regards,

Sincerely,

Thomas V. Glynn

Thomas V. Glynn
Assistant to the Commissioner

Senator BAYH. Can you tell me how many people you now have working in this area, earmarked or not earmarked?

Mr. CLANCY. I don't have the time. When we merged the program I could tell the time we had spent in the special enforcement program, but that includes investigations other than narcotics.

Senator BAYH. When did you merge the program?

Mr. CLANCY. At the end of fiscal 1975.

Senator BAYH. Why did you merge it?

NTTP MERGED WITH REGULAR SPECIAL ENFORCEMENT

Mr. CLANCY. Because we felt that the program probably could be just as well operated in our regular special enforcement program utilizing the strike force concept in some of these cases during the regular program. These cases that may have been fit for the strike force were not placed under the strike force. We have an ongoing strike force of some 17——

Senator BAYH. Well, do you still have the same criteria for the cases?

Mr. CLANCY. We have our special enforcement criteria, sir, and I would be happy to submit that for the record.

[Subsequent to the hearing the following information was received.]

[EXHIBIT No. 11]

Question 3. Senator Bayh: "* * * do you still have the same criteria for the cases?" Mr. Clancy: "We have our special enforcement criteria, *sir*, and I would be happy to submit that for the record."

Response. Special Enforcement Program criteria are defined in IRM 9411.2, a copy of which is attached.

9400
Special Enforcement Procedures

[Amended and Supplemented by MS 94G–56]

9410
Special Enforcement Program (SEP)

9411
Special Enforcement Program Defined

9411.1
SEP Objectives

(1) The primary objectives of SEP are to identify and investigate persons who receive income from illegal activities and to recommend prosecution of such persons, when warranted, for criminal violations of the Internal Revenue Code or other related statutes when committed in contravention of Internal Revenue laws.

(2) Another important objective of this program is participation in the Federal effort against widespread organized criminal acivities by coordinating our enforcement efforts with those of other Federal law enforcement agencies.

9411.2
SEP Categories

(1) *SEP–1* includes all persons who are reasonably believed to be:
(a) *engaged in organized criminal activities;*
(b) *notorious or powerful with respect to local criminal activities;*
(c) *receiving substantial income from illegal activities as a principal, major subordinate, or important aider or abettor; or*

(d) infiltrating legitimate business through illegal means; or infiltrating legitimate business through loaning or investing therein the proceeds from illegal activities.

(2) *SEP–2* includes all taxpayers engaged in occupations requiring the purchase of coin-operated gaming device stamps.

(3) *SEP–3a* includes all taxpayers designated as Strike Force case subjects under the IRS Strike Force Program. Most of the subjects in this category will also meet the criteria of the SEP–1 category.

(4) *SEP–3b* includes taxpayers (not designated as Strike Force subjects) in whom the Organized Crime an Racketeering Section of the Department of Justice has formally expressed an interest and requested disclosure privileges by letter to the Commissioner from the Attorney General or an Assistant Attorney General, and the Assistant Commissioner (Compliance) has concurred in the Department of Justice request and agree to provide copies of returns, reports or other information to Justice. A formal written request originating with the OC&R Section to review a proposed nonprosecution case prior to closing will meet the criteria for a "case of interest." Investigations of interest to other segments of the Department of Justice will be classified as general program cases.

9412
SEP Responsibilities and Security Guidelines

(1) The Assistant Commissioner (Compliance), through the Directors, Audit an Intelligence Divisions, is responsible for establishing the overall objectives and guidelines for the Special Enforcement Program and for the coordination of the Program on a nationwide basis.

(2) The Regional Commissioner, through the ARC's (Audit and Intelligence), is responsible for the following:

(a) assisting and advising in the overall planning and coordination of the Special Enforcement Program within the region;

(b) coordinating and cooperating with other regions, the National Office, assigned Department of Justice attorneys, and Strike Force representatives;

(c) keeping the Director, Intelligence Division, informed of the activities of special enforcement subjects;

(d) evaluating the effectiveness of the Special Enforcement Program; and

(e) determining and providing for manpower and equipment needs.

(3) A Special Enforcement Program Analyst (Operations and Technical), hereinafter referred to as a Special Enforcement Assistant, will be designated by each ARC (Intelligence) to fulfill the responsibilities outlined (2) above.

(4) The District Director, through the Chiefs, Audit and Intelligence Divisions, is responsible for the following:

(a) planning, implementing, and administering the Special Enforcement Program within the distrct; and

(b) determining manpower needs and allocation priorities.

(5) The District Director, through the Chief, Intelligence Division, is responsible for the following:

(a) gathering, assembling, evaluating, and disseminating SEP information;

(b) identifying SEP subjects; and

(c) maintaining liaison with other IRS divisions, the ARC (Intelligence), and other law enforcement officials concerned with SEP matters.

(6) All employees engaged in SEP activities or who have access to documents and information relating thereto will be responsible for security measures contained in IRM 9720 and IRM 9387.3.

9413
Special Enforcement Files

9413.1
Subjects of Special Enforcement Files

The Intelligence Division will maintain a Special Enforcement File for each taxpayer meeting the criteria of the SEP–1 category. Taxpayers in SEP–2 and SEP–3 categories will not be subjects of Special Enforcement Files unless they also meet SEP–1 criteria.

Senator BAYH. You know, I am the last person in the world who wants to sit up here and tell you how many people ought to be in given areas. I don't know how I can remain silent, however, if we all agree that it is a very sophisticated problem requiring intense activity.

Mr. ALEXANDER. Mr. Chairman, our resources have been cut, and there are many pressures on the Internal Revenue to put everything first, and one cannot put everything first.

We have some other very tough responsibilities. One of them is dealing with tax evasion by major corporations, and these cases are hard to work and time consuming to work.

Mr. WOLFE. For example, Mr. Chairman, we were cut about 200 special agents in our fiscal year 1977 budget. Our staff of 2,650 that we have to do all of these criminal cases was cut by 201 staff years.

Mr. ALEXANDER. So when we are told to take our investigative resources and assign a certain number of them to one particular program, we need to be told also what we should take them away from. Should we stop trying to prosecute major corporate tax evaders? Should we stop trying to put corrupt politicians in jail? Tell us now, because there are only so many people. We would like to have more. We don't have more. But if we are told that we must allocate in a particular way, then tell us where we take them away from.

Senator BAYH. Without trying to suggest that you do less in these other areas, I assumed that—especially when we had these special earmarked funds—Congress felt that special emphasis ought to be placed in this narcotics area.

Mr. ALEXANDER. Mr. Clancy's resources were cut. Mr. Clancy sustained almost a 10-percent cut. That is a very serious thing for us to take. Where do we take people away from?

Senator BAYH. Would you support a specific earmarking in this area?

Mr. ALEXANDER. If we get additional people. If we are given additional people. If Congress gives us additional people, additional money, and tells us to work these high-level narcotics traffickers, of course, we will.

Senator BAYH. I would like you to submit—so that we could look at it here, I want to study it and put it in the record for the others—what the force levels and the appropriations levels were in 1971, 1972, 1973, possibly 1974 when you had that earmarking, compared to what the force levels are right now.

Mr. ALEXANDER. All right.

[Subsequent to the hearing the following information was received:]

[EXHIBIT No. 12]

Question 4. Senator Bayh: "I would like you to submit so that we could look at it here—I want to study it and put it in the record for the others—what the force levels and the appropriations levels were in '71, '72, '73, possibly '74 when you had that earmarking, compared to what the force levels are right now."

Response. In accordance with Presidential initiative, the Narcotics Traffickers Program was established by the Treasury Department in July 1971 (the beginning of FY 1972).

During FY 1972, Congress authorized a supplemental increase to the Service's appropriation of $7.5 million (250 average positions) in support of the program's implementation in that year. The following year, in the Service's FY 1973 budget, Congress authorized an additional $6.9 million (291 average positions) to provide for the full year effect of the prior year's authorization, resulting in a total

authorization at that time of $14.4 million and 541 average positions. Later in FY 1973, Congress authorized additional supplemental resources for the program of $4.5 million (198 average positions). Resources budgeted specifically for the Narcotics Program thus totalled some $18.9 million and 739 average positions by the end of FY 1973. The Service's budget for FY 1974 included an additional $.8 million (40 average positions) to provide for the full year effect of the prior year's supplemental. This was approved in the Service's budget, with the result that total amounts budgeted specifically for the Narcotics Program as of FY 1974 totalled $19.7 million and 779 average positions.

Beyond FY 1974, the Service had no increases specifically for the Narcotics Program nor were total resources applied to the program earmarked in the budget. From FY 1972 on, the Service has applied resources to the program as operational circumstances required, and there is variation, as indicated by the following tables, between amounts specifically budgeted and amounts applied to the program.

IRS NARCOTICS TRAFFICKERS PROGRAM RESOURCES EARMARKED IN BUDGETS AND ESTIMATED RESOURCES APPLIED

	Fiscal year				
	1972	1973	1974	1975	1976
Resources earmarked in budgets for narcotics program:					
Average positions	250	739	779	(1)	(1)
Dollars (in millions)	$7.5	$18.9	$19.7	(1)	(1)
Estimated resources applied to narcotics program:					
Average positions	495	878	939	601	512
Dollars (in millions)	$10.5	$19.8	$22.4	$13.0	$12.1

[1] The Service's budget submissions for fiscal years 1975 and 1976 did not earmark funds for the narcotics traffickers program, though the 1975 budget indicated partial estimated staffing for the primary activities involved (764 average positions). There was no separate identification of the narcotics program in the Service's fiscal year 1976 budget submission.

IRS REQUESTS AND OMB CUTS BUDGET

Senator BAYH. Now, you mentioned resource cuts, budget cuts. Can you tell us what the difference was in the amount for the last fiscal year and this fiscal year, as far as the budget request from OMB?

Mr. ALEXANDER. What we submitted to OMB?

Senator BAYH. Both.

Mr. ALEXANDER. I would be glad to give you what we submitted to OMB and then what OMB had us submit to Congress, because they are far different.

Senator BAYH. Can you tell us what that is?

Mr. ALEXANDER. We submitted an increase in intelligence, I think, of about 134 positions, and instead we sustained a cut of over 300 positions.

Senator BAYH. OMB cut your force 300 positions?

Mr. ALEXANDER. That's right. The exact figure was 387 average positions.

Senator BAYH. I assume they cut the dollar budget, too.

Mr. ALEXANDER. That's right.

Senator BAYH. How much?

Mr. ALEXANDER. The dollar budget did not go down as much. The costs have increased. The dollar budget, as I recall, went from about the $105 million figure in fiscal year 1976 I mentioned earlier to about $99 million. But in view of outside costs increasing to a great extent, that meant a very sizable decrease in our work force.

Senator BAYH. Now, I want to make sure that we are talking about the same thing.

Your request to OMB was for how many more additional slots?

Mr. ALEXANDER. I think—I told you that I think it was 146. I will get that for the record. I don't have it.

Senator BAYH. And how many additional dollars?

Mr. ALEXANDER. I will get that for the record. It was about $15 million more.

[Subsequent to the hearing the following information was received:]

[EXHIBIT No. 13]

Question 5. Senator Bayh: "Can you tell us what the difference was in the amount for the last fiscal year and this fiscal year, as far as the budget request from OMB?"

Commissioner: "What we submitted to OMB?"

Senator Bayh: "Both."

Commissioner: "I would be glad to give you what we submitted to OMB and then what OMB had us submit to Congress, because they are far different."

* * * * * * *

Senator Bayh: "Your request to OMB was for how many more additional slots?"

* * * * * * *

Senator Bayh: "And how many additional dollars?"

Response. For the Intelligence Activity in fiscal year 1976, the Service's budget request to the Office of Management and Budget proposed an increase of 476 average positions and $11.9 million for staff increases which was reduced to 63 average positions and $3.0 million for the submission to Congress. Congressional action resulted in a further reduction of 35 average positions, though there was an increase in the dollar amount by $1.4 million to cover the cost of a Federal pay raise. In fiscal year 1977 the request to the Office of Management and Budget proposed an increase of 134 average positions and $4.5 million for staff increases which was reduced to zero and the activity was further reduced below the FY 1976 level by 387 average positions and $6.2 million for the submission to Congress.

Senator BAYH. You say now that OMB cut it by 300?

Mr. ALEXANDER. Over 300.

Mr. CLANCY. I believe 387 staff years. That includes both special agents and others, clerks or paraprofessionals.

Senator BAYH. How many dollars was that amount?

Mr. ALEXANDER. I think the dollar cut was about $5 or $6 million.

We're guessing now based on recollection.

Senator BAYH. Well, are you talking about positions and dollars for this special narcotics program?

Mr. ALEXANDER. No, sir. We're talking about the entire Intelligence Division budget.

Senator BAYH. Which encompasses what area?

Mr. ALEXANDER. That encompasses the special agents and the support of the special agents to cope with the tax evasion, whoever committed it, narcotics traffickers, organized crime figures, corporations, corrupt politicians, lawyers, accountants, doctors, farmers, businessmen, everybody.

We have more than 85 million taxpayers. Many of them comply; some of them don't. We have an obligation to those who do comply

to see to it that those who don't are found out and punished; and I'm sure you agree with that, don't you?

Senator BAYH. Of course, I do.

Have you made a supplemental request?

SUPPLEMENTAL REQUEST REJECTED BY OMB

Mr. ALEXANDER. We made one. It was turned down by OMB.

Senator BAYH. How large was the supplemental for?

Mr. ALEXANDER. It was about $20 million in this and the corporate slush fund area, Mr. Chairman. We combined them. There was another, about $8.5 million, for coping with the Employee Income Retirement Security Act.

Senator BAYH. Can you explain to me what appears to me to be a remarkable inconsistency about the President—he gives us a very strong speech about what we need to do in the area of narcotics and narcotics control, then the President and his Office of Management and Budget sends decreased budget requests for both staff and dollar to the Congress?

Mr. ALEXANDER. I cannot comment on that, sir.

Senator BAYH. I think you are wise not to comment. However, I don't know how you are supposed to do the job unless you get the necessary resources.

I would like for your staff to consult with my staff relative to what you feel is a necessary resource level in this area. And as a member not only of this committee but a member of the Appropriations Committee, I would like to take that up with the other committee. If the President won't do it, maybe we can.

Mr. ALEXANDER. We greatly appreciate that, Mr. Chairman.

I might point out that our supplemental was turned down, but we were told we could resubmit it in the fall, in September. Well, September is rapidly approaching, and you can be darn sure we are going to resubmit it.

Mr. GLYNN. I will contact your counsel, Mr. Chairman.

Senator BAYH. Yes, I wish you would.

(Exhibit No. 14)

Department of the Treasury

Internal Revenue Service
Washington, DC 20224

Date: SEP 27 1976 | In reply refer to:

Mr. John M. Rector
Staff Director and Chief Counsel
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Rector:

During Commissioner Alexander's testimony before Senator Bayh's Subcommittee on August 5, 1976, the Senator asked that we consult with his staff as to the level of resources necessary for the Internal Revenue Service to discharge its responsibilities relating to narcotic traffickers (lines 17-19, page 61, of transcript). Pursuant to this, the following information is offered for consideration by the Subcommittee.

IRS experience with criminal tax fraud investigations of high echelon drug traffickers and racketeers indicates that each senior special agent, working with a revenue agent, can complete one to two in-depth "net worth" investigations per year.

During FY 1977, Intelligence -- supported by Audit, Chief Counsel, and Collection — intends to conduct criminal tax investigations on an estimated 500 narcotics suspects. This will require 890 average positions, including 300 special agents, 300 revenue agents, 65 average positions in Chief Counsel and Collection, and 225 other average positions in support roles. Staffing from Chief Counsel and Collection is required to fully effect this joint enforcement program. Attorneys from Chief Counsel provide legal advice and assistance early in each investigation to the agents involved. Revenue officers from Collection become involved in a case when collection of the tax due is in jeopardy, and when jeopardy or termination of taxable year assessments are made.

To accomplish this program, the following supplemental resources will be needed for FY 1977.

	Positions	Average Positions	$ (Millions)
Audit	553	415	8.9
Intelligence	546	410	9.7
Chief Counsel	46	35	.9
Collection	40	30	.6
Total	1,185	890	20.1

With these expanded resources, the Service would realize an additional 890 average positions in FY 1977. This would necessitate hiring about 1,198 new employees — assuming an average entry-on-duty date of January 1, 1977 — and a commensurate increase in positions. These additional positions would be reduced to some 690 in FY 1978, by attrition, thus maintaining the FY 1977 level of staff-year effort in FY 1978.

A FY 1977 budget supplemental for the Service in this amount is presently under review by the Office of Management and Budget.

Sincerely,

Thomas V. Glynn

Thomas V. Glynn
Assistant to the Commissioner

Mr. ALEXANDER. Mr. Chairman, let the record show we are not here asking for additional money, because I am told not to. But I am pointing out the facts in response to your question.

Senator BAYH. Well, I think the record will show that I did ask the question. If there is anything that is the ultimate in irresponsible demagogery, it's those people who beat their chests and point out the problems of narcotics, the lives that are lost, the unscrupulous individuals involved, and yet they do not exercise their responsibilities to provide the resources to do the job. I doubt there is anything to be gained by saying more about this area.

MONETARY, INTELLIGENCE, AND NARCOTIC TRAFFICKERS PROGRAM

We got away from the question that I asked relative to the MINT problem—Monetary, Intelligence and Narcotics Traffickers program. Is it still operating?

Mr. ALEXANDER. We are drawing a blank here. Now, I have heard of that expression before, Mr. Chairman, but we will have to check to see to what extent it is our program, and being our program, to what extent it is still going. It might have been a particular project.

Mr. CLANCY. I think I can answer part of your question: "Are we still involved in it?"

Senator BAYH. It seems like you have already answered it.

Mr. CLANCY. If it's an intelligence program, I think I can say: "No, we are not." But whether we were ever involved in it, or to what extent, I am not familiar with it.

Senator BAYH. I have been advised that this was a task force designed to provide intelligence on schemes used by people to reinvest illegal money, gained from narcotics, in various legitimate resources and legitimate businesses—or to conceal assets out of the country.

Mr. CLANCY. I would be very interested in getting the facts on it.

Senator BAYH. Well, if it isn't MINT, is there another program currently providing a special effort in this area?

People who make these illegal profits are untaxed and later they try to either invest these assets in this country in legal businesses, or spirit them out of the country. What is the IRS doing, if anything, to detect and prosecute these tax evaders?

[Subsequent to the hearing the following information was received.]

[EXHIBIT No. 15]

Question. Senator Bayh: "Is [MINT] still operating?

Response. During the NTP program, the Intelligence Division obtained information that several targets and organized crime subjects were using the facilities of a Bahamian bank in a tax avoidance scheme. MINT was an acronym used to describe this phase of the NTP program, i.e., MONETARY INTELLIGENCE NARCOTICS TRAFFICKERS, which was initiated in November 1972. MINT was subsequently referred to as Project DECODE (Detection and Exposure of Concealed Overseas Deposits for Evasion). Finally, in an effort to avoid the use of acronyms to describe Service projects, DEODE was renamed Project HAVEN which more accurately described the project, i.e., the use of foreign banks for tax evasion.

Project HAVEN is a continuing investigation and the Department of Justice, with the cooperation of Chief Counsel and our Intelligence Division, is presently conducting Grand Jury proceedings in the Southern District of Florida.

Mr. WOLFE. Are you talking about the cleansing of currency, the washing of it, taking it outside the country and bringing it back in?

Senator BAYH. Yes.

Mr. WOLFE. Well, we haven't been involved in any program that I know that you identified. Yes, we are extremely interested in that and we have been working in that area. In fact, tax savings is where we have been looking for it, in the Bahamas, precisely. We have been looking to see whether not only narcotic money but any other type of illegal funds have been sent out of the country that way, and try to bring it back in through legitimate investments. Yes, we are extremely interested in that, but to my knowledge we have not been identified with any such program, as you have mentioned.

Mr. GLYNN. I would like to point out, Mr. Chairman, that the way you describe the program is part and parcel of our criminal investigation of a particular taxpayer, that is, if we have information that he or she is receiving income from narcotics traffic, we do try to find out what has been done with that money, whether it has been put in a secret bank account, whether it has been invested in personal assets such as a home or a car, or whether it has been invested in a legitimate business. And the value of the money invested in legitimate business would be part of our net worth case, or our source and application of funds case.

Mr. WHITAKER. There is, Mr. Chairman, a criminal statute as part of title 18 which prohibits the reinvestment of this kind of funds and it authorizes the Attorney General to forfeit funds that have been illegally reinvested in violation of that statute. The enforcement of that would be a matter for the Department of Justice, not for the Internal Revenue Service. It is not a tax crime, in other words. It is a general criminal provision.

TERMINATION OF TAX YEAR PROCEDURES

Senator BAYH. Let me direct your attention to a few matters that you mentioned. In your prepared statement, you mention the termination of the taxable year procedures.

Could you explain the purposes of these sections of the Code and typical examples of their application?

Mr. ALEXANDER. Yes. Let me give you an example, Mr. Chairman, that turned into an actual tax case. It was a prize-fighter who came over here to fight for the heavyweight championship of the world. He was a nonresident alien and we believed that he was intending to flee the country without paying his tax, and we did something about it, and developed it into a case. That was the *United States* v. *Johannsen.*

Where we have reason to believe that a tax owing, that we reasonably know that amount of the tax, and we have further reason to believe that the man is about to flee the country or transfer assets or squander assets so as to make it impossible for the people of this country, through the Internal Revenue Service, to receive that tax, we are given the authority to terminate the tax year of that particular taxpayer, to declare the tax due, and then we are given the further authority under section 6331 that I mentioned in my statement to collect that tax by summary means, by taking property.

These are extremely powerful tools. They do, as the courts have told us, go beyond the bounds of ordinary due process because the Agency is given a right to first determine the existence of tax, and having determined that existence, and having determined and found collection to be in jeopardy, to take the property of the taxpayer.

Now we need those tools. We need them badly. We need to use them wisely.

Mr. WHITAKER. It is the existence of this statute, Mr. Chairman, which gives us the control over foreign entertainers and prevents the money from going abroad before we can get their tax return and the tax paid.

Mr. ALEXANDER. Otherwise, people would come in the country, Mr. Chairman, and earn a lot of money in Indiana and elsewhere, and then flee the country without paying their tax.

Senator BAYH. I'm not quarreling with your need to solve the problem. In what percentage of cases does IRS use this procedure? Can you tell me how significant it is?

Mr. ALEXANDER. Very small. I think last year, Mr. Chairman, there were only a few hundred of them. I think at the peak of this program—now, the street program, I'm talking about—there were about 3,000. This discussion is getting back to the street thing, and I know we've beat it to death this morning, and I know your feelings about it, and they're the same as ours. This was an essential ingredient of the street program, and it did not work very well.

Senator BAYH. We're talking about 500 versus 3,000?

Mr. ALEXANDER. Yes, sir. Roughly speaking, that is the aggregate. That includes both narcotics and others such as the entertainers, et cetera.

Senator BAYH. In what percentage of narcotics cases were the termination procedures used?

Mr. ALEXANDER. In fiscal 1973, Mr. Chairman, our figures show 2,589 taxpayers who had either jeopardy assessments made against them, or termination of taxable years. Of that aggregate 2,448 had this termination of taxable year procedure used against them; 2,448. That has been reduced, Mr. Chairman. In fiscal year 1975 there were only 304, and I know this year it is less than that. Reduced in response to these problems that we have been discussing.

Senator BAYH. How many of those are narcotics cases?

Mr. ALEXANDER. All of those, sir. We can submit exact figures for the record, if it would be helpful to your consideration of this problem, Mr. Chairman, for each year.

Senator BAYH. I want to make sure we're talking about he same thing.

Have you given me the figure for the total number of instances in which this procedure was used?

Mr. WOLFE. I can give you those figures. We have them there.

Mr. ALEXANDER. Yes, 3,090.

Senator BAYH. That is the total figure?

Mr. ALEXANDER. Yes, sir.

Senator BAYH. For all taxpayers?

Mr. ALEXANDER. Yes. Narcotics and otherwise. And this includes both jeopardy assessments and termination of the taxable year.

Senator BAYH. I don't think there is any need to pursue this further. I wish, whether it's Mr. Glynn or someone else, to get together with my counsel and discuss the two matters that you have emphasized which, you say, create additional hardships. I recall the hearing procedure required before this complication and jeopardy procedure, and notice as far as banks and the like are concerned. It seems to me we ought to be able to apprehend criminals and still let citizens know that Uncle Sam will be fair. That is a due process situation and we must strike a delicate balance. But to be advised that you are in the crosshairs is rather consistent with due process as it's known in this country, as is the requirement of proof that a person is liable, before property is confiscated. I don't think we need to pursue this further, at this time, but I would like to get into the details and specifics of how we can best achieve that balance.

Mr. GLYNN. I will be happy to contact your counsel, Mr. Chairman.

Senator BAYH. Do you support title IV of S. 3411?

Mr. ALEXANDER. Yes, sir.

SUSPECTED CORPORATE BAGMEN WITH PAYOFF MONEY

Senator BAYH. Could you comment? I notice here in a recent column Jack Anderson reports that Justice, Customs, SEC, and others intended to direct this particular section toward so-called corporate bagmen, an estimated 215 firms that are suspected of sending tens of millions of dollars overseas to pay off officials or others; is that true?

[EXHIBIT No. 16]

[From the Washington Post, Aug. 2, 1976]

CORPORITE BAGMEN ARE PROBED

(By Jackson Anderson and Les Whitten)

Those corporate bagmen, who have been delivering bribes to foreign officials, may wind up behind the eight ball.

Federal lawmen are quietly investigating the couriers, some of them as high as company vice presidents, who have smuggled payoff money overseas. Under the law, the couriers were required to report to customs any amounts over $5,000 that they took in or out of the country.

The law, which went into effect in 1972, was intended to catch couriers for world drug rings. But it will now be used to nail the boardroom bagmen as well.

More than 215 firms are suspected of sending tens of millions of dollars overseas to pay off foreign princes, potentates and politicians for contract favors. Baksheesh, cumshaw and cold cash reportedly have been delivered to Brazil, Columbia, France, Gabon, Iran, Italy, Japan, Malaysia, Netherlands Saudi Arabia South Africa, South Korea, Taiwan Turkey and West Germany.

Some of the nation's most powerful and prestigious corporations have admitted making foreign payments. Among them are Ashland Oil, Burroughs, Exxon, Gulf Oil, Lockheed, McDonnall Douglas, Merck, Northrop, G. D. Searle, Tenneco and United Brands.

In some countries, notably Italy and Japan, the revelations of large-scale bribery have shaken the governments. Yet the corporate executives, who paid the bribes, have largely escaped punishment.

The Securities and Exchange Commission forced the firms to disclose the bribery to its stockholders and thereby, to the public. But because the SEC's main role is to regulate the markets, not to prosecute malfeasance, the boardroom bribers have gone free.

Yet probing by Sen. Frank Church (D-Idaho) and Rep. Benjamin Rosenthal (D-N.Y.) has turned up evidence of criminal violations that cry out for prosecution.

Therefore the Justice Department, Customs Service, SEC and special prosecutor's office are quietly cooperating to bring indictments against offending firms and their corporate couriers.

The Currency and Foreign Transactions Reporting Act, which sets the $5,000 limit, will be used to catch the couriers. Tourists leaving the United States usually aren't checked by customs. Thus the bagmen have had no difficulty getting money out of the country.

Probably more often, the payoffs have been channeled through the foreign subsidiaries of multinational companies, thus avoiding the physical transportation of the money out of the United States. Yet these transactions can be traced, and conspiracy cases possibly can be made.

One fact is evident; illegal loot was delivered overseas. Federal agents intend to find out who delivered it.

Footnote: The Internal Revenue Service, meanwhile, is investigating the misreporting of foreign bribes as business deductions. And SEC sleuths are still digging out more evidence of corporate bribes.

Mr. ALEXANDER. I'm not in a position to say whether it is or is not true, Mr. Chairman. From watching Jack Anderson I would not care to hazard a guess as to that. We have a decided interest in the transmission of funds abroad. We have a decided interest in the laundering process that has been engaged in.

Senator BAYN. Is IRS now investigating the misrepresenting of foreign bribes as business deductions and planning to target these investigations?

Mr. ALEXANDER. We certainly are. We certainly are, Mr. Chairman. We have a massive program going here to try to enforce the tax laws against some of our major corporate citizens that have chosen for some reason to violate them. And this is one of the problems that I mentioned earlier. If we alolcate all our resources one way, we do not have the resources to work these cases, and I know that you share our view that these cases ought to be worked.

Senator BAYH. Well, gentlemen and ma'am, thank you very much for letting us have your testimony. I trust that you will provide us with the information we discussed. We may have a few other questions here that I did not want to take your time to task, and if you could supply the answers for the record, I would appreciate it very much.

Mr. ALEXANDER. Thank you very much, Mr. Chairman.

Senator BAYH. I would like you to get right on this budgetary matter.

Mr. GLYNN. Yes, we will.

Mr. ALEXANDER. With pleasure.

[Subsequent to the hearing the following information was received:]

(Exhibit No. 17)

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

Commissioner

SEP 2 5 1976

Honorable Birch Bayh
Chairman, Subcommittee to Investigate
Juvenile Delinquency
Senate Judiciary Committee
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I appreciated the opportunity to have appeared before your Subcommittee on August 5, 1976, during its consideration of S. 3411, the Narcotic Sentencing and Seizure Act of 1976.

As I indicated during the course of my testimony, I am convinced that the cash forfeiture provision under Title III of this bill is essential to reinforce the tools available to Federal enforcement agencies involved in the effort against narcotic traffickers. I urge that your Subcommittee take favorable action on the bill at the earliest possible time, so that it may be considered by the Congress before adjournment.

If the Internal Revenue Service can be of any further assistance to you in connection with this matter, please do not hesitate to call upon us.

With kind regards,

Sincerely,

Donald C. Alexander

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Senator BAYH. At this point in the record, I will include excerpts from the testimony of Peter B. Bensinger, Administrator, Drug Enforcement Administration, U.S. Department of Justice; and Dr. Robert L. DuPont, Director, National Institute on Drug Abuse, U.S. Department of Health, Education, and Welfare. Their entire testimony is to be found in volume I of these hearings on the Narcotics Sentencing and Seizure Act of 1976; but as these excerpts deal especially with testimony of Commissioner Alexander they will appear herewith as exhibits 18 and 19.

We will then conclude with the testimony of our good friend Congressman Charles A. Vanik of Ohio, who is also very interested in the subject of today's testimony.

[Testimony continues on p. 128.]

[EXHIBIT No. 18]

EXCERPT FROM THE TESTIMONY OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

* * * * * * *

Mr. RECTOR. What has the Department of Justice—DEA, in particular, but perhaps the Tax Division or other entities at Justice, also—done to help facilitate tax investigations of what Senator Bayh called the kingpin drug traffickers; those who, are according to what I have seen recently, taking in at least $400 million in untaxed profits annually?

And at this point in the record I would like to enter the remarks of Assistant Attorney General Richard L. Thornburg to the Fifth Controlled Conspiracy Conference, July 22, 1976.

[The remarks follow:]

"THE PROSECUTOR AND DRUG ABUSE"

REMARKS OF RICHARD L. THORNBURGH, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, TO THE FIFTH CONTROLLED SUBSTANCES CONSPIRACY CONFERENCE, JULY 22, 1976

The problem of narcotics and dangerous drugs continues to pose a monumental challenge to American society.

More than 5,000 Americans die each year from the improper use of drugs. Expensive drug habits account for as much as one-half of the "street crime"—robberies, muggings and burglaries—which afflict American communities. The overall cost of drug abuse is estimated to run as high as $17 billion a year. No wonder that the President has properly noted drug abuse to be "a tragic national problem which saps our Nation's vitality."

In speaking to those of you involved in the investigation and prosecution of criminal offenses related to drug trafficking, I cannot help but take note of the important role you have been assigned in attacking this problem.

At the same time, however, I must also observe that prosecutors have a narrowly defined role to play in the effort to combat this national affliction of drug abuse.

Prosecutors cannot and do not research the reason for the existence of massive numbers of drug abusers in this most affluent, most free, most mobile of the world's societies.

Prosecutors cannot and do not prescribe means and methods for the treatment and rehabilitation of drug abusers or evaluate the many competing prescriptions offered by others in this regard.

Prosecutors can and do only deal with the supply side of the drug abuse equation. Our role is to smash the large scale business enterprises which profit from the miseries of others—to smash them by the accumulation of sufficient legally admissible evidence to convince judges and juries beyond a reasonable doubt of the guilt of those who violate the criminal laws o fthe United States in the conduct of their drug-related enterprises.

At the Federal level, this means we must make a firm commitment to the bold and imaginative use of the provisions of the Controlled Substances Act of 1970

regulating traffic in a wide variety of narcotics and dangerous drugs. It means we must pursue the innovative use of the conspiracy laws and the provisions of the Organized Crime Control Act of 1970 which reach the variety of patterns of business enterprises involved in the illegal drug traffic. And it means maximum use of the income tax laws to exact a full "bite" upon the mammoth ill-gotten profits of the drug merchant—profits estimated to run as high as $350 million a year.

More often than not, the evidence-gathering process for such prosecutions will lead Drug Enforcement Administration (DEA) agents into long and arduous pursuits of those who appear at various levels of the drug trafficker's "organization chart." In many cases, these trails will cross state and international boundaries and will frequently require the cooperation of foreign and overseas law enforcement units as well. Such an undertaking was involved in the intensive helicopter spraying operation mounted this year against 20,000 Mexican opium poppy fields through the efforts of Mexican Attorney General Pedro Ojeda Paullada.

Because the typical drug smuggling and distribution ring must invariably use telephone communications to transact business from time to time, prosecutors must always be prepared to aid DEA investigators in obtaining, often on short notice, court-authorized wire-taps where probable cause can be established to indicate particular telephones are being utilized in major operations.

In an increasing number of investigations, Federal grand juries must be utilized to obtain the full testimony under oath of unwilling or recalcitrant witnesses and so-called "use immunities" must be sought to compel the testimony of the "little fish" in a particular narcotics operation to provide incriminating evidence against the "big fish" so that the full cast of characters can be successfully prosecuted.

Prosecutors must always be alert as well to the need to work with DEA investigators in providing protection for government witnesses who frequently become the targets of underworld threats, intimidation and worse once their cooperation is made known.

And finally, the prosecutors must be alert to every possibility to inform the courts of the need for extended sentences in those cases where convictions are obtained against the true kingpins of illegal narcotics operations.

The effort to deal with the threat posed by large-scale illicit drug operations thus requires a close and constant working relationship between Department of Justice prosecutors and DEA investigators if their separate efforts are to be maximized to the utmost. We intend to see that those prosecutors in the Criminal Division and the United States Attorneys' offices charged with the responsibility for prosecuting cases involving drug offenses do, in fact, give their utmost in this effort.

The principal vehicle in this undertaking since January, 1975, has been the special "Controlled Substance Prosecution Units" established by the Department of Justice in 19 major cities throughout the United States. The goal of these units is to lead enforcement efforts away from simply an aggregation of "buy and bust" arrests and prosecutions and toward the immobilizing of entire networks of drug distribution—attacking each step from the growth of illicit drug-producing crops abroad, through the processing mills and laboratories both here and abroad, to the vast importation and distribution systems utilized to put a wide variety of illegal narcotics and dangerous drugs on the streets of American communities.

On the investigative side, we can only applaud DEA Administrator Peter Bensinger's promise that DEA efforts "will not be on the street dealer, but on the financier, importer, the criminal organization leader or leaders" and to this end we are devoting substantial prosecutive resources ourselves, coordinated by the Narcotic and Dangerous Drug Section of the Criminal Division in Washington.

To step up the capability of our prosecutors in this effort, a series of training seminars, of which the one this week in Minneapolis is the fifth, have been held throughout the United States for those who must man the "front lines" in the effort to deal with drug enforcement. At these sessions, experienced prosecutors share with each other and with those junior in experience the latest techniques in handling the investigation and prosecution of major drug cases before grand juries and Federal courts.

To date, some measure of success has been forthcoming in this effort to "up the ante" for the major financiers and distributors of narcotics and dangerous drugs. But we are far from satisfied. Those engaged in this highly lucrative field have

no shortage of imagination and guile themselves and constant intelligence gathering and sharing is necessary for prosecutors and investigators alike to keep even, let alone get ahead of the adversaries.

While we do take pride in those successes that have been achieved, we know that we must constantly re-evaluate our position and change our priorities as new needs arise. We believe, however, that we have found the basic formula for success—close cooperation between DEA investigators and our Controlled Substance Prosecution Units in the development of major cases.

The Department views with special pride the Central Tactical (CEN TAC) Program developed by the Drug Enforcement Administration in 1973—a program which is targeted upon major organizations operating in multiple geographical areas of the United States. Top priority is given to an investigation once it has achieved CEN TAC status. The investigation is coordinated out of Washington. Prosecutors from the Criminal Division and Assistant United States Attorneys from different parts of the country are assigned to work closely with agent personnel. Step by step the investigation proceeds using every weapon available to the government. A typical investigation may very well be supported by several federal, state and local law enforcement agencies. Prosecutive decisions are made in many cases to proceed under all statutes available, including those unrelated to narcotics such as tax law violations and laws relating to the use and transportation of weapons.

To date, some 17 major CEN TAC investigations have been launched; these have been targeted upon large-scale traffickers in Lebanese, Mexican or Southeast Asian heroin; Colombian cocaine; and domestic methamphetamines. Some of the networks whose participants are now under arrest or indictment have stretched into dozens of states and several Canadian provinces, as well as throughout the world. As we become more adept at using the legal and organizational tools I have discussed, we can look forward to the CEN TAC type of effort becoming more the rule than the exception.

The stakes are high for all of us in doing battle with drug abuse. Those engaged in research efforts to determine the "why" of drug abuse must come up with some answers. Those who seek the optimum means of treatment and rehabilitation will, we hope, some day reach their goal. These efforts can cut down on the demand side of the equation by reducing the market for the merchants of menace who control drug trafficking.

But in the meantime, law enforcement must continue to mount its unrelenting campaign against the supply side of the equation. Both the DEA and Justice Department prosecutors have set their goals high—nothing less than a maximum effort to investigate and prosecute the "Mister Bigs" who monopolize the large scale production and distribution of illegal drugs in this nation. No statistical striving or "seizure syndromes" can or will substitute for the quality prosecution—those cases which place behind bars for extended jail sentences individuals responsible for the flow of illegal drugs into American communities.

The prosecution of these major drug traffickers is no sport for the short-winded. Dealing with only the supply side of the equation, to be sure, has its share of frustrations. But I am confident that proficient and dedicated investigators and prosecutors such as those here this week can do more than their share in breaking the habit of dispair which threatens to engulf our society in its attitudes toward the problem of drug abuse.

I wish you well in this effort. It is as important a challenge as any facing law enforcement today.

Mr. BENSINGER. I am happy to report that the Commissioner of IRS and I did sign an agreement between our two agencies. as a matter of fact, yesterday, that would provide for a continuing exchange of information from DEA to IRS on just the kingpins we are talking about, which you referred to.

We have already provided to IRS names of individuals in class 1 charactristic violator description, who we believe are not only involved in the illegal narcotics traffic, but are inviolation of the tax laws of the country.

We look forward to IRS asserting a positive program toward focusing on such offenders or potential offenders of their laws.

Mr. RECTOR. In other words, are you saying the Department of Justice supports the President's concern that IRS vigorously pursue tax investigations with regard to high-level drug traffickers?

Mr. BENSINGER. I could not emphasize that more strongly.

Mr. RECTOR. One last concern relates to a fairly well-known and widely publicized, I guess we could say, tug-of-war between DEA—its predecessor BNDD—and Customs. I think we could honestly characterize the relationship between these two entities and their predecessor entities as somewhat less than cooperative on occasion, particularly with regard to efforts at the border.

Since the Reorganization Act No. 2, in 1973, when Customs lost some of their authority with regard to intelligence gathering and what-have-you, I think we have all learned that this situation was excerbated. We are concerned as to what the current relationship is between the two agencies.

As you recall, Senator Bayh indicated earlier he was especially concerned about the possibility of a continued weak link in the Federal drug law enforcement at the critical point where heroin is in such high volume and purity; namely, at the border.

Mr. BENSINGER. I am very glad you raised that question. I don't agree with the characterization of DEA and Customs relationships as being strained. I think at the present time they are very good.

Mr. RECTOR. I was making reference to the track record, the past record, and experience.

At this point we will insert several articles, referring to the past record.

[Exhibits 13 and 14, were inserted in the record at this point.]

* * * * * * *

Mr. BENSINGER. I think in the past there have been difficulties between DEA and its predecessor agency, between them and Customs, because of conflicting and competing jurisdictions.

I think today—and the Commissioner of Customs is here, and he can speak to this subsequently—I feel we have a good relationship with that Agency. On a professional basis there has been an agreement signed between Customs and the DEA dated December 11, 1975, on our working relationship. We have participated in the Cabinet Committee on Drug Law Enforcement appointed by the President, a representative from U.S. Customs is working on a daily basis, in our headquarters office in Intelligence, on an interagency committee, with representatives from Immigration, Naturalization, and FAA and the Coast Guard. We have representation from Customs at our El Paso Intelligence Center; we have provided increased communication and information to their agency, and they to our agency, and not only limited to the development of intelligence gathering but on situations where we are developing joint research considerations and also efforts that can capitalize on the strengths of both agencies.

I am glad you raised the issue.

[At this point in the record, Exhibit 15, the Memorandum of understanding between the Internal Revenue Service and the Drug Enforcement Administration, dated July 27, 1976 was inserted in the record.[1]]

* * * * * * *

Mr. BENSINGER. Senator Bayh, we are talking about the relationship between DEA and Customs. They are better than they have been in the past and I would characterize them as good and I would like you to address this question as well to the Commissioner of Customs who will be joining you shortly.

I think it is very important that in the system of enforcement, the agencies maximize the individual potentials that they have, in information sharing and in resource capabilities.

And customs seizures at the borders have increased. The ability of DEA to provide intelligence not only to them, but to State and local police, is also important.

So I think we can give you a report that would not characterize the past as being carried out at present.

Senator BAYH. The reason we saved that question until last is the next witnesses are going to give a review of Treasury Department drug law enforcement activities, including the area of Customs' responsibilities. I appreciate your answer.

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[1] See Appendix, Part 2—Narcotics Traffickers Tax Program Under Commissioner Alexander: D. IRS and DEA Policy, p. —.

[EXHIBIT No. 19]

EXCERPT FROM THE TESTIMONY OF DR. ROBERT L. DUPONT, DIRECTOR, NATIONAL INSTITUTE ON DRUG ABUSE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

* * * * * * *

Senator BAYH. * * * I think this problem is so severe, and its impact on society in general is so great, that in certain selected cases I want those who are going to be tempted to take advantage—to make a quick buck—at the expense of others to know that the penalty is going to be certain and, hopefully, quickly imposed.

Dr. DUPONT. Yes, sir; and I support that personally.

Senator BAYH. I know you heard the discussions we have had earlier about the importance or lack thereof of IRS giving special attention to drug tax evaders. The IRS cannot do it by itself. But, certainly the IRS does have a tool that is not available to others. I asked Mr. Alexander about a statement he had made before the American Bar Association in Honolulu, in the summer of 1974, in which he pointed out that the IRS was going to deemphasize the special task force—NTTP—approach which directed resources toward those tax evaders who were high-level drug traffickers.

I noticed about that same time—in fact, in June of that same year—a document entitled, "Federal Strategy for Drug Abuse and Drug Traffic Prevention, 1974" was released.[1] It was transmitted to the President over your signature, part of which contains the following text.

First it targets major drug traffickers as one of five principal targets.

Second, it says at page 67—

"The Treasury Department, through the Internal Revenue Service, is continuing its program involving intensive investigation of the incoming tax returns of suspected drug traffickers. Since drug traffickers rarely declare their illicit income, tax audits" and investigations can be very productive even when other Federal agencies are unable to obtain enough evidence to prosecute the traffickers successfully for drug law violations."

Further, the following page says—

"The strategy in the 1974 action plan in the area of criminal investigative activities against major drug traffickers include the following:"

And the second item specifies—

"The Internal Revenue Service will expand its investigations of tax evasion as part of increased Federal efforts against nonopiate of drug distribution."

Let me go further.

You are one of those that participated in the drafting of September 1975 White Paper on Drug Abuse;[2] is that correct?

Dr. DUPONT. Yes, sir.

Senator BAYH. Despite the 1974 strategy which was enunciated the year before, and the 1975 White House White Paper makes the following assessment at page 43.

"By focusing on the traffickers' fiscal resources the government can reduce the flow of drugs in two ways. First, high-level operators, usually well insulated from narcotics charges, can often be convicted for tax evasion. Second, since trafficking organizations require large sums of money to conduct their business, they are vulnerable to any action that reduces their working capital."

PRESENT IRS POLICY NONEFFECTIVE IN PRIORITIES

Then the White Paper states—

"The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement action. Recently, the program has been assigned a low priority because of IRS concern about possible abuses. The task force is confident that safeguards against abuse can be developed, and strongly recommends re-emphasizing this program. The IRS should give special attention to enforcement of income tax laws involving suspected or convicted narcotics traffickers."

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[1] Federal Strategy for Drug Abuse and Drug Traffic Prevention, 1974. For sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price $1.15. Stock number 4110-00014.

[2] White Paper on Drug Abuse, September 1975—A Report to the President from the Domestic Council Drug Abuse Task Force. For sale by Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price $1.55. Stock number 041-010-00027-4.

What has happened?

Also, Mr. David Macdonald, Assistant Secretary of the Treasury, in addressing a memorandum to the Deputy Secretary through the Under Secretary, has the following observations—this is a memorandum of March 3, 1975:

"Treasury will be hard put to explain why, especially in a period of hard times for the average workingman whose dollar is being eaten up by inflation, we are sanctioning an IRS policy that picks on the little guy but lets the bigshot racketeer get off, as the average citizen would put it."

And Secretary Macdonald has other things to say about the shortcoming of the present IRS policy.

Now, isn't anybody listening over at IRS? How can there be such a great differential between what is said at the White House and what is said at Treasury and the policy that is followed at IRS?

Dr. DU PONT. Well——

Senator BAYH. Well, is it fair to ask? I assume you meant what you said. Do you still mean it?

Dr. DU PONT. Yes; I think one fact to be considered is the limitations on the power of the people within the executive branch to get compliance in all of the components of the executive branch. I have great hopes that this hearing and your involvement in this issue will help to change the thinking in IRS because I share with you a strong conviction that this is one of the most important areas for our drug abuse prevention effort.

One of the grave problems in the supply reduction area has been the excessive emphasis on the small dealer and the limited activities impacting on high-level drug traffickers.

IRS COULD LEAD ATTACK ON DRUG TRAFFICKERS

As you point out, one tool that is most effective in dealing with the high-level trafficker is the tax law as administered by the IRS. I think that Mr. Alexander's concern about political abuses of IRS can adequately be dealt with without sacrificing this extremely important tool.

I was the head of the Narcotics Treatment Administration in Washington, D.C., at the time of the initial activity of IRS in the drug abuse field—that is before they downgraded it—and let me assure you that the impact of IRS activity was very strongly felt in the District of Columbia. It led to a sense of energizing and hopefulness on the part of everybody in the local drug field at the time. I hope that with a rejuvenated activity at IRS, with the leadership and encouragement of this committee, this will happen again on a national scale.

Senator BAYH. I don't think anybody wants to get the Commissioner of the IRS angry at them. However, it seems we have to recognize that somebody is missing the boat in this area. There has been, what I would think, a significant decrease in the request to OMB for resources for IRS to pursue this attack on the high-level traffickers. Can you shed any light on the reason behind that?

Dr. DU PONT. I cannot.

As I understand, though, there may be some question about whether IRS spent the money in the drug area that they already had, and there was some question about whether they would spend additional money specifically on drug-related efforts. But in any event, it is my understanding that OMB and the Domestic Council are unequivocal in their support of IRS activity in this area.

I have had the experience of talking specifically with the President on this very point, and I know that he is very aware of the specific problems in this area and the importance of tax activity against traffickers. So I have a feeling we are going to see some progress in the next few months.

Senator BAYH. What is being done about it?

Dr. DU PONT. I don't know.

Senator BAYH. Here we have a widely publicized speech from President Ford and many of us applaud aspects of its contents; and yet the amount of resources going into the area are subsequently reduced. I had heard rumbles—in fact, it was whispered in my ear after Mr. Alexander left, or I would have brought it to his attention—that people at OMB and over at Treasury are angry with him because of the fact that the Narcotic Traffickers Tax Program wasn't being done that they did not want to give him money that was not going to be used properly.

Well, it seems to me there is one way to remedy that, and that's not to decrease the effort but to get somebody else to do the job correctly; if, indeed, that is the assessment. I don't know. You seem to lend some credence to that.

IRS SHOULD IMPROVE ACTIVITIES IN NARCOTICS ATTACK

Dr. DU PONT. Well, I am not competent to judge Mr. Alexander's performance across the board in terms of the wide range of activities that he is involved in. But I would say I am not satisfied with what IRS is doing in the narcotics field, and I think something has to be done to improve it.

Senator BAYH. You are here also, as a representative of the President and the Cabinet Committee on Drug Abuse, Prevention, Treatment and Rehabilitation. We will enter President Ford's memorandum dated May 12, 1976 at this point in the record.

[The memorandum follows:]

CABINET COMMITTEE ON DRUG ABUSE PREVENTION, TREATMENT AND REHABILITATION

THE PRESIDENT'S MEMORANDUM ON THE RESPONSIBILITIES OF THE COMMITTEE AND THE DESIGNATION OF ITS MEMBERS

Dated: *May 12, 1976.*
Released: *May 13, 1976.*

Memorandum for:

The Secretary of Defense.
The Secretary of Labor.
The Secretary of Health, Education, and Welfare.
The Administrator of Veterans' Affairs.

Subject: Cabinet Committee on Drug Abuse Prevention, Treatment and Rehabilitation.

The need to provide humane and effective drug abuse prevention, treatment and rehabilitation services, to balance our law enforcement efforts aimed at drug traffickers, has been clearly established. Given the magnitude of the drug abuse problem and its impact on the health and well-being of our nation, it is vitally important that the efforts of the various departments and agencies of the Federal government responsible for providing these services be integrated into an effective overall program.

In my recent message to the Congress on drug abuse, I announced the establishment of a Cabinet Committee on Drug Abuse Prevention, Treatment and Rehabilitation, to have responsibility for oversight and coordination of all Federal activities in this area. You are hereby appointed members of the Cabinet Committee, along with such other members as I may appoint from time to time. The Secretary of Health, Education, and Welfare will serve as Chairman of the Cabinet Committee.

The Cabinet Committee shall be supported by a Working Group composed of personnel from each Federal department and agency having drug abuse prevention, treatment or rehabilitation responsibility and the Office of Management and Budget. The Secretary of Health, Education, and Welfare shall designate an Executive Director of the Cabinet Committee, who shall be Chairman of the Working Group.

The Cabinet Committee shall be responsible for the coordination of all policies of the Federal government relating to the drug abuse prevention, treatment and rehabilitation services, as well as related research activities. To the maximum extent permitted by law, Federal departments, agencies and offices shall cooperate with the Cabinet Committee in carrying out its responsibilities.

More specifically, the Cabinet Committee shall:

(1) develop and implement the Federal strategy with respect to drug treatment, rehabilitation, prevention and research;

(2) assure proper coordination among Federal drug treatment and rehabilitation programs, including the collection, analysis and dissemination of information;

(3) assure that Federal prevention, treatment and rehabilitation resources are effectively utilized;

(4) provide liaison between the Executive Branch and Congress, State and local governments and the public;

(5) assure implementation of relevant recommendations contained in the Domestic Council's *White Paper on Drug Abuse;*

(6) develop and monitor a plan for improving job opportunities for former addicts;

(7) evaluate and make recommendations to improve Federal drug treatment and rehabilitation programs; and

(8) report progress to me on October 1, 1976, and periodically thereafter.

In addition to the above on-going responsibilities, the Chairman of the Cabinet Committee, shall work closely with the Attorney General to develop plans for improving the coordination between law enforcement and drug abuse prevention, treatment and rehabilitation programs.

GERALD R. FORD.

NOTE: The text of the memorandum was made available by the White House Press Office. It was not issued in the form of a White House press release.

Senator BAYH. You might convey our very sincere wishes from one subcommittee chairman to cooperate with the President in any way he can—either to strengthen the laws, or in the capacity as a member of another committee to get the resources necessary.

Let's not quit and say because it allegedly experienced some problems or because Mr. Alexander has effectively sandbagged it we are going to cut off the arms and legs of the Narcotics Traffickers Tax Program. Is there any reason why we should not have this special program revitalized?

Dr. DU PONT. No. On the basis of what I understand and what I have heard this morning, and my review of the excellent summary that you submitted in the Congressional Record following last week's hearings, I am persuaded that we do need a special program.

"WATERGATE" EXCUSE IRRELEVANT TO ISSUE

We are talking about reasons for the behavior that we are observing in the IRS. One we focused on is the concern about politicalization. Mr. Alexander referred to Watergate; and I thought your statement about that was very eloquent, because I think it is irrelevant to what we are talking about. But I think it is on his mind.

Senator BAYH. I can understand why it would be on his mind. I did not bring it out, but I think it's a real copout to suggest because they had Watergate, that we are not now able to conform to an acceptable standard. There are others who do conform to the standard and are given marching orders and strict criteria to follow and go about their jobs. Let's get on with it.

BUREAUCRATIC RESPONSES TO MAIN ISSUES

Dr. DU PONT. Yes, Mr. Chairman. And there is another problem which we have not focused on which I spent a good bit of my professional life in the past decade dealing with. When we were dealing with people whose bureaucratic responsibilities cover a very broad range of issues, and one component of that broad range—such as the drug component gets special legislative attention, executive branch attention, public attention—the bureaucrat with the broad responsibility will often attempt to, on the one hand, put the special concern—in this case, drug abuse—down into a relatively minor position; or, on the other hand, try to use the energy that is created by that to run his entire budget and organization.

In other words, he tries to get not just additional funds for drug abuse activities, but get additional funds for the entire range of bureaucratic activities that the individual is concerned with. That is very destructive tendency, but a very common one. We had it in the drug field in dealing with our mental health colleagues, where for many years they used the public's concern with drugs to fund a broad range of perfectly appropriate mental health activities that didn't have anything to do with drugs. It was because of that activity that ultimately the National Institute on Drug Abuse was created as a separate entity. We simply could not solve that problem in the ambit of overall mental health. I don't know the details in IRS, but on the basis of what I heard from Mr. Alexander today, it seems very possible that a similar activity and a similar solution—which is to identify a specific identifiable budgetary administrative responsibility in IRS—may be justified. And when IRS comes back, in response to your questions, and they say they can't identify their drug abuse activities specifically because they are woven into the fabric of the entire agency; that seems, to me,

to be unresponsive to the specific concerns of this committee and of the President. Thus, to have specific accountability on drug abuse within IRS it, presumably, will be necessary to have a separate drug abuse unit.

Senator BAYH. Well, Mr. Alexander and his staff pointed out that they were allegedly shifting from the emphasis on street people to some of the more sophisticated business types who were making it possible for these street people to operate.

From your experience in the drug field, is it not a reasonable assessment that a shift to the shadowy figures—as Congressman Vanik described them, the persons behind the scenes that makes all this possible—that the very shift to those persons, more sophisticated, more removed from the scenes, perhaps better educated, more diverse, with an opportunity to thwart prosecution—from the street to the suite is a good policy? That's not bad.

Dr. DU PONT. It's too bad we don't have television here for that.

Senator BAYH. That approach requires a degree of sophistication and specialization far above what would be necessary if you're worrying solely about street or low-level distributors; is that an unreasonable assessment?

APPLY PRESSURE TO SUITE—NOT STREET—PEOPLE

Dr. DU PONT. No, that makes great sense to me, Mr. Chairman.

The public support for that kind of shift is very broad. Mr. Alexander, as I understand it, is under no pressure to go back to dealing with the street people. What, in fact, he is under pressure to do is to be more effective in dealing with the suite people, as you have talked about them. He is being asked to be more effective in nailing the bigtime profiteers in illicit opiate drugs who are not now paying any taxes on these deadly profits.

Senator BAYH. Now if I might address a question to you, that perhaps you or Mr. Dormer might want to answer. We were told by Mr. Alexander that one of the problems he had was that Congress was imposing burdens on IRS that made it impossible for them to do the job.

The jeopardy program was one area mentioned. The administrative summons was the other. Can you give us your opinion—either of you gentlemen, or both—as to whether it is possible for Congress to provide protection of due process for the individual suspect without tying as alleged, the hands of IRS or other law enforcement officials?

Dr. DU PONT. I have no doubt in my mind that it is possible. I think the charge that this singling out of major dealers in narcotics is politically motivated in some dangerous sense, can be adequately dealt with in a variety of ways, not the least of which is through the interagency kind of procedures to identify the targets. This would help to mitigate or avoid any possibility of personal or political animus affecting the selection of targets. In other words, I don't think that is an unsolvable problem at all. It seems to me it's perfectly straightforward.

Senator BAYH. We have had IRS abuses, unfortunately, which were politically motivated. Can you cite specific instances—and you certainly have a long track record in the drug field—where the narcotic program was subjected to political abuse?

Dr. DU PONT. I don't know of any. I guess the mood of the country in the last few years makes me think that maybe such has happened. I don't know of any; but, in any event, it seems to me that by making this targeting decision a shared responsibility, in an interagency sense, one can certainly avoid that possibility. The worry is that some particular person—particularly some high-level person—would singlehandedly be able to target somebody for IRS investigation and thus abuse his power for a variety of reasons, including political gain or personal feelings, is an area of concern. But, I think, by sharing that decisionmaking in a systematic open way it is possible to avoid that problem.

Senator BAYH. Could I ask, Mr. Dormer, if you are not familiar with the provisions of the tax bill—both the IRS people and Congressman Vanik come to different conclusions referred to this morning. If you are familiar with it, could you give us your assessment of those provisions? And, if not, could you rather quickly become familiar and let me have your assessment?

Mr. DORMER. I will be glad to become familiar and submit something for the record.

[Subsequent to the hearing, the following was furnished]

ANALYSIS OF THE EFFECTS OF JUDICIAL AND
PROPOSED LEGISLATIVE ACTIONS ON
IRS' ABILITY TO CONDUCT AN EFFECTIVE
NARCOTICS TRAFFICKERS TAX PROGRAM

The October 1975 Domestic Council White Paper on Drug Abuse supported the use of the tax law to impede the activities of high-level traffickers. The justification for this supply reduction strategy was as follows:

> "By focusing on the trafficker's fiscal resources the government can reduce the flow of drugs in two ways. First, high-level operators, usually well insulated from narcotics charges, can often be convicted for tax evasion. Second, since trafficking organizations require large sums of money to conduct their business, they are vulnerable to any action that reduces their working capital.
>
> "The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement actions. Recently, the program has been assigned a low priority because of IRS concern about possible abuses. The task force is confident that safeguards against abuse can be developed and strongly recommends re-emphasizing this program. The IRS should give special attention to enforcement of income tax laws involving suspected or convicted narcotics traffickers." (White Paper on Drug Abuse at 43-44).

The Federal Courts, however, have been increasingly critical of IRS' use of the tax law against suspected narcotics traffickers. Moreover, legislation, which has passed both the House and the Senate, and is now in committee, would substantially alter the statutory authority which IRS has relied upon to make tax assessments against narcotics traffickers.

The mechanics of the IRS enforcement procedure in drug cases has been as follows: When an individual is apprehended on a drug-related offense,

or when a person is arrested on a non-drug related offense but there is evidence that the individual may be involved in narcotics trafficking, IRS, pursuant to section 6851 [1/] of the Code, terminates the taxable year of the taxpayer, and on the basis of the amount of money or drugs in the taxpayer's possession at the time of arrest, IRS estimates the amount of the tax owed and makes immediate demand for payment. If the taxpayer refuses to pay or cannot pay, IRS levies on any property owned by the taxpayer.

Recent litigation has focused on the issue of whether this assessment under section 6851 is a "deficiency." The Government has taken the position that the assessment authority under section 6851 is section 6201, which makes no mention of a deficiency. Taxpayer-defendants have

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1/ Section 6851(a) provides that:
"If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy." 26 U.S.C. § 6861(a).

generally argued that the assessment authority for a section 6851 termination is the companion jeopardy provision of section 6861.[2/]

The practical ramification of this issue is that if IRS is required to rely on section 6861 for its assessment authority and the tax owing under a section 6851 is a deficiency, IRS must, within 60 days of the jeopardy assessment, send to the taxpayer a notice of deficiency. This deficiency notice is important because it is a jurisdictional prerequisite for the taxpayer to petition the Tax Court for a redetermination of the tax. If the tax is not a deficiency, the only way for the taxpayer to litigate the correctness of IRS' assessment is to pay the full tax, file for a refund with IRS, and if the refund claim is denied or IRS fails to act within six months, file suit for a refund in District Court. This procedure normally takes longer than a Tax Court proceeding and the taxpayer therefore may be wrongfully deprived of his property for a greater period of time.

2/ Section 6861(a) provides for the immediate assessment of deficiencies whose assessment or collection would otherwise be in jeopardy:

"If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof." 26 U.S.C. § 6861(a).

The Supreme Court in the case of Laing v. U.S., 96 S.Ct. 473 (1976) resolved the conflict which had existed among the lower courts on this issue. On January 13, 1976, the Court held that any tax owing after a section 6851 termination is a deficiency, and therefore, the assessment of that deficiency is subject to the provisions of section 6861. In its opinion, the Court, recognizing that taxpayers are normally entitled to Tax Court review of any assessment, stated that:

> "Denying a Tax Court forum to a particular class of taxpayers is sufficiently anomalous that an intention to do so should not be imputed to Congress when the statute does not expressly so provide. This is particularly so in view of the Government's concession that the jeopardy assessment procedures of section 6861 et seq. are sufficient to protect its interests, and that providing taxpayers with the limited protections of those procedures would not impair the collection of the revenues." (96 S.Ct. at 482).

It is difficult to conclude that the Court's decision in Laing will impair IRS' ability to conduct an effective program against drug traffickers. Under the section 6861 procedures mandated by the Court, the only procedural distinction appears to be that the taxpayer can contest IRS' tax determination prior to paying the tax and therefore IRS cannot sell the taxpayer's property to satisfy the tax assessment until after Tax Court review. In a footnote to the Laing decision, the Supreme Court stated that:

> "The Government repeatedly conceded at oral argument that adoption of the taxpayers' theories would result in no significant injury to the Government other than the loss of some of the cases now pending in the lower courts. (citations omitted). This concession completely rebuts the dissent's claim that our decision today deprives IRS of a device it obviously needs in combatting questionable tax practices . . ." (Note 22 at 482).

Furthermore, the Fifth Circuit Court of Appeals in Campbell v. Clark, 501 F.2d 108 (5th Cir. 1974) in considering the possible adverse consequences of a ruling against the Government stated that:

> "We fail to see how any legitimate government interest will be prejudiced by construing the law to permit the section 6851 quick termination taxpayer to seek a redetermination in the Tax Court before his assets are involuntarily applied to the liability. The opportunity for prompt review will hardly dry up the sources of revenue or stop the Government in its tracks since virtually all other taxpayers (section 6861 jeopardy or otherwise) who desire to contest income tax liability prior to payment are currently allowed to do so. Nor will the purpose of section 6851 and section 6861 - the avoidance of tax evasion - be thwarted since the Government will still be able to seize all of the taxpayer's available assets necessary to satisfy the potential liability prior to the Tax Court proceeding." (501 F.2d at 126).

This is an important point - the requirement of a deficiency notice does not prevent IRS from seizing the taxpayer's assets. It only prohibits IRS from selling those assets prior to a Tax Court review of the deficiency. This power to seize and retain the taxpayer's assets has also been the subject of criticism on the grounds that it allows IRS, through an assessment which may be arbitrary, to effectively tie up the taxpayer's resources and thereby make it difficult for him to obtain legal counsel.[3/]

As noted above, legislation currently before the Congress[4/] would substantially revise the procedures for both the section 6851 and the section 6861 jeopardy assessments. It remains to be considered

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3/ Tarlow, Criminal Defendants and Abuse of Jeopardy Tax Procedures, 22 UCLA L. Rev. 1191 (1975); Note, Narcotics Offenders and the Internal Revenue Code; Sheating the Section 6851 Sword, 28 Vand. L. Rev. 363 (1975).

4/ H.R. 10612

whether the proposed statutory changes would adversely affect IRS' ability to operate an effective tax program against drug traffickers.

Although the versions to H.R. 10612 which have passed the Senate and the House of Representatives differ in the extent to which they would amend the jeopardy assessment provisions, the thrust of the bills' amendments in this area is to provide an expedited review of the reasonableness of IRS' assessment of the amount of tax owed by the taxpayer. In view of the possible hardship which could result from the seizure of the taxpayer's assets and the lengthy time necessary for review of IRS' assessment, it seems only fair that the taxpayer be allowed to contest this assessment as soon as possible. As the report of the Senate Finance Committee notes:

> ". . . a taxpayer may have to wait at least 60 days to petition the Tax Court and then his case will be placed on the regular docket of the Tax Court, his judicial remedy (considered in the light of the fact that substantially all of his assets may have been seized) is not sufficiently speedy to avoid undue hardship in cases where the assessment may have been inappropriate.
>
> * * * * *
>
> "Furthermore, some may argue that under present law, a taxpayer's rights for review of the Service's action are constitutionally inadequate. That argument would be based on the premise that, in view of the hardship that may be suffered by a taxpayer who has been the subject of a jeopardy or termination assessment, it is not sufficient to provide that within 60 days a taxpayer could file a petition with the Tax Court which generally could be expected to render an opinion within 12 to 30 months after the petition is filed." (S. Rep. 94-938, 94th Cong., 2nd Sess., June 10, 1976, at 363.

Regardless of whether a successful constitutional challenge could be made to the current jeopardy assessment procedures, it would appear that taxpayers whose assets have been seized by IRS should be afforded an early opportunity to contest the Service's determination. Both the

Senate and House versions of H.R. 10612 would provide an adeuqate framework for protecting the taxpayer's rights without unduly hindering IRS' ability to collect the revenue or, in appropriate instances, to bring tax evasion or tax fraud cases against narcotics traffickers.

In summary, although recent judicial and legislative actions would provide greater protections for taxpayers who are the subject of jeopardy assessments, these actions should not prevent IRS from conducting an effective program against narcotics traffickers. The procedural protections afforded the taxpayer under Laing and the legislative amendments under consideration would allow the taxpayer quicker access to a judicial review of a jeopardy assessment. These safeguards are designed to reduce abuse of the jeopardy procedures without adversely affecting IRS' ability to use this procedure in appropriate cases where the Service has adequate evidence to substantiate its case.

Nevertheless, this conclusion in no way lessens the Government's need to be able to seize directly moneys used or intended to be used in illegal drug transactions. Title III of the Narcotic Sentencing and Seizure Act of 1976, S. 3411, would amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to provide the Department of Justice with this power. This amendment, as well as the remainder of S. 3411, merits favorable consideration. Title III would provide the Government with an additional weapon which it needs to combat drug trafficking and it would place that weapon in the arsenal of the Department of Justice which has the primary responsibility for enforcing Federal drug laws.

[Testimony continued from page 112.]

Senator BAYH. Our next witness is the distinguished representative from the State of Ohio, Congressman Charles Vanik. Congressman Vanik is the chairman of the Subcommittee on Oversight of the Ways and Means Committee.

STATEMENT OF HON. CHARLES A. VANIK, U.S. REPRESENTATIVE IN CONGRESS FROM THE 22D DISTRICT OF THE STATE OF OHIO

Mr. VANIK. Mr. Chairman, I ask unanimous consent that my basic statement be submitted into the record as provided; and, at this time, I would like to briefly summarize that statement.

Senator BAYH. We appreciate, as busy as you are in these hectic days, your taking the time to appear here.

Your complete statement will be entered into the record, at this point.

[The statement follows, testimony continues on p. 146.]

STATEMENT OF CHARLES A. VANIK, CHAIRMAN

WAYS AND MEANS OVERSIGHT SUBCOMMITTEE

U.S. HOUSE OF REPRESENTATIVES

before the

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE COMMITTEE ON THE JUDICIARY

U.S. SENATE

August 5, 1976

Testimony on
Narcotics Traffickers Tax Program

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I welcome the opportunity to appear before you today. As Chairman of the Ways and Means Oversight Subcommittee, I personally have a keen interest in the problem of enforcing the tax laws against persons who derive income from illegal sources such as gambling, loan sharking, and narcotics trafficking. Your Subcommittee and I have at least one common goal: To insure that the Federal agencies, within our respective jurisdictions, operate effectively against the multi-billion-dollar illicit drug trafficking business.

In my prepared testimony today, I believe I can show --

1) that, with rare exception, narcotics traffickers can only be brought to justice through special investigations of violations of the tax law;
2) that while there have been violations of defendants' rights in the past under the Narcotics Traffickers Tax Program (NTTP), the program has been highly successful in prosecuting major drug figures, and most government officials believe that the past abuses in the program can be prevented in the future;
3) that the IRS has phased out the NTTP;
4) that despite what I believe to be the will of Congress, the announcements of the President, and the active desire of the Domestic Council and numerous Treasury, Justice, and IRS officials, the IRS continues to oppose the reinstitution of a vigorous NTTP, and, therefore,

5) legislation is necessary to mandate the resumption of an NTTP designed both to prosecute narcotics middlemen and to protect citizen rights.

The IRS's resistance to reestablishing an NTTP is one of the most controversial and important bureaucratic disputes to occur in Washington in some time. I believe that secret bureaucratic infighting which distorts announced public policy should be a subject of Congressional oversight. I believe the President's stated support for an NTTP is clear. I am sure that if we walked onto the floor of the House and Senate we could get unanimous votes for an NTTP. Therefore, I hope that this hearing, designed to express what I believe to be the public will on this issue, will help change the policy of the IRS and make the IRS a true partner in a program the rest of the government and the American public support.

THE NEED FOR THE NARCOTICS TRAFFICKERS TAX PROGRAM

I have had the opportunity during recent months to study the Treasury Department's lack of effort against organized crime and major narcotics traffickers.

There are two main aspects to narcotics trafficking: There is the man on the street who sells, and there is the shadowy figure who never touches the hard drugs, but merely sits back and rakes off millions in his role as the middleman. It is almost impossible for general law enforcement agencies such as the Drug Enforcement Administration to touch these hidden "white collar" criminals. The only effective way that these people can be brought to justice is through

tax laws. If we ever hope to stop the flow of hard drugs in this country, we must wipe out the middleman, the importers, the financiers of this "industry".

Major drug dealers are immune from conviction under substantive drug laws. They never touch the drugs themselves. They only touch the money. But even the most sophisticated money mover leaves a trail that can be found and followed.

Drug trafficking is a business. The major purpose of engaging in the business of narcotics trafficking is to earn illegal income. The huge profits of the drug trafficking business are largely unreported. This unreported income from drug trafficking is taxable and the Treasury Department has the responsibility of uncovering and taxing this income.

Such unreported income is discovered through Special Enforcement Programs.

There is a disagreement within Treasury on the value of Special Enforcement Programs. Agents in the Special Enforcement Program work criminal tax cases against people who are suspected of deriving their income from illegal sources. Different techniques and criteria are needed in this program from those utilized in the general program in which an average citizen's 1040 is routinely audited.

People who make their money illegally hide their dealings and generally do not use normal commercial institutions such as banks, brokerage houses, and certified public accountants. When they do use normal commercial institutions, they normally hide behind tiers of nominees. Most illicit profits are received in currency behind

closed doors or in dark alleys. Because of the nature of these illegal transactions, it is necessary for the IRS to use different criteria when selecting a person for investigation who is engaged in an illegal business and does not report adequate income on his return, than the criteria used in selecting cases where the subject makes an honest living. It is also more difficult, time-consuming and expensive to work a case where the income is illegal.

I fully agree with the statement made by the Assistant Treasury Secretary for Enforcement, David R. MacDonald, who said in a memorandum last March:

> "It is widely recognized that successful drug traffickers realize enormous profits which frequently are not reported for Federal income tax purposes. There is nothing, in my opinion, more deleterious to the confidence of our tax system than the realization that 'big shot' criminals are successfully avoiding the payment of taxes. Moreover, there is nothing so encouraging to the small taxpayer than to see the narcotics dealer prosecuted for failing to meet those tax obligations that the rest of us are forced to comply with."

The Commissioner of Internal Revenue, on the other hand, stated in a speech before the Tax Section of the American Bar Association on August 14, 1974:

> "Selective enforcement of tax laws, designed to come down hard on drug dealers or syndicated crime, for example, may be applauded in many quarters, but it promotes the view that the tax system is a tool to be wielded for policy purposes, and not an impartial component of a democratic mechanism which applies equally to all of us. * * *
>
> "[T]he overall emphasis of our criminal enforcement activities has been shifted away from special enforcement programs such as Narcotics Traffickers and Strike Forces, and have been aimed more directly toward the taxpaying public in general."

I disagree with the latter policy. Resistance to our voluntary tax system is more likely to occur if citizens perceive that the IRS is giving a free pass to the criminal element. The IRS cannot stop collecting taxes from gamblers, extorters and narcotics traffickers simply because they are not nice people. If no special enforcement effort is made against the cleverest tax evaders, then the result will be selective enforcement against the poor, the middle class and the weak.

It takes a special effort to catch a special criminal -- and drug trafficker middlemen are specially sophisticated, specially organized in a world-wide network, with special places to secret their millions of rake-off profits. It is naive to believe that "general" enforcement will ever lay a glove on such special criminals.

No one can dispute the fact that there have been abuses in the Narcotics Traffickers Tax Program in the past. Jeopardy assessments and tax year terminations were often used in violation of the constitutional rights of taxpayers in the illegal business of drug trafficking. However, the Drug Abuse Task Force of the President's Domestic Council believed that any such abuses were not inherent in the program and could be overcome. Last September, the task force stated in its white paper to President Ford:

> "The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement actions. Recently, the program has been assigned a low priority because of IRS concerns about possible abuses. The task force is confident that safeguards against abuse can be developed, and strongly recommends reemphasizing this program. The IRS should give special attention to enforcement of income tax laws involving suspected or convicted narcotics traffickers."

The President accepted this advice. In his April 1976 statement, Mr. Ford asserted that these abuses can be corrected: they are not inherent in the program. I agree.

The President issued a strong call for action in his April statement where he said:

> "The first need for stronger action is against the criminal drug trafficker. These merchants of death, who profit from the misery and suffering of others, deserve the full measure of national revulsion. * * *
>
> "[T]he Federal government must act to take the easy profits out of drug selling." * * *

The President's proposal, which comes at a time when narcotics usage is again on the rise, had a familiar ring. In 1971, Mr. Ford's predecessor announced an expanded effort by the Federal Government to combat drug abuse. In response to this charge, the Narcotics Traffickers Tax Program (NTTP) was created, and the Congress appropriated huge new sums to implement it.

While President Ford's sentiments as expressed in his message of April 27 are laudable, apparently he had no control over the . . . bureaucracy. As I have noted, the IRS did set up a NTTP to accomplish the very mission that Mr. Ford now wishes to accomplish. But that program was "merged" out of existence by the IRS on July 1, 1975, and funds specifically requested of Congress for this program were diverted to other IRS programs.

The program had been a success. While it lasted, more than 2,000 mid- and upper-level traffickers were selected for tax investigation. More than 250 individuals were indicted on criminal tax charges. Stiff prison terms were meted out to such kingpin

traffickers as Richard Barksdale of Fort Wayne, Indiana, Gordon King, alleged to be one of the top dealers in the nation's capitol, and Vincent Papa, who is thought to have figured in the theft of "French Connection" heroin from the New York Police Department property room. But the NTTP began to go downhill soon after Mr. Ford became President.

While the President has called for more action, in fact, tax and penalty recommendations have fallen off dramatically in the last two years. For fiscal year 1974, almost 70 million dollars in taxes and penalties were proposed against narcotics traffickers. Less than 10 million dollars have been proposed against narcotics traffickers for the first 9 months of this fiscal year. As a matter of fact, the Internal Revenue Service has become so embarrassed about its criminal tax enforcement statistics that it stopped publishing its quarterly statistics in June, 1975.

With drug abuse and illicit trafficking again on the rise, with President Ford exhorting Executive agencies to action, one would expect the Administration to be fully marshaled against the menace. But I must tell you that from my work on IRS matters, the Administration today has no real program to tax the illegal profits of major drug traffickers.

Since the Commissioner terminated the program a year ago, neither the President's Domestic Council nor the President himself has been able to budge him. Last September, a Domestic Council white paper "strongly recommended" reviving the NTTP. That recommendation was ignored. And so far the Commissioner, with timely footdragging on

on the part of Secretary Simon, has managed to rebuff a Presidential call upon both of them "to develop a tax enforcement program aimed at high-level drug traffickers."

These are not my observations alone. They are the observations of officials in the Treasury Department -- primarily the Assistant Secretary for Enforcement and his predecessors -- and in the Justice Department, who have been fighting a valiant but losing battle over the past three years to save the NTTP from extinction.

Seven months after the Domestic Council's White Paper was issued, President Ford, in a message to the Congress on April 27, 1976, entitled, "The Control of Drug Abuse", stated that he had directed the Secretary of the Treasury to work with the Commissioner of the Internal Revenue Service to develop a tax enforcement program aimed at high-level drug traffickers. In my report to the House on May 17, 1976, I urged that such a program be developed and implemented. However, I expressed misgivings about the sincerity of the Ford Adminis ration's commitment to such a program. I was concerned that perhaps all that the President sought was a quick headline.

My concerns were based on two grounds. First, the previously existing "tax enforcement program aimed at high-level drug traffickers"-- the Narcotics Traffickers Tax Program -- was, if not killed, certainly maimed by the Administration. Second, at the time I made my report to Congress, three weeks after the President's message, there was no movement within the IRS to reinstitute the Narcotics Traffickers Tax Program.

CONTINUED

2 OF 8

Subsequent to my report to the Congress, Treasury Secretary Simon announced the formation of a Treasury Department "Anti-Drug Enforcement" Committee. The Committee, formed more than four weeks after the President's announcement, was to report its findings to Secretary Simon by July 1, 1976. Only Congressional hearings forced the executive to take action. Unfortunately, as I will demonstrate later in my statement, the only action taken by the Administration was to issue a document long on generalities, but short on specifics.

My efforts to communicate on these issues with the Treasury Department have been futile and strongly suggest that an effective program will not be implemented. Since May 27 of this year, I have had pending with the Secretary of the Treasury a formal request for documents relating to the rise and fall of the Narcotics Traffickers Tax Program. But the Secretary has not complied with my request. Not one document has been turned over to me by the Secretary or other officials of his Departmert. Since the Secretary has stonewalled my request, this statement is, therefore, necessarily based on evidence from indirect sources.

The Assistant Secretary for Enforcement, David R. MacDonald--one of the voices that has been crying out for reestablishment of the NTTP--has been muzzled. He and members of his staff have been given blanket orders to say nothing to my staff or, I understand, the staff of your Subcommittee. I have been referred instead to the General Counsel of Treasury, Mr. Richard Albrecht, who for weeks has had the documents we have requested just sitting on his desk. All we get from Mr. Albrecht is the run-around.

It is easy to see why the Treasury hierarchy is trying to dodge this issue. The documents they are trying to hide are an embarrassment in light of President Ford's most recent message to Congress on the scourge of drug abuse. In that message on April 27, 1976, the President made the following statement:

> "I am directing the Secretary of the Treasury to work with the Commissioner of the Internal Revenue, in consultation with the Attorney General and the Administrator of the Drug Abuse Enforcement Administration, to develop a tax enforcement program aimed at high-level drug traffickers. We know that many of the biggest drug dealers do not pay income taxes on the enormous profits they make on this criminal activity. I am confident that a responsible program can be designed which will promote the effective enforcement of the tax laws against those individuals who are currently violating these laws with impunity."

This statement has a ring of leadership and action. But analysis will show that it is really a confession of past failure. In effect, Mr. Ford was saying: Many of the biggest drug traffickers are violating the tax laws with impunity because of failures of the Administration to exercise its responsibilities.

The President was correct, and his statement holds true today. There was no program on April 27. There is still no real program. And from what we see going on at the Internal Revenue Service, the Treasury Department and the Office of Management and Budget in the White House itself, there isn't going to be any effective program.

The Treasury Committee set up by Secretary Simon to develop a tax enforcement program was headed by Under Secretary Jerry Thomas and includes Assistant Secretary MacDonald, Commissioner of Customs

Vernon D. Acree and Commissioner Alexander of Internal Revenue. According to Secretary Simon's announcement, one objective would be "the revitalization of an income tax enforcement program focusing on the illegal profits of high level drug dealers."

The Treasury committee headed by Under Secretary Thomas has held only two meetings. Neither has been productive within the meaning of the objectives announced for it by Secretary Simon.

At the first meeting on June 10, Assistant Secretary MacDonald presented a proposal that would have created the NTTP essentially as it existed before its dissolution by Commissioner Alexander. Under it, tax enforcement against drug traffickers would be elevated again to the level of national direction, rather than the decentralized system which now exists. A minimum of 600 cases with high tax potential against upper-level narcotics traffickers would be the target each year. IRS would have primary responsibility for selecting the cases and operating the program. Monthly reports on accomplishments would be made to Treasury Assistant Secretary MacDonald, with overall coordination and monitoring in the hands of a steering committee representing Treasury, IRS, the Customs Service and the Drug Enforcement Administration.

But this plan, an excellent one in my opinion, met with strong resistance from the IRS officials that Commissioner Alexander had sent to represent him at the Treasury committee meeting. The IRS position called for no change in its basic approach--that is, giving narcotics traffickers no greater attention than is accorded any ordinary tax

evader and leaving it to District Directors and District fraud chiefs to decide how to fit trafficker cases into their general workload. The only difference would be that, under an inter-agency agreement then being negotiated, the Drug Enforcement Administration would provide IRS with the names of individuals DEA suspected of being major narcotics traffickers.

At any rate, the first meeting of the Treasury committee ended with a pledge from the IRS representatives to provide IRS comment on the MacDonald proposal for reestablishing the Narcotics Traffickers Tax Program. Such comment did not materialize, however. When the committee met a second time a few weeks ago, the IRS representatives produced a letter from Commissioner Alexander addressed not to the committee chairman, Under Secretary Thomas, but to Treasury number two-man Deputy Secretary Dixon.

I have not seen this letter, although a copy has been requested. However, I am told that in it Commissioner Alexander cites the IRS-DEA agreement and says that that is the only length to which IRS is willing to go. I am further advised that the Commissioner reaffirmed this position in strong terms at a meeting with Treasury Deputy Secretary Dixon on July 23.

THE IRS-DEA AGREEMENT

On July 27, 1976, the IRS and DEA entered into an agreement, thus bypassing the Treasury committee. I was not furnished with a copy of the agreement. However, Mr. Chairman, you were kind enough to furnish me with a copy and ask for my comments.

The agreement is long on generalities and short on specifics.

The first question to be asked is why is such an agreement needed in the first place? Basically, all it provides is for an exchange of information between two Federal agencies (with, of course, no tax return information going to the non-tax agency, DEA). Why haven't DEA and IRS exchanged information before?

The agreement does not require the IRS to commit itself to work a single case, nor give any priority to narcotics cases. There is no commitment to form specialized groups where the caseload warrants, nor to expedite cases.

The agreement contains an interesting non sequitur right in the second paragraph which renders the whole agreement meaningless. It provides that:

> The responsibility of IRS is to conduct appropriate civil examinations and criminal investigations of high-level drug leaders and financiers who IRS determines to have violated the internal revenue laws using its established standards.

That's right! That's what it says -- opinions first, facts later. The IRS will make a determination as to whether tax laws have been violated, before conducting civil examinations or criminal investigations. That's ludicrous! If the program is going to work, the IRS must commit itself to performing X number of examinations of alleged Class I violators.

The agreement places "primary responsibility for gathering information relating to * * * major narcotics leaders" with the DEA. No special enforcement tax program can be a success unless specially trained tax fraud agents are permitted to go out and develop their

own tax related information. The agreement does not encourage this kind of initiative. Furthermore, new IRS regulations on information gathering are so complicated as to make case development unworkable.

The agreement makes it plain that the program will have no national punch behind it; the National Office acts only as a channel of information for DEA information; District offices will act on the information furnished by DEA as it finds time in the workload. IRS officials at the district level shall make the final determination as to which cases shall be subject to either an audit examination or a criminal investigation.

My recent inquiries at IRS confirm that the IRS-DEA agreement will bring no change in the IRS approach. No special priority is being assigned to tax cases involving suspected narcotics traffickers. And no special provisions will be made to handle any increased workload that might be generated by information received from DEA. In my opinion, the agreement is woefully inadequate.

The Narcotics Traffickers Tax Program grew from outlays of $10.2 million to fund 482 positions in fiscal year 1972 to outlays of $22.5 million to fund 913 positions in fiscal year 1974. Thereafter, support for the Narcotics Traffickers Tax Program was cut drastically. The amount claimed by the IRS to have been spent for this program fell by one-third in fiscal year 1975 to only $15 million and 598 positions. Even these reduced amounts were not actually devoted to the NTTP. Inferring from the productivity figures for the period, 70 percent of these claimed outlays were actually diverted to other programs! Only 181 positions and $4.5 million of the amounts claimed

to be allocated for tax cases against narcotics traffickers were actually used for that purpose in fiscal year 1975.

Table

Fiscal Years	1972	1973	1974	1975 Claimed	1975 Actual	Diverted
Positions	482	854	913	598	181	417
Outlays (in millions)	$10.2	$19.9	$22.5	$15.0	$4.5	$10.5

There was no separate NTTP program for fiscal year 1976. Worse yet, the President's budget axe for fiscal year 1977 whacks a full one-third out of the special enforcement program. Not only has the President failed to seek a budget to fund a narcotics traffickers tax program, but under his proposed budget, there is no provision for Treasury enforcement of the gambling tax laws. Furthermore, the budget cut will result in a continuing decline of tax evasion cases brought against organized crime figures. By cutting one-third out of the budget for the special enforcement program, the President has doomed any program against narcotics traffickers to failure.

Recently, Treasury requested a supplemental appropriation of $20.6 million to fund 982 positions for IRS to work narcotics trafficking and corporate "slush fund" cases. The request was turned down by the President's own Office of Management and Budget on June 15, 1976. So Mr. Ford's demand for action is getting no support from OMB either.

CONCLUSION

Mr. Chairman, I have come to the conclusion, finally, that the only hope this nation has for an effective Narcotics Traffickers Tax Program is by legislation such as you suggested last Wednesday. It is sad that the Administration cannot afford us an effective program administratively. Therefore, I would like to join you in introducing legislation to mandate an effective program.

[Testimony continued from p. 128.]

Mr. VANIK. Mr. Chairman, I welcome the opportunity to appear before you today. The Ways and Means Oversight Subcommittee, which I chair, has a keen interest in the problem on enforcing the tax laws against persons who derive income from illegal sources.

In my prepared testimony today, I believe I can show:

1. That with rare exception, narcotics traffickers can be brought to justice through special investigations of violtaions of the tax law.

2. That while there have been violations of defendants' rights in the past under the narcotics traffickers tax program, this program has been highly successful in prosecuting major drug figures, and I think most Government officials believe that the past abuses in the program can be prevented in the future so they could be made a workable program without jeopardizing anyone's rights.

3. I think my statement will substantiate the fact that the Internal Revenue Service is phasing out the narcotics traffickers program.

4. That despite what I believe to be the will of the Congress, the announcements of the President, and the active desire of the Domestic Council and numerous Treasury, Justice, and IRS officials, the IRS continues to oppose the reinstitution of a vigorous narcotics traffickers tax program.

5. I think it is true that the Service has shifted some programs that are of such dynamic and great importance as the narcotics traffickers tax program in order to confine its efforts to audits of the general public, and I mean the local plumber or businessman or individual who may have some tax problems, instead of really getting after the major culprits in our system—those who are involved in criminality.

Finally, Mr. Chairman, I believe that legislation is necessary to mandate the resumption of a narcotics traffickers tax program—and I think it must be mandated—designed both to prosecute major drug traffickers and to protect defendants' rights.

IRS RESISTANCE TO PROGRAM IS BUREAUCRATIC INFIGHTING

Mr. Chairman, the Internal Revenue Service's resistance to reestablishing a program is one of the most controversial and important bureaucratic disputes to occur in Washington in some time. I believe that secret bureaucratic infighting which distorts announced public policy should be a subject of congressional investigation and oversight.

I believe that the President's stated support for a narcotics traffickers tax program is clear, and I'm sure that if we walked on the floor of the House and Senate today we could get unanimous support for a bill of this type.

I might say, Mr. Chairman, that I understand the budgetary problems to which the Commissioner has referred. I have tried to get these funds increased. I've appeared before the House Appropriations Committee at various times endeavoring to get adequate funding and I took the issue to the floor. It is incredible to me that the IRS budget is being cut at a time when Treasury receipts are so important.

If I might just depart from my prepared testimony for a moment, I do want to call your attention to one very important case we had

in Indianapolis in which a man reported a $5,000 annual income. When he was arrested by DEA agents he possessed more than $12,000 in cash and was driving a Cadillac. The Government could not make the case on narcotics because his girl friend was the one who actually delivered the heroin. The only way the case could have been pursued was on the basis of the tax question. He had to describe how he developed this tremendous bankroll, and it was the tax aspect that really brought him into the custody of the court.

ADEQUATE SAFEGUARDS IN JEOPARDY ASSESSMENT TAX PROGRAM

Now, I want to say this also, Mr. Chairman, that in the bill that is on the floor, the House version of the tax reform bill, we have pretty well taken care of the jeopardy question. We were very careful about that in the House and I don't see that that should be any problem. I think we have put adequate safeguards in what we have done, and I think if you'll examine those sections, you will find that there is no reason why the jeopardy assessment program should be any bar to an effective program in narcotics tax apprehension.

Senator BAYH. I suggested to the Commissioner that this sounded like a rather feeble excuse—particularly when, at first blush, it looked as if they were talking about that in limiting their capacity to deal with the problem—now when, frankly, it was in the past.

Mr. VANIK. Yes; well, I think you will find that those sections, as you peruse through them, are quite adequate. And I hope that the Senate will concur in what we have done in this program.

I might also point out, Mr. Chairman, that when we asked for this extra money, House Treasury Appropriations Subcommittee Chairman Tom Steed went along with us, and it was over here that we did not fare so well. I think additional work needs to be done on this side of the Capitol to help support the added funding that we are going to need.

Senator BAYH. Did the full House go along with the subcommittee recommendation?

Mr. VANIK. Yes; when I testified before Mr. Steed's subcommittee I asked for $15 million. We got $10 million out of the House committee on the supplemental.

Mr. Chairman, the IRS' resistance to reestablishing the narcotics traffickers tax program is most controversial. There are two main aspects to narcotics trafficking as you have well described. There is the man on the street who sells and then there is the shadowy figure who never touches hard drugs, but merely sits back and rakes off his profits in his role as middleman. It is almost impossible for general law enforcement agencies such as the Drug Enforcement Administration to touch these hidden white-collar criminals. The only effective way that these people can be brought to justice is through tax laws. If we ever hope to stop the flow of hard drugs in this country, we must wipe out the middleman, the importers, and those who finance and profit in this business.

Drug trafficking is a business to earn illegal income. The huge profits of the drug business are largely unreported. This unreported income from drug trafficking is taxable and the Treasury Department has the responsibility of uncovering and taxing this income through special enforcement programs.

IRS COMMISSIONER AGAINST SPECIAL ENFORCEMENT PROGRAMS

In my prepared statement I have a quote from the Commissioner of Internal Revenue in which he argues against special enforcement programs. I disagree with his policy. Resistance to our voluntary tax system is more likely to occur if citizens perceive that the IRS is giving a free pass to the criminal element. And I want to say that this also extends to gambling; because the same enforcement withdrawal is applied to gambling income. There has been a tremendous cutback in enforcing the tax laws on professional gamblers. Treasury receipts in this area have plummeted to almost nothing, and this is a tremendous industry that probably goes as high as $60 to $63 billion annually. It is a tremendous untaxed business.

And there are ways, Mr. Chairman, in which profits of this business can be concealed. We have something like Swiss banks in America and tax-free bearer bonds. And if hot money or criminal money flows into tax-free bonds, nobody in this country can ever find out where it is, because that is not subject to tax, and no bank who is custodian of those funds or accounts will ever tell who the real owners are of these hidden resources that can be securely kept right in America. They don't have to keep it abroad.

Senator BAYH. Isn't it fair—and you infer this—that if we're saying to the bigtime criminal we're not going to make a special effort to tax your hidden gains; and, if we're saying to the drug trafficker that we're not going to continue to make the same kind of special effort tomorrow that we did yesterday to get at your illicit untaxed gains, then this could have a very erosive effect on the voluntary compliance of the individual taxpayers?

Mr. VANIK. I think it is terribly discriminatory. The big profits of these industries are untaxed and escape the tax collector, and here is the average taxpayer facing inflation which puts him into higher tax brackets, and deprives him of more and more consuming power. I think that what this tends to do, Mr. Chairman, is to spread a lack of loyalty or lack of respect to our entire tax system. I think it insults the integrity of the system when the biggies get away.

Mr. Chairman, the IRS cannot stop collecting taxes from gamblers, extorters, and narcotics traffickers simply because they're not nice people. If no special enforcement effort is made against the cleverest tax evaders—and these are indeed the cleverest—then the result will be selective enforcement against the middle class, the poor, and the weak.

No one can dispute the fact that there have been abuses in the narcotics program in the past. However, the President's Domestic Council believes that such abuses are not inherent in the program and could be overcome. In his April 1976 message on drug control to the Congress, Mr. Ford asserted that these abuses can be corrected. They are not inherent in the program, and I agree. While President Ford's sentiments as expresed in his message are laudable, apparently he had no control over some bureaucracy which apparently did not read his message.

As I have noted, in 1971, the IRS did set up a narcotics traffickers tax program to accomplish the very mission that Mr. Ford now wishes to accomplish. But, that program was merged out of existence by the

IRS on July 1, 1975, and funds specifically requested of Congress for this program were diverted to other programs.

The program had been a success. While it lasted, more than 2,000 middle- and upper-level traffickers were selected for tax investigation. More than 250 individuals were indicted on criminal tax charges, and stiff prison terms were meted out. And the publicity of this was something that affected the whole business of the drug program.

While the President has called for more action, in fact tax and penalty recommendations have fallen off dramatically in the past 2 years. For fiscal 1974 almost $70 million in taxes and penalties were proposed against narcotics traffickers. Less than 10 million has been proposed against narcotics traffickers for the first 5 months of this fiscal year. The Internal Revenue Service has become so embarrassed about its criminal tax enforcement records that it has stopped publishing its quarterly statistics in June 1975. And I think we ought to find out why they have stopped publishing the figures.

FORD ADMINISTRATION HAS NO PROGRAM AGAINST KINGPIN TRAFFICKERS

With drug abuse and illicit trafficking again on the rise, with President Ford exhorting executive agencies to action, one would expect the administration to be fully marshaled against the menace. But I must tell you that, from my work on IRS matters, the administration today has no real program to tax the illegal profits of major drug traffickers. These are not by observations alone; they are observations of people in Treasury, primarily the Assistant Secretary for Enforcement and his predecessors; and the Justice Department has been fighting a valiant but losing battle over the past 3 years to save the narcotics traffickers tax program from extinction.

In a message to the Congress in April of this year, President Ford stated that he directed the Secretary of the Treasury to develop a tax enforcement program aimed at high-level drug traffickers. Subsequently——. Those bells call you back, Mr. Chairman?

Senator BAYH. Yes.

Mr. VANIK. I can stop right now. I have my full statement inserted in the record.

Senator BAYH. Which would you prefer to do? I feel terrible about this.

Mr. VANIK. I understand. I will be happy to suspend, and we'll just quickly conclude my remarks.

Senator BAYH. You might contemplate one question that I directed to Mr. Alexander. I must say I found some inconsistency between what is being said and what is being done. There is a remarkable inconsistency between a President who makes a very hard-hitting, sweet-sounding, responsible antidrug message to the Congress—and then cuts the funds and personnel in the agencies that are supposed to be dealing with it. How does that make sense?

Mr. VANIK. I will respond when you get back.

Senator BAYH. I don't think it will take too long for you to think up an answer. I will be right back.

[Brief recess.]

PRESIDENT'S BUDGET CUTS ASSIST ORGANIZED CRIME PROFITEERS

Mr. VANIK. Mr. Chairman, you asked a question just before you had to leave, and I just want to say that there was no separate narcotics traffickers tax program for 1976. Worse yet, the President's Budget Act for fiscal 1977 whacked a whole one-third out of the special enforcement program. Not only has the President failed to seek a budget to fund a narcotics traffickers tax program; but, under his proposed budget, there is provision for the Treasury enforcement of gambling tax laws.

Furthermore, the budget cut will result in a continuing decline in tax evasion cases brought against organized crime figures. By cutting one-third out of the budget for a special enforcement program, the President has doomed any program against narcotics traffickers to failure.

Recently the Treasury requested a supplemental appropriation of $20 million to fund 982 positions for IRS to work narcotics trafficking and corporate slush fund cases. The request was turned down by the President's own Office of Management and Budget on June 15, 1976.

So the President's demand for action is getting no support from the OMB, either.

Now, Mr. Chairman, if I can just conclude by going back to my basic statement. I talked about the President's message to the Congress on April 27, 1976. Subsequently, Secretary Simon announced the formation of a Treasury Department Anti-Drug Enforcement Committee. The Committee, formed within 4 weeks after the President's announcement, was to report its findings to Secretary Simon by July 1, 1976. My efforts to communicate with the Treasury Department have been futile. I strongly suggest that an effective program will not be implemented. Since May 27 of this year I have had pending with the Secretary of the Treasury a formal request for documents relating to the rise and fall of the Narcotics Traffickers Tax program, but the Secretary has not yet complied with my request. Not one document has been turned over to me by the Secretary or other officials of his Department. Since the Secretary has stonewalled my request, this statement is necessarily based on evidence from indirect sources.

Senator BAYH. Why?

Mr. VANIK. I can't tell you. I would hope the chairman might help me get some of this documentation which I think is absolutely essential before decisions are to be made on the programs.

Senator BAYH. My chief counsel, Mr. Rector, tells me that we have obtained about half of the requested documents, and they are being turned over to your staff. I'm not certain about the other records. I don't know why I should be more successful than you. It would seem they should cooperate with any Member of Congress, although we had to take extraordinary steps to get the information. I will enter a letter received from the Department of the Treasury as an exhibit now.

(Exhibit No. 20)

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUL 27 1976

Dear Mr. Rector:

In accordance with your telephone conversation with General Counsel Albrecht today, I have enclosed a copy of the documents pertaining to the Treasury narcotics traffickers tax enforcement program that have been submitted to Chairman Rosenthal. At the moment, this is the extent to which we are able to comply with Chairman Bayh's request of July 16 inasmuch as we have not, as yet, made any documents available to Chairman Vanik.

Sincerely yours,

David R. Macdonald
Assistant Secretary
(Enforcement, Operations
and Tariff Affairs)

Mr. John M. Rector
Staff Director and Chief Counsel
Subcommittee to Investigate Juvenile
Delinquency
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Mr. VANIK. We have had problems.

Mr. Chairman, it is easy to see why the Treasury hierarchy is trying to dodge this issue. The documents they are trying to hide are an embarrassment in the light of the President's most recent message to the Congress on the scourge of drug abuse.

I believe there still is no real program. And from what we see going on, there isn't going to be any effective program. The Treasury committee has held only two meetings; neither has been productive. At the first meeting Treasury presented a proposal that would have created a Narcotics Traffickers Tax program, essentially as it existed before its dissolution by the Internal Revenue Service. But this plan—an excellent one, in my opinion—met with strong resistance from IRS officials that Commissioner Alexander had sent to represent him at the Treasury committee meeting. The IRS position called for no change in its basic approach—that is, giving narcotics traffickers no greater attention than is accorded any ordinary tax evader—and leaving it to district directors and district fraud chiefs to decide how to fit trafficker fraud cases into their general workload. The only difference would be that under an interagency agreement, then being negotiated, the Drug Enforcement Administration would provide IRS with the names of suspected major narcotics traffickers.

At any rate, the first meeting of the Treasury committee ended with a pledge from the IRS representatives to provide IRS comment on the proposal for reestablishing the program. Such comment did not materialize.

However, when the committee met a second time a few weeks ago, the IRS representatives produced a letter from the Commissioner reportedly citing an IRS/DEA agreement and saying this is the only length to which IRS is willing to go.

On July 27, 1976, the IRS and DEA entered into an agreement, thus bypassing the Treasury committee. I was not furnished with a copy of the agreement. However, as you have said, I have been able to use your copy. The agreement is long on generalities and short on specifics.

The first question to be asked is, why is such an agreement needed in the first place?

Basically, all it provides for is an exchange of information between two Federal agencies. Why haven't the DEA and the IRS exchanged information before? The agreement does not require the IRS to commit itself to work a single case, nor give any priority to narcotics cases. There is no commitment to form specialized groups where the caseload warrants, nor to expedite cases.

DEA/IRS AGREEMENT MEANINGLESS

The agreement contains an interesting note in the second paragraph which renders the whole agreement meaningless. It provides that:

> The responsibility of IRS is to conduct appropriate civil examinations and criminal investigations of high-level drug leaders and financiers who IRS determines to have violated the internal revenue laws using its established standards.

That's right. That's what it says. Opinions first, facts later. The IRS will make a determination as to whether tax laws have been violated before conducting civil examinations or criminal investigations. That's

ludicrous. If the program is going to work, the IRS must commit itself to performing a certain number of examinations of alleged class 1 violators.

The agreement places "primary responsibility for gathering information relating to major narcotics leaders" with the DEA. No special enforcement tax program can be a major success unless specially trained tax fraud agents are committed to go out and develop their own tax-related information. The agreement does not encourage this kind of initiative.

Furthermore, new IRS regulations in information gathering are so complicated as to make case development nearly unworkable. The agreement makes it plain that the program will have no national punch behind it. The national office acts only as a channel of information for DEA information. District offices will act on the information furnished by DEA as they find time in the workload. IRS official at the district level shall make the final determination as to which cases shall be subject to either an audit examination or a criminal investigation. My recent inquiries at IRS confirm that the IRS/DEA agreement will bring no change in the IRS approach. No special priority is being assigned to tax cases involving suspected narcotics traffickers. No special provisions will be made to handle any increased work load that might be generated by information received from DEA.

In my opinion, the agreement is woefully inadequate.

I have some figures in my prepared statement[1] which detail the decline of adequate appropriations for the narcotics traffickers tax program which further support my belief that under present policy, talk of a Narcotics Traffickers Tax program is mere rhetoric.

Mr. Chairman, I have come to the conclusion finally that the only hope this Nation has for an effective narcotics traffickers tax program is by legislation such as you suggested last Wednesday. Therefore, I would like to join you in introducing legislation to mandate an effective program.

Senator BAYH. Thank you very much, Congressman Vanik. We look forward to continuing to work with you.

I have a number of additional questions, but I think you and I would answer them in the same way. I see no justifiable reason why we don't have a special program. The responses of Mr. Alexander, as far as politicians go, is the costly expense one pays to get the narcotics pushers; I think that is a very sterile way to approach it.

Let's see what we can do.

Mr. VANIK. Thank you, Mr. Chairman. I want to commend you for your tremendous drive in this program. I, frankly, believe that your approach is the only way we are going to get to the root of the problem; and I certainly want to do everything I can on the House side to help you in this endeavor.

Senator BAYH. We look forward to working with you.

Thank you, sir.

[EDITOR'S NOTE:—The conclusion of this day's hearing, with testimony from Dr. Robert L. DuPont, Director, National Institute on Drug Abuse; accompanied by Dr. Robert Shellow, visiting scientist; and Robert Dormer, Staff Attorney, NIDA, U.S. Department of

[1] See prepared statement of Hon. Vanik, pp. 143–144.

Health, Education, and Welfare, are to be found in volume I of the hearings on the Narcotic Sentencing and Seizure Act of 1976, held on July 28 and August 5, 1976.]

[Subsequent to the appearance of these witnesses, the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Additional statements and material supplied for the record

Part 1—History of the Narcotic Traffickers Tax Program

[From the Chicago Tribune, May 27, 1973]

INTERNAL REVENUE SERVICE PLAYS THE SECRET AGENT GAME FOR KEEPS

(By George Bliss and John R. Thomson)

For seven years Dave Rocco has led a double life.

As an undercover agent for the Internal Revenue Service, he poses as a 40-hour-a-week, white collar worker. The job is his cover as he works after hours to gather information that may explode someday into newspaper headlines and national TV reports.

The cover job periodically gives him legitimate reason to leave town for a few days. He uses this time to resume his real life, which includes his wife and married daughters and grandchildren in other cities.

Only six persons in the entire country, including his wife, know his secret life. If others knew it, his life wouldn't be worth a nickel.

Dave Rocco (not his real name) is engaged in what the IRS calls "penetration" intelligence. He has penetrated deep inside a criminal organization suspected of major tax cheating. With the help of information that Dave provides, the IRS hopes to be able to prove its case in court.

When the time comes, the people arrested and their associates probably will undertake a major search for the source of the information leak. The background of every person fairly new and accepted in the tight little community of tax cheats and criminals will be explored. Dave is "buried" so deep that the IRS feels confident he could stay there forever without being detected.

The chances are, however, that Dave will be transferred when the case is straight, and possibly earlier. IRS intelligence chiefs have found that an undercover agent who remains too long in a criminal environment tends to take on the hue of criminals, to act and think like them.

Until his job is finished, Dave's only contact with the IRS will be the telephone call he makes daily to his contact agent in the IRS district where he's working. The contact agent is the only IRS agent in the district who knows Dave personally.

Having established himself in the gang, Dave is safe as long as he is not exposed. Sometimes the IRS has found, an undercover agent creates his own problems and puts himself in danger by going beyond the task assigned to him.

Undercover penetration is a dangerous job. Dave Rocco will never receive acclaim from an admiring public. If fame comes to him, it will be fame limited to his bosses and fellow agents in IRS intelligence. It is a life for which few persons are suited, and like all others in it, Dave volunteered.

The IRS is one of the few government agencies that engages in intelligence work, and reportedly is the only one that engages in penetration intelligence as opposed to "fringe" undercover work, which may last only a few days.

The penetration agent is following a great tradition established by the fabulous Mike Malone, who, posing as a hoodlum on the lam, cemented himself inside the Al Capone gang and its headquarters in Chicago's old Lexington Hotel so solidly that he attended the going-away party for Al when Capone finally went to prison for income tax evasion.

Malone, using the name Mike Leopto, didn't come out from under cover until the fourth day of Capone's trial in Federal District Court. He did so only because he discovered that Capone's bodyguard, Phil D'Andrea, was carrying a handgun under his coat in court. He and another agent disarmed D'Andrea, who was later imprisoned for contempt of court.

Malone relished penetration work. He went on to establish himself deep in the Huey Long organization in Louisiana as the IRS sought to trace the flow of cash between organized crime and politics that went unreported in income tax

returns. When he died in 1960 he was buried in Arlington National Cemetery. Few outside the IRS and those few were mostly hoodlums and politicians ever knew that Mike Malone existed.

The IRS carries on penetration intelligence only in dealing with organized crime. Periodically, reports arise that the IRS has an undercover agent in City Hall or some other government office. That's just not done, say IRS officials.

The spate of indictments involving top aides of the Cook County Assessor's office, sometimes attributed to the work of an undercover agent, actually resulted from information furnished voluntarily to IRS intelligence by a "walk-in" informant.

The informant, of course, wanted something, something he didn't get, but when he found out he wasn't going to get it he kept on talking. Agents checked out some information and found it true. The informant, they discovered, had an amazing knowledge of the inside political workings in Cook County—of who was getting away with what.

That informant is still talking, incidentally. Until he runs down, only IRS intelligence and the United States attorney's office in Chicago, thru which it funnels the information when it nails down a case, will know where the grand jury lightning may strike next.

The first information that resulted finally in the trial and conviction of former Gov. Otto Kerner and Theodore J. Isaacs, Kerner's one-time campaign manager and state director of revenue, came not from IRS intelligence work but from one of the principals involved—Marje Lindheimer Everett, former owner of Arlington Park and Washington Park race tracks. She got irritated at Kerner and Isaacs and told the IRS about it. That's when IRS intelligence agents went to work and nailed down the case.

The case against Edward J. Barrett, former Cook County clerk facing prison following his conviction for taking kickbacks in the purchase of voting machines, was a spin-off from an investigation started in Philadelphia by intelligence agents seeking to trace the cash flow from a business woman to a labor union official.

The business woman refused to talk. She had paid tax on the money, or at least on part of it. Part was eaten up by losses reported for several corporations she controlled. IRS wents to banks and obtained records for her and her corporations and discovered she was the recipient of hundreds of thousands of dollars from Shoup Voting Machine Corp.

Shoup records, obtained by the IRS, also showed large sums of money going to various individuals thruout the country. Intelligence agents called on two men who had received Shoup checks. They wouldn't talk, and the agents went back to Philadelphia to pore over Shoup's records.

The two men who wouldn't talk thought things over and went voluntarily to the IRS. They said they had cashed the checks, kept part of the money, and returned the rest to Irving H. Meyers, president of Shoup Voting Machine Corp. When intelligence agents called Meyers in, he did not hesitate to tell them that the money went into a cash slush fund and that one of the public officials he paid from that fund was Barrett.

Like most tax cases, these did not involve undercover work. In the whole IRS structure there are only about 2,500 intelligence agents to cover the entire nation. Including clerks, there are only 475 persons in intelligence division in the eight state regions of which Illinois is a part.

With about 150 agents in Chicago, this district, which takes in 26 counties in Northern Illinois, ranks as the biggest intelligence office in the country. The Manhattan and Brooklyn offices and New York are separate offices, but together they have more agents than the Chicago district.

Agents who engage in undercover penetration make up a miniscule percentage of the entire intelligence force. Perhaps that is why they are so successful in their work. They are successful up to the point where they might be required to do something illegal. The IRS does not permit an undercover agent to take part in any law-breaking activity that might result in physical harm to anyone. He can, however, get deeply involved in gambling.

In 1965, the IRS planted an intelligence agent undercover in a hoodlum gang that operated a large part of the gambling in Cleveland. Posing as an accountant—all agents must have accounting skills—the undercover man set up a small office in the right area. He haunted the right taverns, got to know the right people, and dropped some accounting hints.

"He got to know everyone, and if they wanted to evade taxes or set up a double bookkeeping system or open hidden bank accounts, they consulted him," an intelligence official said. "They trusted him so much he kept their records of

gambling on a day-to-day basis. We had to pull him out because income tax time was coming up and they wanted him to prepare false returns for them. We found a reason for him to disappear until after the filing deadline, and then he went back."

Sometimes an agent is too successful. The IRS wanted to penetrate a West Coast betting center, and it assigned an undercover man to the job. After he had established himself, he bought a partnership in a handbook.

The bookie involved was hitting the bottle and didn't want to be bothered too much with business details which he left to his new partner. The handbook zoomed from a $80 net a day to $1,600 a day, half of which went to the IRS through the undercover agent.

"He was a bookmaker about seven months and wound up running the biggest handbook in that part of the city," said the undercover agent's superior. "We pulled him out and just let the handbook collapse. The other partner had drunk so much from the increased profits that he wasn't interested in it any longer.

"But we learned what we wanted to know—the flow of the cash, where it went, and who got it."

Spread thin though they are, the intelligence agents cover a lot of bases. One Chicago agent doing fringe undercover work was assigned to investigate a racing wire room on the Southwest Side. He found the bets were taken at a cleaning shop nearby, and he established himself as a bettor.

"I went in one day to settle my account and while I was there, a Puerto Rican came in with his money in his hand," the agent recalled. "Right behind him was a fellow who was looking for a company about a block away. The bet taker quickly directed the second guy to the place he was looking for, and then he proceeded to give the Puerto Rican hell for talking about making a bet while a stranger was there."

After the Puerto Rican had left, the bet taker resumed his conversation with the undercover agent, saying, "You can't be too careful. These days you don't know who you might be talking to."

Indeed, one never knows.

[From the Chicago Tribune, May 28, 1973]

IRS Gives Witness New Identity

(By George Bliss and John G. Thomson)

If it has to, and it sometimes does, the Internal Revenue Service intelligence division can provide a man with everything except a new face and new finger prints.

It can provide a man or a woman with a new name, a new home in a far-away community, a new Social Security card, and a complete new set of credentials similar to the true ones.

The IRS has done this for years for witnesses who have cooperated in criminal prosecutions and who then faced possible retaliation.

Altho this job has been taken over largely by the U.S. Marshall Protective Service, under the Department of Justice, the IRS has some cases in which it still does the job.

"A witness may refuse to place complete trust in anyone except the agent with whom he has dealt," said Robert J. Bush, IRS assistant regional commissioner for intelligence. "The agent has brought him safety thru a period of investigation and trial, and he wants that agent to handle his new life. In that case, we will do the job."

It is no small task to set up a new life for a man and his family, and IRS intelligence therefore strives to prove its case in court without exposing the identity of an informant, Bush said.

Only if it needs him on the witness stand will the IRS call the informant into court. Once the witness is there, government lawyers make every attempt to prevent defense lawyers from eliciting his or her new address.

The need for such security is obvious. The witness or his family—gets threats. His girl friend may be threatened. And those making these threats are not the kind of people you fool around with.

In a tax exasion trial a few years back of Sam Battaglia, then the ruling kingpin in the Chicago area crime syndicate, and of his west suburban rackets chief,

Joe Amabile, an agent suddenly realized that a gangland figure who had disappeared could provide vital testimony.

The agent flew to Palm Springs, Cal., where Donald Hanke had set himself up in the restaurant business. Hanke had operated the handbook, cards and juice center in Stone Park for Rocco Pranno, a predecessor of Amabile, until Pranno ordered him to enforce juice payments. In other words, if a borrower doesn't pay up, beat him up, break his leg, threaten his life—whatever you do, get the money, Hanke didn't want any part of it and he took off.

Hanke remembered a meeting the agent wanted him to testify about. He could virtually wrap up the case against Battaglia and the others on trial. Hanke voluntarily came back to testify. He drove the last nail in the case for the IRS, but in the course of his testimony his new address came out.

Hanke was under IRS security while in Chicago for the trial, and as soon as the jury came in, convicting all the defendants, the intelligence agent flew back with Hanke to Palm Springs. They spent two weeks closing up Hanke's restaurant and winding up his personal affairs. Then the agent spirited him out of town, to a new home with a new job and a new identity.

"Within 10 days the restaurant was torched," the agent recalled. "It burned to the ground. And Don didn't have any insurance on it, either." Even if he had had insurance, no doubt Hanke would have depended on the IRS intelligence division to claim it for him.

Gangsters and hoodlums make every effort to locate and silence any witness who endangers their freedom—by threats if possible. Often they will hire private detectives to track down their man. Recently, they made some limited and still unexplained headway.

Frank Terranova, a witness in the tax trial of Anielo [Neal] Delacroce last winter in New York City, was secreted in an apartment known only to IRS intelligence, or so they thought. One day the telephone rang. The caller identified himself as a private detective and asked for a meeting with Terranova.

Terranova swore to IRS agents he had not called or given the phone number to anyone. He was moved to another location. Intelligence agents made the meet proposed by the caller, but no one showed up.

"We've had some close calls, but we've never lost a witness yet," said an intelligence official. "We've never lost a witness we've relocated and given a new identity. But if he's arrested for a crime, we cut ourselves off from him. He's on his own then."

The IRS has about 150 national and international corporations that will cooperate in proving a job to a witness for a new start in life.

When a witness must be moved and hidden, IRS finds him a job similar to his old one. If he was a construction worker, he might wind up in a different phase of construction work. A white-collar worker is placed in a white-collar job. A whole new background life is provided for him. If he is a university graduate, IRS gives him credentials from a different university than from where he actually got his diploma. If he has two or three years of college, the witness' record will be changed to substitute the identical courses at a different college. If he is an ex-convict, that is known to the company that provides him a job.

If for any reason he has to get in touch with anyone from his old community, he writes to a post office box number in one of the nation's largest cities. An intelligence agent there will pick up the letter, transfer the contents to another envelope, and mail it from still another locality.

Often a witness has schoolage children. They receive credentials from other schools and are cautioned against getting in touch with anyone in their old neighborhoods.

Children pose one of the greatest risks for a man given a new identity and established in a new community. They may get homesick for their school chums, or for grandma or grandpa, or Uncle Ed, or Cousin Sam. In this day of direct-dial, long distance telephoning, it is a simple matter to make a call.

The hidden witness may panic after such an incident, but eventually he will do what he is supposed to do under such circumstances—telephone his local contact agent. IRS intelligence then goes to work to determine whether there is any indication in his old neighborhood, hundreds of miles away, that someone knows where he is living. If necessary, the family will be relocated.

"The witnesses we get are, by and large, different from the mine-run the U.S. Marshal's office gets," said an intelligence official. "Our's are more likely to be white-collar people who know how to follow directions and who are not likely to get into trouble."

If a hidden witness must return home for a funeral, he is returned by a devious route designed to hide the trip's origin. While in his old neighborhood, he gets constant protection. If total security is required, as it sometimes is with witnesses during a trial, he will be housed temporarily in facilities known only to the government. In the past, even military installations have been used.

Intelligence agents have even made all the arrangements for a funeral. When the brother of one hidden IRS witness died while the trial was pending, there were no other relatives to make arrangements. So IRS agents did it all, and then accompanied the witness to the funeral.

[From the Chicago Tribune, May 29, 1973]

SURVEILLANCE IS PART OF IRS JOB

(By George Bliss and John R. Thomson)

Sam Battaglia, operating head of the Chicago crime syndicate, would have been unpleasantly surprised if he had paid closer attention to the church belfry a few blocks from his Oak Park home in the winter of 1966–67.

Agents of the Internal Revenue Service's intelligence division had his home under surveillance from that belfry. They knew when he left home each morning, and which one of his drivers was at the wheel of the car or station wagon that called for him.

Sam would have been just as surprised if he had opened the window of the car at 2:30 a.m. some nights that winter and looked overhead as his car sped along the tollroad.

He would have seen a helicopter overhead. He might even have seen the IRS agent, clad in electrically heated clothing, but cold nevertheless in the 40-below temperature 1,000 feet overhead, leaning out the helicopter door.

The agent in the sky was in radio communication with the helicopter pilot who was snug and warm in his compartment, and with IRS agents in cars on the toll road. They were following Sam's car as closely as they could to the oasis where Sam and his top lieutenants held their after-midnight meetings, which were never held twice in a row in the same oasis.

Sam should have paid closer attention to the workmen with lunch buckets who descended on the oasis where he held his top-level conferences. Of course, a toll road oasis at 2:30 or 3 a.m. is a busy place. Sam could not be expected to notice that the lunch buckets which were aimed at his table contained hidden cameras.

Sam was not surprised, however, when he stopped at a roadside telephone on the way to his 400-acre farm the morning of February 16, 1967. He called a lookout he had at 25th Avenue and Lake Street in Melrose Park and was told he was being followed by a strange car.

This time it was the IRS agents' turn to be surprised. Of the 11 cars each containing two agents that were tailing Sam, all avoided the intersection in Melrose Park except one car containing agents not familiar with the case. Someone had forgotten to tell them Sam had a lookout there.

Joe Rocco, Sam's driver, took evasive action. The agents didn't know it until later, but under the hood of the Ford station wagon Joe drove with such skill was a souped-up Thunderbird engine. Up one street and down another he sped, through one suburb after another.

The agent in the IRS lead car had picked up police cars from Schiller Park, Melrose Park, and Northlake. He was speeding along North Avenue at 90 miles an hour but the Northlake police car was gaining on him. He stopped, ran back to the police car as it pulled up behind him, flashed his badge and shouted, "Federal officer on surveillance."

"Before that Northlake policeman had time to say anything the other 10 cars came whizzing past. He was still standing there beside his car open mouthed, when I got back in the car and started out," said the agent who had stopped.

"We didn't dare lose him. Ed Hanrahan [United States attorney in Chicago at the time] was bringing in the indictment at 2 p.m. and he had told us, 'If you let him get away, it'll be your funeral'," the agent recalled.

Newspaper stories of Sam's indictment and arrest said merely that he was apprehended in Marengo by federal agents after a high speed chase on the toll road.

The stories failed to say that Sam and his driver, finally aware they were being tailed, sped through a toll plaza near Rockford without stopping to pay the toll.

Four cars in radio communication were right on his tail. They sped through at 80 miles an hour speed without stopping.

"They started playing games with us, cutting thru to the opposite lanes at emergency crossings and heading the opposite direction. We cut across and followed him at 100 miles an hour. As we all went south we passed state police cars, notified by the toll plaza, heading north.

"He cut across again with us right behind him, and we all headed north, and there on the southbound lanes came the state police cars we had passed when they were headed north," the agent recalled.

Sam finally tired of the game and his driver left the toll road and drove sedately into Marengo, where the agents telephoned Hanrahan, learned the indictment had been returned, and put Sam Battaglia in handcuffs.

The extortion charge which finally put Battaglia in prison, along with gangsters Rocco Pranno, Joe Amabile, and several other persons, including Mayor Henry Neri and crooked aldermen and officials of the village of Northlake, was a byproduct of a classic IRS intelligence tax investigation.

It began in 1963 when reports began to circulate that village officials and gangsters were shaking down companies for building permits and inspections in Northlake. Extortion money is seldom reported on income tax returns, and that meant the government was being cheated, which interested the IRS.

During the course of the investigation IRS agents were the first to learn that Battaglia had supplanted Sam Giancana as operating head of the crime syndicate here, and that Amabile had supplanted Pranno as the hoodlum boss of Northlake and other western suburbs.

Before the case finally was closed with the last of the defendants in prison only two years ago, four persons who had been cooperative witnesses in the IRS investigation were under federal protection and eventually were provided new identities and placed in new environments. A fifth person, girl friend of one of the cooperative witnesses, also was provided protection during the trial, as was the witness' family.

Surveillance does not alway involve auto chases, of course, and it doesn't always stem from a tax investigation or result in a tax prosecution. Three IRS agents were conducting surveillance of hoodlums in the western suburbs in 1968 and followed one from his home to a small pool hall, the Family Amusement Center, in Cicero.

The agents entered to play a game of pool and found themselves lonely, even tho there was a goodly number of people there. Virtually all others were in the rear, where they talked in low voices. At 1 a.m. several known hoodlums were seen closing up the place. The next night the agents went back and found the situation the same. They rented a vacant apartment across the street and set up a surveillance post.

For 45 days, in summer heat that was so great they stripped down to their shorts, agents kept watch at night from the dark apartment, taking pictures of cars driving up to the pool hall and the people entering it.

After nearly two months the IRS investigation pinpointed the pool hall as a center of the juice loan racket. The IRS turned over all its surveillance records, photographs, and even the keys to the apartment to the Federal Bureau of Investigation, which was charged with enforcing the Truth in Lending Law.

The FBI completed the investigation and arrested 11 men for what the U.S. attorney's office called "perhaps the biggest juice loan operation in the United States." A Treasury Department expert testified that interest rates on juice loans at the Family Amusement Center ranged from 215 to 308 per cent.

[From the Chicago Tribune, May 30, 1973]

IRS Nails Dope Traffickers on Taxes

(By George Bliss and John R. Thomson)

The Internal Revenue Service, called upon for many strange investigative tasks in the past, is now an integral part of President Nixon's war on the nation's drug problem.

For nearly two years IRS intelligence agents have been probing the tax returns and financial affairs of persons suspected of being in the middle and upper echelon of the nation's narcotics traffic who have always pictured the Bureau of Narcotics and the Bureau of Customs as their chief enemies.

"They're inclined to look on tax investigations as a big joke," said an IRS intelligence official. "They don't realize what's coming up behind them."

What's coming up behind them is a corps of almost 400 intelligence agents thruout the nation. With the aid of other law enforcement organizations, including local police departments, they have identified nearly 2,000 "targets" in the drug traffic for tax investigations.

The program was kicked off in August, 1971. More than 700 suspects are now under active investigation. As of March 31, $116 million in tax assessments was slapped on major narcotics traffickers. All resulted from IRS investigations; some in cooperation with other agencies.

Major narcotics dealers from the Great Lakes states to the Deep South have been sent to prison, not for trafficking in narcotics, but for evading taxes on the profits from their sordid trade.

Some, like Apolonio Rios of Chicago, have gone out of business. Rios was known to Chicago authorities as a multiple-kilo importer of heroin from Mexico. The bureau referred the case to the IRS, which quickly found he had failed to file any income tax returns. He was indicted and fled to Mexico, where he remains.

Willie Horton is one of the Chicago men heavily involved in narcotics traffic. In January, 1969, Horton sold narcotics to an informer for the federal narcotics agency, but before Horton went to trial the informant was murdered at 63d Street and Ashland Avenue.

Intelligence agents found the doors and windows barred on Horton's first floor apartment. They rang the door bell and to their surprise he answered it and, after they identified themselves, let them in.

"What are you after me for?" Willie wanted to know. Like so many others in the narcotics trade, he failed to identify IRS agents as a threat to his safety. He was friendly and talkative, and the conversation covered a wide range of subjects. A tax investigation disclosed that his girl friend had an expensive boat equipped with a ship-to-shore radio registered in her name. She swore that Horton bought it.

Willie was convicted of a crime he probably never heard of—falsely registering a radio in violation of federal regulations and was sentenced to 5 years' probation and fined $1,500. He still faces another charge of illegally taking a firearm across state lines. That is not illegal for everyone, but it is for Horton because he has a prior conviction as a narcotics violator.

Alex Beverly, a major narcotics figure on the West Side, managed to avoid the attention of IRS-intelligence until last Nov. 3, when he arrived at an apartment at 737 N. Central Ave. and announced to Chicago narcotics detectives: "This is my place. What's going on here?"

What had gone on was a raid by Chicago detectives who had to batter the door down with a sledge. Mrs. Vercie Lee Carter who lived there shot a detective. Police found marijuana, cocaine, and heroin there, as well as $13,500 in cash and a quantity of business records. The Chicago detectives notified IRS intelligence and agents went to the apartment. On the basis of the amount of cash found, they "terminated" Mrs. Carter's tax year and established tax assessments of $200,000.

The business records indicated two safe deposit boxes were held in an Oak Park bank. Agents got a court order and on April 19 opened the two boxes, which contained a total of $45,000 in cash.

Beverly, for claiming it was his apartment, was charged by Chicago police with possession of narcotics. However, Mrs. Carter is the target of the tax investigation. The IRS is now holding $58,500 of her money. Or Beverly's money, depending on how you look at it. Mrs. Carter may be thrifty, but she was, after all, on welfare and it would have been rather difficult to save that much.

"We hurt 'em where it hurts most—in the pocketbook," says IRS intelligence. "When we start getting a lot of flak from their lawyers, we know they're hurt and scared."

The IRS has arrangements with local police departments conducting investigations of illegal activities such as narcotics and gambling. When the departments come across large amounts of cash or records of illegal activity they notify the IRS.

It can terminate an individual's tax year on the date the cash is seized, and make an assessment for the year, up to the date of the seizure. The assessment goes to the IRS collection division, which presents the individual with the assessment and demand for payment.

If the individual wishes, he can get a trial in Tax Court, and if the case goes against him he can appeal thru the federal courts all the way to the Supreme Court.

Early termination of a tax year, which the average taxpayer seldom encounters, is one of IRS' strongest weapons in narcotics cases.

The value of cooperation between agencies and the effectiveness of IRS civil sanctions was emphasized recently when the Bureau of Customs had two informants who identified two men as responsible for smuggling most of the pure heroin into this country from France.

The two men fled from New York City before they could be aprehended. Italian authorities located and arrested the men. There were 22 forcible attempts to free the two prisoners and Italian authorities moved the prisoners to 15 different locations. They were eventually brought to the United States along with $22,000 which had been seized when they were arrested. The men were held in lieu of $250,000 bail each.

The Boston office of customs notified IRS and a special agent prepared a computation which resulted in jeopardy assessments against them of about $6 million. The $22,000 was seized and the prisoners were then released on bail of $500,000 presented in the form of a bond of an insurance company.

An IRS special agent then served a levy of $500,000 on the insurance company for the collateral given by the defendants' attorney.

With its authority to seize assets, including homes and cars, and to levy on bank accounts to satisfy tax liabilities, the IRS is, in some ways, the most powerful arm of the government.

The biggies in the narcotics racket have been finding it out. Instead of driving Cadillacs and Continentals they've taken to driving old cars.

[From the Chicago Tribune, May 31, 1973]

AGENTS FIND TAX CHEATS COME FROM ALL WALKS OF LIFE

(By George Bliss and John R. Thomson)

Ninety-seven percent of all income taxes collected by the government is paid voluntarily. Enforcement activities of the Internal Revenue Service account for the other 3 percent.

Th IRS intelligence division is, in the words of one agent, "responsible for everything from the corner grocery to the bank president if there is a suspicion of fraud."

Clifford Blount, who is in prison now, is as unlikely a tax cheat as you might find. He is armless. He operated a tax preparation service on the South Side, and IRS intelligence knows him well.

Blount was one of a dozen or so persons arrested in Chicago for preparing false returns in March, when tax preparation time got exceptionally busy.

Blount managed it by creating phony deductions to boost the size of refund checks, which he appropriated after the government mailed the checks to addresses he controlled.

Wardell Dalcour built up a clientele in the Taylor Homes. and took one-fourth to one-half of refund checks which were inflated by phony exemptions, particularly the number of children he claimed for his clients. He's in prison now, too.

"Taxes are a mystery to most blacks and Spanish-speaking people in the United States," said an IRS official. "When they find a man who gives the appearance of knowing something, they'll follow his instructions to the letter."

The preparers of phony returns are not limited to men practicing business in the ghetto areas with clients who are largely laborers or unskilled workers.

A certified public accountant with a nationwide clientele was arrested. and his partner surrendered before he too could be arrested, for preparing amended returns for prior years with phony deductions. They dealt with corporation executives.

The sad thing about it, and particularly for people on the lower rungs of the economy ladder, is that the taxpayer personally is responsible for the tax return

he has signed. If he got a refund when he actually owed the government, he has to pay.

The IRS encounters tax protesters and collects from them. Austin T. Flett, an Evanston insurance man in 1953 began signing his tax return after filling in only his name and address and sending it in with a letter protesting benefits in tax laws to mutual insurance companies.

After he died a couple of years ago in Arizona, the IRS collected his back taxes from his estate.

"He was, I believe, a gentleman. He was sincere," said one intelligence agent who dealt with Flett.

Wilhelm Schmidt, a Villa Park engineer, was no gentleman when it came to dealing with IRS agents. He threatened to kill them. They got after him when his ex-wife came under IRS audit in 1964 to verify alimony she received. In 1965 he started filing returns with only his name, address, and signature and, written across the face of the return, his defiant message, "I refuse to furnish any information or collaborate with a communist government."

Schmidt, who had a bazooka and a tripod-mounted machine gun in his home and a 9mm. automatic pistol in the glove compartment of his car, was placed on probation for threatening a federal agent. He fled when he was ordered into court for failing to file tax returns, which was made a part of his probation.

IRS agents traced him to Minnesota, where they staked out a farmhouse in sub-zero weather only to find he had skipped before they arrived. They traced him to Rhodesia. Three years later he returned to Canada. His name came up in the computer system at the Canadian border, and Canada notified the United States. He was arrested as he got off a plane at O'Hare International Airport. He was sentenced to three years in prison for unlawful flight, falsely registering firearms, and threatening a federal agent.

Lawyer, doctor, merchant, thief—they all are brought to the bar of justice by IRS intelligence when it finds evidence they have fraudulently violated the tax laws.

An intelligence supervisor cited the case of Seymour Lacob, a Chicago personal injury attorney, as a typical "routine" case. It began when an IRS revenue agent, auditing a physician's return, noted that the physician had received considerable money from Lacob. The revenue agent pulled Lacob's tax returns from the file to verify the amount paid to the physician. He found Lacob reporting only a modest salary of around $10,000 from a law firm which employed him.

When Lacob sidestepped requests to come in for an interview, or send his accountant in with records, the revenue agent finally referred the case in the intelligence division for a fraud investigation.

An intelligence agent and the revenue agent were unable to get any cooperation from Lacob or his lawyer. IRS intelligence went to work on court records, which led them to the Illinois Industrial Commission. Four months was spent poring over records for the previous five years.

They found and interviewed hundreds of clients Lacob had represented in claims against insurance companies, and discovered that in almost all the cases the clients had received only one-third of the amount paid by the insurance company. His real income, the IRS charged was $17,000 to $20,000 a year.

Lacob was indicted for and found guilty in 1968 of tax evasion. His appeals finally ended two years later with the U.S. Supreme Court. When the time came for Lacob to surrender the agent found him in court in the Civic Center, representing a client.

Computers are only one of the modern devices the IRS has for rooting out tax frauds. The government does not like to divulge much information on how it keeps abreast of criminals and tax cheats.

"They are getting smarter all the time—but so are we," said one intelligence supervising agent.

One lawyer who operated "out of his hat," served his criminal clients largely in payment of his debts, lived with his mother in her home, and informed an agent he had no assets whatever.

"What about the suit you're wearing?" the agent inquired.

"It belongs to my brother," said the lawyer.

He wore his brother's suit to federal prison. The IRS convicted him of willfully failing to file income tax returns.

[From Drug Enforcement, Summer 1974]

IRS Taxing the Trafficker

(By John J. Olszewski)

The most important task of the Internal Revenue Service is administering and enforcing the tax laws. Our federal budget, the cornerstone of all government operations, depends on the collection of the revenue. The enforcement of the criminal statues of the revenue laws is the responsibility of the Internal Revenue Service's Intelligence Division.

The activities of the intelligence Division cover a wide range of tax law enforcement. The mission of Intelligence is to identify, investigate, and recommend prosecution of would-be tax evaders. The successful prosecution of the most flagrant cases is one means of encouraging compliance with the internal revenue laws.

Justice Holmes once observed: "Congress can tax what it also forbids."

The constitutionality of taxing illegal income was established early in the administration of the income tax laws when the Supreme Court held that profits from the illicit distilling of alcohol were taxable. Subsequently, special agents of the Intelligence Division have conducted investigations resulting in the convictions of many law violators for evading income taxes on illegal sources of income.

NARCOTICS TRAFFICKERS PROJECT

As a part of the President's nationwide program to stem the tide of increased narcotics abuse in the United States, the Internal Revenue Service in August 1971 initiated the Narcotics Traffickers Project (NTP). The project objective of NTP is "to assure that tax administration and enforcement efforts are applied to major narcotics traffickers and financiers." This objective is accomplished by identifying major traffickers and financiers who are suspected of having violated the internal revenue laws. Individuals selected for either tax investigation or tax examination generally occupy significant operational or financial positions in the narcotics distribution system. Experience has demonstrated that the traffickers and financiers in such positions will generally be insulated from the daily operations of the drug traffic, making it extremely difficult to establish substantive narcotics charges against these persons. We find that many of these individuals are living beyond their reported income or are engaged in unusual financial transactions which indicate that they are violating the internal revenue laws.

TARGET SELECTION COMMITTEE

The Target Selection Committee (TSC) is composed of representatives from the Drug Enforcement Administration, Main Treasury, and the Audit and Intelligence Divisions of the Internal Revenue Service. The TSC meets twice monthly in Washington, D.C. to review background data received from the various IRS field offices as well as information received from DEA, Customs, and other federal and non-federal agencies. The TSC attempts to select the most significant traffickers using criteria applied on a uniform basis. This approach allows us to detect geographical areas where IRS resources can be deployed to the maximum advantage. Before the TSC can act on the background data, the information must first be obtained and evaluated by the field offices.

The Chiefs, Intelligence Division, located in 58 district offices of the Service, are responsible for the collection and evaluation of intelligence data relating to possible tax violations. Narcotics and financial information obtained from other agencies, from cooperating individuals, and from other sources is matched with information contained in Intelligence Division files. Tax data, which is strictly confidential, is evaluated by specially trained IRS personnel, who compare the tax data with information known about an individual's living standard, expenditures, and possibly unusual financial transactions. Inconsistencies are then reported to the TSC, which may select the individual for either criminal tax investigation or civil tax examination.

The Internal Revenue Service's enforcement efforts involve criminal tax investigations, investigations of crimes committed in contravention of the internal revenue laws, and civil enforcement efforts. The Service recognizes that DEA has the primary responsibility on the federal level for the investigation of substantive narcotics violations and related conspiracies. All NTP investigations

are closely coordinated with DEA field offices having possible jurisdictional interest in any possible substantive narcotics case. Coordination and liaison are carried out at the field office, regional, and headquarters levels in a manner consistent with IRS disclosure procedures for the safeguarding of confidential tax information.

The violations of the Internal Revenue Code for which taxpayers are most frequently prosecuted are willful attempts to evade or defeat the tax, willful failure to collect or pay over the tax, and willful failure to file tax returns.

PROJECT ACCOMPLISHMENTS

Since August 1971, NTP investigations have resulted in 425 prosecution recommendations. Although a number of these cases are either in the review process or at pre-indictment stages, there have been 167 indictments and 113 convictions so far. In connection with civil enforcement efforts, we have recommended for assessment $210,650,000 in additional taxes and penalties.

As of March 30, the TSC has identified 1,959 individuals for either criminal investigation or civil examinations. Investigations have been conducted in every state, the District of Columbia, and every major metropolitan area. There are currently seven NTP fugitives who have fled after being indicted on tax charges.

Vincent Papa and Joseph A. DiNapoli were arrested on narcotics charges while driving a car in New York. Found in the car by federal agents of the New York Joint Task Force was a suitcase containing $967,550 in cash. Both men denied any knowledge of the suitcase or its contents. Papa later pleaded guilty to both tax and narcotics charges and was sentenced to two concurrent five-year terms in prison. His partner DiNapoli was sentenced to three years in prison on tax charges. The suitcase and its contents were turned over to IRS to satisfy tax assessments against both men.

Luis Reyes, also known as "The Inspector," is the former owner of two establishments, the Marti Theater and Pauparino Flowers, Inc., in Miami, Florida. While he was under indictment by a grand jury on charegs of evading taxes of more than $57,000 on a taxable income of $111,100, a remote radio-controlled bomb was found under the vehicle of a key government witness. The bomb was discovered and defused before it exploded, and an associate, Jose Louis Sarria, also known as "Pepe," was indicted in connection with the bombing attempt. Both men are now wanted by IRS and DEA.

Several warrants are now outstanding on Frank Larry Mathews, also known as "Frank McNeal," "Pee Wee," and "Mark III," who failed to appear after indictment on six counts of violating the internal revenue laws. More than $7 million in taxes and penalties have been assessed against him. After he jumped bail of $325,000, IRS seized his home in Staten Island, New York, valued at $150,000, and other property estimated to be worth $2 million. IRS and DEA have since formed a special task force to secure his arrest.

Among those indicted on tax changes in the now famous roundup of 69 persons in Manhattan, climaxing a complex heroin conspiracy investigation in April 1973, were Murad "The Arab" Nersesian, who pleaded guilty to tax charges; he was sentenced to two years in prison and fined $10,000. A second conspirator, Arnold "The Animal" Squitieri, also pleaded guilty to tax charges; he was sentenced to four years in prison and fined $10,000. A third, Ralph "The General" Tutino, who managed to escape the net, was listed as a fugitive. There were reports that he had been murdered and other reports that he had been seen disguised as a woman. In April 1974 he was arrested in a Fort Lee, New Jersey, apartment. He now faces a possible 18 years in prison on tax charges, in addition to payment of taxes and penalties. He is also charged with having conspired to cover up a recent gangland murder.

[From the New Republic, Feb. 1, 1975]

THE NARCOTICS PROJECT

(By Richard W. Graham)

In July 1972 Roberto Aguilar, a Mexican trucker, sent one of his trucks with $11,270 in cash into the United States bound for San Antonio to buy automotive parts. Police seized the truck and cash in Laredo, Texas on "suspicion" of illegal narcotics activities, sent the two drivers back to Mexico on foot, and called the Internal Revenue Service. The IRS immediately assessed a $12,774 income tax against Mr. Aguilar, levied on his cash, and sold his truck for $750, refusing to

explain how they had figured a United States income tax in any amount against a person who was not a citizen or resident and who had never worked or earned any money in the United States. When Mr. Aguilar went to court it became apparent that there was no basis for the tax and that the IRS had simply come up with a figure that would "justify" seizing the truck and cash. In ruling the IRS action illegal last September, Chief Judge Brown of the United States Court of Appeals for the Fifth Circuit referred to the "total—the word is total—lack of any basis for computing the quick terminated tax to be $12,774—almost the precise total of the money and the value of the truck."

This was one of many recent court decisions castigating the IRS for an illegal and abusive tactic that has grown out of the "IRS Narcotics Project," started as a part of President Nixon's campaign announced June 17, 1971 to step up enforcement of the drug laws. The project's stated purpose was to "disrupt the distribution of narcotics through the enforcement of all available tax statutes" and by "taking money out of the hands of traffickers." This use of the income tax as a blunt instrument to enforce the drug laws came on the heels of the repeal on May 1, 1971 of the narcotics excise taxes, which the Supreme Court had in effect held to be unconstitutional in the Leary case in 1969.

The tactic, called a "termination assesment," works like this: The police arrest a person on suspicion of a narcotics violation and find that he has cash in his pocket or other assets. They immediately call the IRS which, in a whirlwind of paperwork, "terminates" the person's taxable year, "determines" that he has had taxable income of such and such an amount during the year, and assesses a tax on this supposed income. Usually an IRS agent works up the amount of tax, serves a written demand on the person in jail, returns to his office and makes the assessment by telephone call to one of the IRS' 10 service centers, and then goes out and seizes the suspect's cash, bank accounts, home, automobiles and any other belongings he can find. This is all done within hours; for example on March 8, 1972 the IRS director in Phoenix ordered the "procedures will be developed so that terminations, etc. can be made in less than two hours," citing the IRS manual "that emergency situations may be handled orally and covered thereafter by written reports." The purpose of this speed is to freeze the person's assets while he is still in jail and before he's gotten a lawyer.

The "taxpayer" may thus be stripped of all his funds and property whether or not he is found guilty of a drug charge, even if no charge is formally made, and he is deprived of the means to hire counsel.

The procedure is based on a 1918 law that was designed to thwart income tax evasion by persons fleeing the country or hiding assets. One court has called it "a weapon, little known and previously not too often employed, having atomic potentialities in the arsenal of the tax gatherer," which enables "the sovereign's stranglehold on a taxpayer's assets," making him "indigent overnight."

The tactic is objectionable for several reasons. One is the often spurious basis for the amount of tax, which can range from no justification at all, as with Mr. Aguilar, to various subjective approaches taken to arrive at a tax that will equal or exceed the revealed assets that are the target of seizure. The IRS' internal procedure manual provides for two basic methods: One is to simply tote up all the taxpayer's assets at the time of his arrest plus his estimated living expenses and conclude that his income during the year must equal that sum, ignoring whatever net worth he may have had at the beginning of the year and any nonincome receipts since. The other method is to attribute to the taxpayer a certain level of narcotics dealing (often just extrapolated from drugs found in his possession when arrested) and derive a net income from that. Even in theory both methods fall short of the auditing standards used by the IRS for taxpayers who haven't happened to be arrested; in practice they have proved to be highly flexible devices for coming up with a figure that will justify sezing everything in sight.

In May 1973 Sharon Willits, a divorced mother of two, was arrested in Miami for speeding and for possessing a pistol and vial of barbiturates. (All of these charges were later dismissed. Four barbiturate pills were found in Mrs. Willits' purse. She maintained that they had been prescribed by her doctor.) The police found $4400 in cash and some jewelry in her purse and promptly notifie dthe IRS, which within 24 hours of her arrest worked up a termination assessment against her of $25,549 based on a "finding" that she had sold $240,000 worth of cocaine in 1973, and seized her cash and jewelry. In fact there was no evidence that she had ever been involved in the sale of any narcotics; there was only the admitted fact that she lived with a man who was suspected of narcotics dealings. A US

district court judge said that he was "revolted" by what the IRS had done but reluctantly held that he was prevented from helping her by a 1962 Supreme Court decision that severely limits the granting of injunctions in tax cases. In July 1974 Judge Clark of the fifth circuit reversed and held the IRS seizures illegal, referring to the "gossamer basis" for the "altogether fictitious assessment."

Similarly District Court Judge Craig in Phoenix, in enjoining a termination assessment against Jerry Woods, whose home and automobiles had been seized by the IRS in 1973 in a termination assessment of $244,314 observed that "It taxes the credulity of the Court, and I suspect any reasonable court, to give any merit to the method of calculation and the computation worksheet" used to figure the "tax." In the Woods case the IRS report stated that at the time of his arrest he had in his possession 3.5 ounces of heroin, one ounce of cocaine, and numerous amphetamine tablets. The charges against him were dismissed because of the illegal search and seizure.

One of the more colorful (if less colorable) recent termination assessments was in San Francisco: The taxpayer was arrested on the report of a pharmacist from whom he had purchased what seemed to be an inordinate number of prophylactics over a period of months, and was charged with the sale of heroin, which it seems is often packaged in prophylactics for retail sale. The IRS projected the same rate of prophylactic purchases over the remaining months of the year. hypothesized that each prophylactic was used to package one ounce of heroin (apparently without deduction for normal usage), and then pyramided a series of assumptions as to cost, dilution rate and sale price into a bottom line taxable income. The taxpayer's attorney has protested the tax. The case will be taken to court unless a settlement is reached. In the San Francisco case a substantial amount of heroin was found in the house of a codefendant, and the subject was charged with conspiracy to import heroin.

The IRS' approach to figuring termination taxes is summed up by a fifth circuit judge's recent comment that "the cat got out of the bag" in the case of Antoine Rinieri, a French citizen arrested at Idlewild Airport in 1962 with $247,500, which was promptly seized by revenuers. A district court in New York declared the "tax" illegal after hearing this cross-examination of the IRS agent:

> Q. To be very blunt about it, isn't it the fact that you were just merely told to write a report that would come out with an income tax of approximately $247,500 so that the government would have a basis of seizing this money, isn't that the blunt fact?
>
> A. That would be part of it. My position is to protect the government.
>
> Q. I want an answer, yes or no, Mr. Vita. Isn't that the blunt fact?
>
> A. Yes.

The IRS has escaped scrutiny and challenge in the vast majority of the several thousand termination assessments made since 1971 through two expedients: first, it refuses to explain to the taxpayer how the tax is figured; the IRS manual states that "a written report will not be given to the taxpayer," An IRS spokesman says that some explanation may be given orally to the taxpayer after his assets have been seized, but that even then the explanation may be limited because the identity and statements of informants (which are sometimes third- and fourth-hand hearsay that would be inadmissible in court) are not revealed.

Second, the IRS takes the position that the taxpayer has no right to go immediately into court to have its action reviewed. It acknowledges that a taxpayer can go to the tax court for immediate review of the similar "jeopardy" assessment, but argues that this right is not available for a "termination" assessment. (A "jeopardy" assessment is made after the end of a year; it also involves seizure of a taxpayer's assets, but the assets must be held and cannot be sold by the IRS so long as the matter is pending in the tax court.) The IRS also claims that the 1962 Supreme Court ruling bars a taxpayer from going to a US district court for an immediate hearing, contending that the taxpayer's only right is to wait until the year ends, file a tax return, wait six months, then file a suit for refund in a district court. The inadequacy of this remedy is obvious—it requires the taxpayer to wait a year or so before even starting a court action, by which time his property has long since been sold at distress prices. For some such as Elizabeth Hall, a Kentucky taxpayer whose taxable year was terminated at January 31, 1973 and whose bank account and Volkswagen were seized for an asserted tax of $52,680 for that one-month period, the IRS position would require a wait of almost one and a half years before a hearing.

This raises in all cases the constitutional question of whether the taxpayer is being deprived of his property without due process of law, on top of other issues that have come up in specific cases, such as the propriety of a search and seizure (in Jerry Woods' case an IRS agent made a search of his home after state narcotics officers had gone through the front door with a battering ram), right to counsel and the privilege against self-incrimination.

For those left with enough money to hire lawyers and get into court, the results have varied. The US courts of appeal have split on whether a taxpayer is entitled to an immediate tax court hearing—the second and seventh circuits have ruled for the IRS and the fifth and sixth circuits have held for the taxpayer. Because of this conflict, on October 15, 1974 the US Supreme Court agreed to hear two cases: one is the sixth circuit's decision in favor of Mrs. Hall, and the other is a second circuit decision for the IRS in the case of Mr. Laing, a New Zealand citizen who was found leaving the US with $306,896 in cash and who was promptly assessed with a tax in the predictable amount of $310,000. (The second circuit had also ruled for the IRS on a termination assessment against Clifford Irving.) So this question at least should be resolved within the next few months.

Legality aside, there is the policy question whether the IRS should be in the business of narcotics law enforcement. In Mrs. Willits' case, the judge said, "The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures." And in Mr. Woods' case: "This Court is certainly favorable to cooperation between state and federal agencies, but I think it is a miscarriage of that principle to use the Internal Revenue Service as an arm for state enforcement of criminal proceedings. And I don't think Congress ever intended that the IRS be used for that purpose."

These abuses can be positively harmful to legitimate tax collection and narcotics law enforcement alike. There is some evidence that they have had a demoralizing effect on regular IRS auditors who see their professionalism tainted. And in some cases illegal tactics actually prejudice, rather than assist, effective prosecution of narcotics violations.

In his speech to the American Bar Association in Honolulu on August 14, 1974, Commissioner of Internal Revenue Donald C. Alexander acknowledged that "there are influences . . . which do affect the integrity [of the tax administration effort]. These influences arise most often when either the framing or the application of tax laws do not have the raising of revenue as their principal objective. . . . Selective enforcement of tax laws, designed to come down hard on drug dealers . . . promotes the view that the tax system is a tool to be wielded for policy purposes, and not an impartial component of a democratic mechanism which applies equally to all of us. . . . we have changed the criteria for IRS involvement in anti-narcotics . . . activities."

So what changes have been made? On May 31, 1974, possibly reacting to a critical Wall Street Journal article, the IRS instructed its agents to be more careful in termination cases. And IRS spokesmen say their manual is now being revised so that taxpayers will be given some kind of conference to discuss the tax, but still only after the assessment and seizures have been completed and still without giving the taxpayer a written explanaion of how the tax was computed.

The head of the Narcotics Project in one major city said agents are no longer figuring taxes on the basis of a presumed level of drug dealing except in "very solid" cases. He also emphasized that most of the work of the Narcotics Project is now on normal audits, and termination assessments. Still, in view of Commissioner Alexander's remarks, why should there be a Narcotics Project at all?

Much now depends on the Supreme Court's decision in the Hall and Laing cases. If it rules that a taxpayer has a right to immediate court review of a termination assessment and that his property cannot be sold in the meantime, that may be enough to restore a professional character to IRS actions. If the Court upholds the IRS, there will be a clear need for corrective legislation.

LAW ENFORCEMENT AND JUSTICE

This function includes those Federal programs that provide judicial services; police protection; and the apprehension, prosecution, detention and rehabilitation of criminals, along with financial and technical assistance to States and localities for their own criminal justice systems.

Program Highlights

- Intensify efforts to curtail illegal commerce in firearms and seek stronger legislation related to handguns.
- Strengthen programs to reduce illegal traffic in narcotics and dangerous drugs.
- Increase resources devoted to litigation and court support.
- Activate three new correctional institutions and begin construction of four facilities.
- Adopt a more cautious approach to new State and local law enforcement grants.
- Expand resources for increased enforcement of the antitrust laws.
- Emphasize apprehension and deportation of illegal aliens.

State and local governments have the primary responsibility for law enforcement and the administration of justice; they will spend an estimated $15 billion for these purposes in 1977. Proposed Federal outlays for law enforcement and justice, which include $834 million of assistance to State and local governments, are estimated to be $3.4 billion in 1977—nearly the same as in 1976. In 1978, outlays for these programs are projected to be $3.3 billion. Further discussion of Federal activities in the law enforcement area is contained in Special Analysis N, "Federal Programs for the Reduction of Crime."

Federal law enforcement and prosecution.—Outlays for Federal law enforcement and prosecution will increase slightly in 1977 to an estimated $1,933 million.

During the past year, the Bureau of Alcohol, Tobacco and Firearms (ATF) began an intensified effort to curtail illegal commerce in firearms. This action is designed to assist local police in disrupting distribution channels and prosecuting those who engage in this trade. Vigorous enforcement of present firearms laws will complement the Administration's legislative proposals, which include mandatory sentences for felons convicted of using such weapons, prohibitions on the manufacture and sale of "Saturday night specials," and a man-

LAW ENFORCEMENT AND JUSTICE

(In millions of dollars)

Program or agency	Outlays				Recommended budget authority for 1977 [1]
	1975 actual	1976 estimate	TQ estimate	1977 estimate	
Federal law enforcement and prosecution:					
Drug Enforcement Administration	132	155	43	159	159
Federal Bureau of Investigation	439	468	126	460	467
Immigration and Naturalization Service	179	212	54	223	222
Justice Department legal activities	226	245	62	273	270
Legal Services Corporation	-------	85	24	83	80
Secret Service	86	110	31	112	114
Customs Service	299	338	80	323	324
Bureau of Alcohol, Tobacco and Firearms	95	108	26	123	125
Other	138	164	49	178	172
Subtotal, Federal law enforcement and prosecution	1,593	1,885	496	1,933	1,933
Federal judicial activities	279	338	91	378	380
Federal correctional and rehabilitative activities	226	267	75	279	299
Law enforcement assistance	853	919	255	844	713
Deductions for offsetting receipts	−9	−7	−3	−7	−7
Total	2,942	3,402	914	3,426	3,318

[1] Information on budget authority for 1975, 1976, and the transition quarter is shown in table 14 of Part 8.

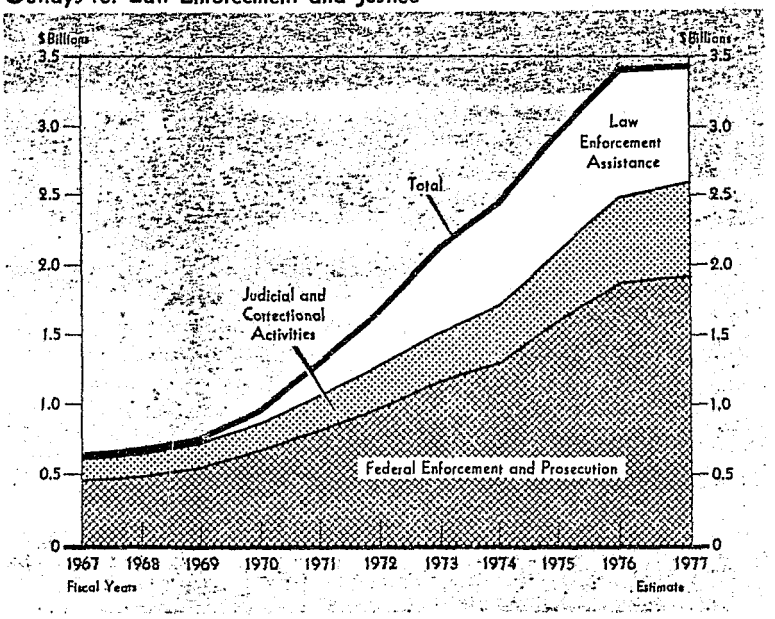
datory waiting period between purchase and receipt of handguns. In 1977, outlay increases for ATF programs to reduce violent crime will be partially offset by reductions in activities related to illegal liquor production, which has declined sharply in recent years.

The Customs Service will reduce staff in 1977 to reflect the impact of an unanticipated decline in the number of travelers who arrived from foreign countries and formal import entries recorded in 1975.

Within the Immigration and Naturalization Service (INS), staff will be redeployed to emphasize apprehension, detention, and ultimate deportation of illegal aliens. Border patrol operations will continue at 1976 levels. Expected productivity gains will allow modest staff reductions for port-of-entry inspections and background investigations of immigrants seeking U.S. citizenship.

The Drug Enforcement Administration (DEA) coordinates Federal activities to control illegal production and sale of narcotics and dangerous drugs, provides technical assistance and training to support State and local police, and assists foreign governments in curbing

Outlays for Law Enforcement and Justice



smuggling. DEA will emphasize control of hard drugs and concentrate its resources on high level offenders in order to disrupt distribution channels and organizations.

Outlays for the Federal Bureau of Investigation will decline slightly due to expected productivity increases, improved management practices, and deferred acquisition of selected equipment. The intensive effort to combat white collar and organized crime will not be diminished.

The Justice Department conducts most Federal litigation in both civil and criminal matters. Most Washington-based legal divisions will be held to 1976 staff levels. However, additional resources are requested for the Antitrust Division in order to carry out the Administration's program for increased enforcement of the antitrust laws. Staff in the U.S. attorneys' field offices will expand by 9% to handle burgeoning civil and criminal caseloads of increasing complexity.

The Legal Services Corporation provides aid in non-criminal cases for clients who are unable to afford legal services; outlays are estimated to be $83 million in 1977.

Constitutional guarantees of equality are enforced through civil rights programs of the Department of Justice and other Federal agencies. These programs are discussed in detail in Special Analysis M, "Federal civil rights activities."

Federal judicial activities.—By law, the President's budget forwards estimates for the Judiciary without change. In 1977, the budgets of the Supreme Court, the appellate and district courts, other activities of the judicial branch in this subfunction, and certain other judicial activities amount to $378 million, an increase of 12% from 1976 level of $338 million.

Federal correctional and rehabilitative activities.—Three new correctional institutions will be activated and construction will begin on four additional facilities—metropolitan detention centers in Detroit and Phoenix, a youth correction center in Alabama, and an adult correction center in New York. These facilities are needed to alleviate overcrowding problems in existing penal institutions.

Law enforcement assistance.—The Law Enforcement Assistance Administration (LEAA) is responsible for providing Federal assistance to State and local criminal justice systems; legislation to extend the LEAA program for 5 years has been submitted to the Congress. In 1977, proposed outlays for LEAA grant programs will decline by 8%, reflecting a more cautious approach in this area. Improved selectivity in grant activities, coupled with a greater distribution of resources for evaluation and research, will enable LEAA to determine and pursue those programs which promise the most impact on reducing crime in the United States. Such evaluation will improve decisions on the level and direction of LEAA assistance.

In 1977, State and local governments will be asked to pay one-half the costs of law enforcement training programs conducted for their officials by the FBI. Other Federal agencies will continue to provide technical assistance upon request.

LAW ENFORCEMENT AND JUSTICE

Program Highlights

- Intensify enforcement activities directed against major drug traffickers and white collar and organized crime.
- Expand antitrust activities of the Department of Justice in order to reduce artificial inflationary pressures on costs and prices.
- Develop recommendations, under the auspices of a new Cabinet-level committee, to deal with the problem of illegal aliens.
- Increase Immigration and Naturalization Service outlays by $34 million to cope with the increasing number of illegal aliens.
- Provide legal aid to indigent defendants through the newly created Legal Services Corporation.
- Continue to develop a balanced correctional system by building new community and institutional facilities and by emphasizing vocational rehabilitation programs.
- Promote more effective State and local criminal justice systems through the Law Enforcement Assistance Administration.

State and local governments have the primary responsibility for law enforcement and justice. Federal programs include enforcement of Federal laws and financial support for law enforcement activities of State and local governments. Outlays for these purposes will be $3.3 billion in 1976. Special Analysis N, "Federal Programs for the Reduction of Crime," in the Special Analyses volume of the Budget discusses all Federal activities related to the reduction of crime.

Federal law enforcement and prosecution.—Outlays for Federal law enforcement and prosecution, which are primarily responsibilities of the Justice and Treasury Departments, will rise from $1,582 million in 1975 to $1,726 million in 1976.

During the past year, the consolidation of Federal drug enforcement activities under the *Drug Enforcement Administration* (DEA) has continued. The DEA coordinates Federal activities, provides technical expertise and training to support State and local police, and assists foreign governments in controlling the illegal production and smuggling of dangerous drugs. In 1976, a new intelligence center in El Paso, Texas, will be opened to support the narcotics intelligence effort. This center will coordinate the collection, analysis, and dissemination

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LAW ENFORCEMENT AND JUSTICE

[In millions of dollars]

Program or agency	Outlays			Recommended budget authority for 1976 [1]
	1974 actual	1975 estimate	1976 estimate	
Federal law enforcement and prosecution:				
Drug Enforcement Administration	98	136	153	151
Federal Bureau of Investigation	381	435	459	466
Immigration and Naturalization Service	149	175	209	210
Secret Service	68	85	97	98
Customs Service	225	305	314	305
Bureau of Alcohol, Tobacco and Firearms	79	96	102	101
Justice Department legal activities	183	219	239	245
Other	91	131	153	148
Subtotal, Federal law enforcement and prosecution	1,274	1,582	1,726	1,725
Federal judicial activities	221	323	350	354
Federal correctional and rehabilitative activities	202	219	258	254
Law enforcement assistance:				
Law Enforcement Assistance Administration	770	862	887	770
Legal Services Corporation	-------	47	72	72
Subtotal, law enforcement assistance	770	909	959	841
Deductions for offsetting receipts	−5	−6	−4	−4
Total	**2,462**	**3,026**	**3,288**	**3,169**

[1] Compares with budget authority of $2,615 million in 1974 and $3,074 million in 1975.

of narcotics trafficking information. Outlays for the DEA will reach $153 million in 1976, an increase of $17 million over 1975.

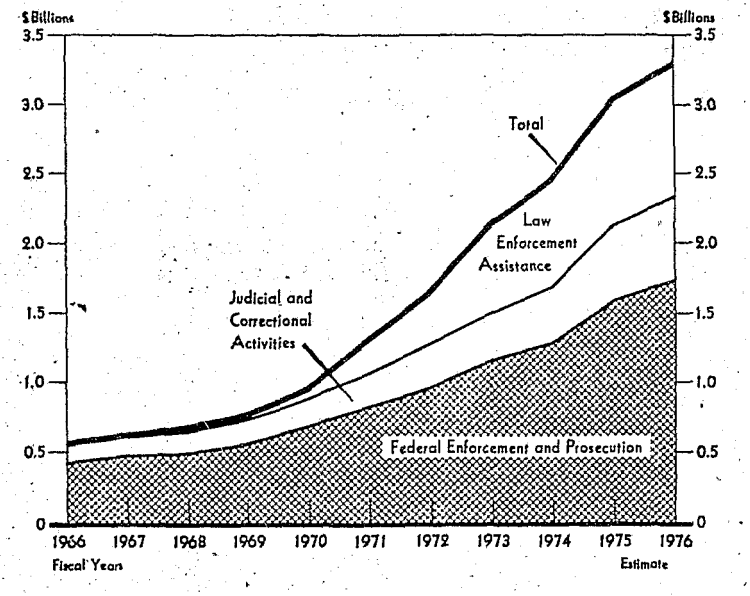
Outlays for the *Federal Bureau of Investigation* (FBI) will increase by $24 million to $459 million. In 1976, the FBI will give highest priority to white collar and organized crime.

The *Immigration and Naturalization Service* (INS) will have outlays of $209 million in 1976. This increase of $34 million will improve the detection, apprehension, and expulsion of illegal aliens. During 1976, the INS will begin to issue a new, counterfeitproof alien documentation card which will prevent illegal entry into the U.S. by the use of forged documents. There will be an increased effort to understand better the illegal alien problem and to develop more effective approaches for dealing with it.

Law enforcement activities in the Treasury Department will also increase in 1976. Secret Service outlays will increase from $85 million in 1975 to $97 million in 1976 to provide for expanded protection of Presidential candidates and of foreign missions in Washington, D.C.

The Bureau of Alcohol, Tobacco and Firearms (ATF) will continue to improve its programs to enforce Federal firearms and explosive laws. The Customs Service will continue to improve its system for processing imports.

Outlays for Law Enforcement and Justice



The Justice Department conducts most *Federal litigation* in both civil and criminal matters. Outlays for the legal divisions of the Justice Department will increase 9% in 1976 to $239 million. Staff in the U.S. Attorneys' field offices will expand in order to handle additional caseload and to deal with increasingly complex cases. The Antitrust Division will expand its enforcement activities to promote competition and reduce artificial inflationary pressures on costs and prices.

Civil rights are another principal Federal enforcement responsibility. The constitutional guarantees of equality are enforced through civil rights programs by the Department of Justice and other Federal agencies. See Special Analysis M, "Federal civil rights activities," for a more detailed discussion of Federal civil rights activities.

Federal judicial activities.—By law, the President's budget contains estimates for the Judiciary as they are submitted by that branch.

The Federal Judiciary proposes to spend $341 million in 1976 for the Supreme Court, the appellate and district courts, and the other activities of the Judicial branch in this subfunction.

Federal correctional and rehabilitative activities.—Community and institutional treatment programs will continue to expand. Seven additional community treatment centers and two new correctional institutions will be opened in 1976. Programs to divert accused defendants from prosecution to community programs supervised by the probation offices of the U.S. courts will be initiated in selected districts in cooperation with the U.S. Attorneys. Outlays for correctional and rehabilitative activities will total $258 million.

Law enforcement assistance.—The Law Enforcement Assistance Administration (LEAA) is the principal Federal agency for providing law enforcement assistance to State and local governments. Total LEAA outlays for 1976 are estimated at $887 million. In 1976, $485 million will be distributed as bloc grants in support of State and local law enforcement activities. Other Federal agencies, such as the FBI, ATF, and Bureau of Prisons, will continue to provide technical assistance to State and local governments upon request. The new Legal Services Corporation will provide funds for assistance for indigent defendants who are unable to pay for the cost of legal services. Its outlays are estimated to be $72 million in 1976.

SPECIAL ANALYSIS M

FEDERAL PROGRAMS FOR THE REDUCTION OF CRIME

Reduction of crime is a high priority within the Federal Government. Nineteen Federal agencies and commissions participate in providing an effective national response to the crime problem. Federal programs are not only concerned with enforcing statutes and administering criminal justice but are also designed to increase understanding of the causes of criminal behavior, prevent the commission of criminal acts, rehabilitate offenders, and reform Federal criminal laws. The goal is to reduce the rate of criminal violations, thereby limiting the substantial economic and social costs of crime.

The Federal crime reduction program complements activities of State and local governments, which bear the heaviest burdens and widest responsibilities for law enforcement and administration of justice. Federal assistance in the form of grants-in-aid, training, and technical assistance contributes to the effectiveness of State and local crime reduction programs.

Accomplishments of the Past Year

There were numerous accomplishments in the area of crime reduction during the past year. Among the most significant developments were:

- Reduction of 2% in the Nation's crime during calendar year 1972, the first actual reduction in the volume of crime since 1955.
- Creation of a consolidated Drug Enforcement Administration within the Department of Justice to permit more effective enforcement of Federal narcotic laws and better coordination with State and foreign governments in the overall effort to stem the flow of illicit drugs.
- Increase in worldwide seizures of opiates (in heroin equivalent pounds) from 5,500 in 1972 to 9,800 in 1973, and an increase in drug arrests from 15,500 to 24,900.
- Enactment of the Crime Control Act of 1973, extending the Law Enforcement Assistance grant program through 1976 and streamlining its administration to ensure a smoother flow of grants to State and local governments.
- Convocation of the National Conference on Criminal Justice to review the standards and goals formulated by the National Advisory Commission on Criminal Justice and to develop a commitment and strategy for implementing standards and goals in each State.

1975 Budget Highlights

Federal outlays for the reduction of crime will total $3.0 billion in 1975, as compared with $2.8 billion in 1974 and $2.3 billion in 1973.

It is estimated that expenditures for this purpose by all levels of government—Federal, State, and local—will exceed $19 billion in 1975. Of the $3.0 billion in Federal expenditures alone, $1.2 billion or 41% will be used to assist State and local governments to improve their criminal justice systems. Outlays directed to other levels of government in 1975 are 25% greater than the comparable figure in 1973. Once again in 1975, the Department of Justice will conduct the most extensive Federal crime reduction program with expenditure of $1.9 billion. The Department of the Treasury has the second largest Federal program which is budgeted for $326 million in 1975.

Table M-1. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY AGENCY[1] (in thousands of dollars)

Agency	Outlays		
	1973 actual	1974 estimate	1975 estimate
The Judiciary	73,745	83,698	92,267
Executive Office of the President	11,605	70,979	39,368
Department of Agriculture	6,440	7,105	8,018
Department of Commerce	1,280	1,878	2,378
Department of Defense—Civil	5,182	5,755	5,815
Department of Health, Education, and Welfare	132,118	196,997	219,986
Department of Housing and Urban Development	34,800	34,800	13,000
Department of the Interior	38,299	42,964	40,780
Department of Justice	1,350,981	1,741,813	1,891,515
Department of Labor	143,284	89,600	92,400
Department of State	20,583	34,416	37,399
Department of Transportation	48,743	32,585	30,134
Department of the Treasury	252,700	291,344	326,376
General Services Administration	93,412	97,916	69,791
Veterans Administration	80,053	92,346	82,251
Other independent agencies	469	991	2,026
Total Federal outlays	2,293,694	2,825,187	2,952,504

[1] Does not include Department of Defense—Military and $38.2 million of outlays for the U.S. Postal Service which are included in the Annexed Budget for 1975.

Application of resources to the reduction of illicit drug traffic, a major contributor to crime in America, will be expanded throughout the full range of Federal criminal justice activities. The new Drug Enforcement Administration consolidates Federal drug enforcement activities previously scattered in five separate agencies. The Drug Enforcement Administration has responsibility for planning a comprehensive Federal enforcement strategy and developing a coordinated program consistent with that strategy. Outlays and narrative descriptions concerning the Federal drug enforcement program are found throughout this special analysis, while a summary of expenditures related to enforcing drug laws is contained in table M-2.

Table M–2. FEDERAL OUTLAYS FOR DRUG ENFORCEMENT [1]
(in millions of dollars)

Agency	Outlays		
	1973 actual	1974 estimate	1975 estimate
Department of Agriculture	1.3	1.5	1.5
Department of Defense—Civil	.2	.2	.2
Department of Justice:			
Drug Enforcement Administration	77.3	109.4	135.9
Law Enforcement Assistance Administration	28.5	31.7	50.2
Other activities	2.9	4.8	5.2
Department of State	20.6	34.4	37.4
Department of Transportation	.4	.5	.4
Department of the Treasury:			
Customs Service	46.4	41.9	41.9
Internal Revenue Service	16.9	20.3	20.7
Total Federal outlays	194.5	244.7	293.4

[1] Does not include Department of Defense—Military and U.S. Postal Service.

Crime Reduction Programs by Activities

Budget outlays included in this special analysis represent all Federal programs related to crime reduction except expenditures of the Department of Defense.[1] The analysis covers estimated costs of the judiciary related to criminal adjudication. Even though such programs may indirectly reduce crime, the analysis excludes general social programs, unless they are clearly within the context of crime reduction or prevention, such as vocational training of prisoners or treatment and rehabilitation of narcotic addicts. This analysis does not include background investigations for employment, administrative inspections, or investigations of a regulatory nature which might in rare cases result in the application of criminal sanctions. Where activities involve both criminal and civil proceedings, such as operation of Federal courts, an allocation of outlays to the crime-related function has been estimated. The narrative is not intended to be all-inclusive, but rather highlights new initiatives contained in the 1975 budget and portrays the wide range of activities and agencies involved in the Federal crime reduction program.

Crime research and statistics.—Crime research and statistics encompass Federal activities designed to produce numerical data and other information concerning crime, criminals, and the criminal justice system, and to develop new techniques and methods for operation of that system.

- Total Federal outlays for crime research and statistics are estimated to be $113 million in 1975. Of this amount $36.6 million

[1] Defense Department outlays for crime reduction are not included in this analysis. However, a summary of Defense Department outlays for law enforcements are estimated as follows (in thousands of dollars):

	1973	1974	1975
Department of the Army	304,002	308,962	310,444
Department of the Navy	31,366	32,922	31,719
Department of the Air Force	407,957	399,032	400,355
Total, Department of Defense	743,325	740,916	742,518

will be spent for collection of quantitative data, and $76.7 million for research. This compares with $104 million for research and statistics in 1974.

- During 1975 the Drug Enforcement Administration's catalog of information and statistics on controlled substances will reach maturity, providing a comprehensive data base for identifying and investigating large quantities of abusable substances which may be entering illicit markets.
- The Coast Guard will continue research to improve its capability for detecting pollution law violations by developing advanced all-weather means of detecting, identifying, and quantifying discharges of oil and hazardous polluting substances.
- The U.S. Postal Service will continue development of improved postal security and detection devices such as a letter tracing system, anti-tampering devices for mail sacks, and portable containers for suspect letter bombs.
- Expenditures by the Law Enforcement Assistance Administration to develop and evaluate new enforcement technology will total $29 million in 1975, while criminal statistical collection will account for $33 million.

Reform of criminal laws.—Criminal law reform consists of efforts to improve the effectiveness of criminal statutes and assure that they accurately reflect the values and standards of our society.

- $5.5 million will be spent on criminal law reform in 1975, a 32% increase over the comparable amount in 1974. Approximately 62% of the 1975 expenditures will support law reform efforts in State and local governments.
- In 1975 the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance will be conducting its first full year of study into the impact of the Omnibus Crime Control Act of 1968 on the use of wiretaps for law enforcement purposes.
- A special unit within the Criminal Division of the Justice Department has been created to establish procedures and coordinate use of the immunity provisions of the Organized Crime Control Act of 1970, as well as monitor requests for immunity.
- The Drug Enforcement Administration will continue drafting and revising regulations and procedures, as well as gathering information for administrative hearings on provisions of the Comprehensive Drug Abuse Prevention and Control Act which will be applicable to individuals and industry alike.
- During 1975 the Commission to Review National Policy Toward Gambling will hold public hearings and conduct studies and surveys to determine the nature, extent, and public attitude toward gambling in order to formulate recommendations on a national policy.

Prevention of crime.—Crime prevention includes efforts to limit the probability that criminal acts will be committed through means other than direct enforcement or general correctional activities. This category therefore encompasses public education, drug addict rehabilita-

Table M–3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND SELECTED ACTIVITY [1] (in thousands of dollars)

Major program and selected activity	Outlays		
	1973 actual	1974 estimate	1975 estimate
Crime research and statistics:			
Statistics on crime, criminals, and criminal justice system	28,374	33,902	36,595
Research on criminal behavior and sociology of crime	45,675	70,331	76,703
Program total	74,049	104,233	113,298
Reform of criminal laws	2,738	4,215	5,545
Services for prevention of crime:			
Public education on law observance, enforcement, and crime prevention	23,603	34,092	36,507
Special programs for the rehabilitation of narcotic addicts	117,850	245,368	236,959
Prevention and control of juvenile delinquency	66,667	82,724	95,424
Development of other community crime prevention services	173,006	131,920	119,100
Program total	381,126	494,104	487,990
Criminal law enforcement:			
Investigations into violations of Federal criminal law	702,239	766,104	832,175
Federal police	102,175	107,009	116,978
Assistance to State and local governments for enforcement	145,249	208,260	219,878
Program total	949,663	1,081,373	1,169,031
Law enforcement support:			
Criminal intelligence and information systems	29,151	42,221	44,997
Education and training of enforcement officers	151,385	164,985	160,207
Laboratories and criminalistics	28,115	37,204	41,636
International programs in support of domestic law enforcement	28,077	42,191	46,958
Program total	236,728	286,601	293,798
Administration of criminal justice:			
Conduct of Federal criminal prosecutions	68,147	80,077	91,607
Operation and support of Federal court systems	83,677	96,336	103,904
Assistance to States and localities for improved administration of justice	45,078	58,132	60,662
Program total	196,902	234,545	256,173
Rehabilitation of offenders:			
Operation of Federal correctional institutions	132,478	199,921	179,972
Federal probation, parole, and community treatment	15,550	18,912	22,230
Federal inmate education and training	9,467	11,230	12,872
Federal inmate medical treatment	9,190	11,382	12,934
Other programs supporting Federal corrections	1,967	2,065	2,473
Assistance to States and localities for improved correctional programs	229,110	307,778	327,170
Program total	397,762	551,288	557,651
Planning and coordination of crime reduction programs	54,726	68,828	69,018
Total Federal outlays	2,293,694	2,825,187	2,952,504

[1] Does not include Department of Defense—Military and U.S. Postal Service.

tion, juvenile delinquent programs, and projects to improve police-community relations.

- An estimated $488 million will be concentrated on crime prevention programs in 1975, representing a 28% increase above 1973.
- The bulk of the Federal drug treatment, rehabilitation, research, and prevention programs will be located in the new National Institute on Drug Abuse within the Alcohol, Drug Abuse, and Mental Health Administration in HEW.
- New outreach programs linked with the criminal justice system will be encouraged by the Special Action Office for Drug Abuse Prevention in 1975 to bring into treatment hard-core addicts who have not sought treatment or have dropped out of a program.
- The Urban Mass Transportation Administration expects to make $2 million in grants to State and local governments in 1975 for procurement of public transit equipment containing crime prevention devices.
- In 1975 HEW will fund sufficient drug treatment capacity to care for every addict seeking help.
- During 1974 and 1975, the Law Enforcement Assistance Administration will encourage States and localities to adopt the crime prevention standards developed by the National Conference on Criminal Justice.

Criminal law enforcement.—Criminal law enforcement consists of activities to detect, identify, and apprehend violators of criminal laws. Federal support of State and local enforcement is included in this category, as is investigation by Federal agents into the wide variety of Federal offenses. Representative programs include policing of Federal reservations, special activities against organized crime and illicit drug trafficking, and grants to upgrade the effectiveness of State and local law enforcement.

- Criminal law enforcement will account for $1.2 billion in outlays during 1975, including $220 million in support of State and local enforcement programs.
- Additional personnel are being added to the FBI to assist in automating its criminal fingerprint file and to purge and reorder its extensive civil fingerprint file.
- The Internal Revenue Service will add 324 personnel to its tax fraud investigative force in 1975 in order to intensify its effort against tax evasion.
- The Department of Transportation and the Criminal Division in the Department of Justice will be joining forces to foster improvements in State car title and registration systems in order to frustrate false documentation by auto theft rings.
- The Department of Labor will continue to assist Federal strike forces against organized crime by furnishing compliance officers to identify, investigate, and assist in the prosecution of labor racketeers who manipulate welfare and pension funds.
- In 1975 the Executive Protective Service will provide expanded protection for foreign diplomatic missions against potential terrorist and other criminal activity.
- Nearly 300 border patrol agents will be added to the Immigration and Naturalization Service in 1974 and 1975 to strengthen an

enforcement program which apprehended 466,755 unlawful aliens and seized 107 tons of marihuana during 1973, both record highs.

- The Securities and Exchange Commission will continue to give top priority to cases involving organized crime, particularly those instances concerning criminal infiltration into the securities industry.
- During the next year the Bureau of Alcohol, Tobacco, and Firearms expects to more than double its identification of firearms used in criminal acts, which will assist Federal, State, and local law enforcement.
- A drug diversion investigation program, conducted by the Drug Enforcement Administration and funded by the Law Enforcement Assistance Administration, will encourage States to curb the illicit diversion of drugs at the retail level in 1975.
- A new Surface Law Enforcement Patrol will be operated in Florida during 1974 and 1975 by the Coast Guard to implement the United States-Cuba antihijacking agreement and to act as a deterrent to narcotics smuggling and introduction of illegal aliens into this country.
- During 1974 and 1975 the Federal Aviation Administration will continue to direct the intergovernmental effort targeted against hijacking, which prevented any successful attempts in 1973.

Law enforcement support.—Law enforcement support entails activities contributing to the effectiveness of criminal law enforcement. Included are operation of criminal intelligence systems, education and training of enforcement officers, activities of forensic laboratories, and international programs supporting domestic enforcement efforts, primarily in the area of narcotics control.

- Outlays of $294 million are projected for law enforcement support in 1975. Of this amount, $207 million will assist State and local enforcement by funding laboratories, training programs, and criminal intelligence networks.
- Construction contracts of $19 million are planned in 1975 for the new Federal Law Enforcemen Training Center, which will provide basic and specialized training to Federal personnel in a variety of law enforcement subjects.
- The Drug Enforcement Administration will support State and local drug enforcement activities in 1975 by conducting 60 schools for 4,300 law enforcement officers, training 100 chemists in 5 forensic workshops, and analyzing an estimated 22,350 drug exhibits for non-Federal police agencies.
- The Veterans Administration will provide financial assistance for 15,500 policemen to pursue on-the-job training and related academic instruction during 1975.
- In 1975 the Treasury Enforcement Communications System operated by the U.S. Customs Service will be expanded to make a comprehensive smuggling intelligence file available to enforcement officers at all major international airports and some seaports in the United States.
- During 1975 the State Department will use Foreign Assistance Act funds to continue to support foreign governments in their efforts to disrupt the flow of illicit narcotics to the United States

through training in drug enforcement and intelligence, equipment procurement, advisory assistance, and crop substitution projects.

Administration of criminal justice.—This category includes the preparation and prosecution of criminal cases, operation of court systems, trial of cases, provision of adequate defense, and related supporting activities.

- Over $256 million will be devoted to prosecution of criminal cases and administration of criminal justice in 1975, including $61 million for assisting State and local prosecution and court systems. Operation of the Federal judiciary will require expenditure of $104 million in 1975; criminal prosecutions will account for $92 million.
- The addition of 241 people to U.S. Attorneys' offices in 1975 will be applied to reduce the large number of criminal cases declined for prosecution each year due to lack of litigative resources.
- The fees and expenses of witnesses appearing on behalf of the Federal Government to provide factual information or expert testimony will require expenditure of $12 million in 1975.
- The Antitrust Division of the Department of Justice will use a 13% personnel increase in 1975 to expand its economic analysis of anti-competitive practices in order to improve enforcement of antitrust and consumer protection cases, particularly in those matters related to energy.
- The Federal court system will improve its ability to handle criminal cases through a 12% increase in support personnel in 1975.
- In coordination with the Criminal Division and the Internal Revenue Service, the Tax Division of the Justice Department will increase its prosecutive efforts against organized crime racketeers during 1975.
- Working with U.S. district courts and magistrates, the National Park Service will initiate a new procedure in 1975 to permit violators of petty Federal offenses to forfeit collateral rather than unnecessarily clog court dockets.
- During 1975 the Drug Enforcement Administration will continue to assist State officials prosecute cases under State uniform controlled substances acts and conduct revocation proceedings before State licensing boards.
- The U.S. Marshal Service will establish coordinators in each Federal appellate district during 1975 to supervise and upgrade the service of Federal warrants by deputy marshals.

Rehabilitation of offenders.—These programs encompass Government custody and rehabilitation of criminal offenders, including supervision and operation of correctional institutions, inmate and offender treatment and training programs, probation and parole services, and other supportive functions.

- Expenditure of $558 million will support rehabilitation of offenders in 1975, as compared with $551 million in 1974 and $398 million in 1973. Of the 1975 total, $327 million will be allocated to non-Federal correctional activities.

- During 1975, $222 million will be spent on correctional programs of the Bureau of Prisons, with emphasis on developing a balanced system of community and institutional facilities for the reintegration of offenders into society.
- The U.S. Board of Parole will regionalize its operations and implement new decisionmaking criteria to ensure greater equity, consistency, and speed in the parole process in 1974 and 1975.
- The Probation Service of the Federal judiciary will add 340 officers in 1974 and 320 officers in 1975 to improve probation and parole supervision.
- HEW will make grants of $4.2 million in 1975 to enable an estimated 67,800 inmates in penal institutions to enroll in adult education classes aimed at providing at least a high school education.

Planning and coordination.—Included in this category are outlays supporting State and local criminal justice planning, as well as coordination of Federal enforcement activities internally and with international enforcement efforts.

- Approximately $69 million will be spent on planning and coordination of crime reduction programs in 1975, consisting primarily of $62 million in expenditures by the Law Enforcement Assistance Administration to encourage State and local governments to plan and evaluate their criminal justice activities.
- The Special Action Office for Drug Abuse Prevention will continue to plan and coordinate all Federal drug abuse prevention and treatment activities during 1975.
- In 1975 the Department of State will continue to work with foreign governments and international organizations to implement drug control policies and coordinate interagency participation in the international narcotics control effort.
- New cabinet subcommittees on domestic enforcement and treatment will coordinate Federal interdepartmental drug abuse activities during 1975.

Table M-4. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)

Major program and agency	Outlays		
	1973 actual	1974 estimate	1975 estimate
Crime research and statistics:			
The Judiciary	629	891	1,168
Executive Office of the President	648	319	----------
Department of Agriculture	1,285	1,527	1,549
Department of Defense—Civil	14	16	17
Department of Health, Education, and Welfare	3,411	3,776	3,754
Department of Justice	65,049	92,686	102,574
Department of Transportation	2,061	4,178	3,396
Department of the Treasury	840	840	840
Other independent agencies	112	----------	----------
Program total	74,049	104,233	113,298

Table M–4. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)—Continued

Major program and agency	Outlays		
	1973 actual	1974 estimate	1975 estimate
Reform of criminal laws:			
Department of Justice	2,738	3,645	3,985
Other independent agencies	.....	570	1,560
Program total	2,738	4,215	5,545
Services for prevention of crime:			
Executive Office of the President	10,957	66,445	33,368
Department of Defense—Civil	138	150	152
Department of Health, Education, and Welfare	75,045	137,451	160,462
Department of Housing and Urban Development	29,500	29,500	11,000
Department of the Interior	876	1,074	989
Department of Justice	108,253	149,039	169,419
Department of Labor	128,500	81,200	84,000
Department of Transportation	148	100	2,000
Veterans Administration	27,709	29,145	26,600
Program total	381,126	494,104	487,990
Criminal law enforcement:			
Department of Agriculture	5,155	5,578	6,469
Department of Commerce	1,280	1,878	2,378
Department of Defense—Civil	3,961	4,404	4,433
Department of the Interior	35,573	39,805	37,363
Department of Justice	512,145	618,997	697,756
Department of Labor	3,600	3,400	3,400
Department of Transportation	46,452	28,219	24,642
Department of the Treasury	248,598	283,252	322,333
General Services Administration	92,542	95,419	69,791
Other independent agencies	357	421	466
Program total	949,663	1,081,373	1,169,031
Law enforcement support:			
Department of Defense—Civil	133	147	155
Department of Health, Education, and Welfare	5,825	7,500	7,500
Department of the Interior	314	399	435
Department of Justice	154,221	172,138	190,494
Department of State	19,679	33,381	36,266
Department of Transportation	80	86	94
Department of the Treasury	3,262	7,252	3,203
General Services Administration	870	2,497	.....
Veterans Administration	52,344	63,201	55,651
Program total	236,728	286,601	293,798
Administration of criminal justice:			
The Judiciary	63,583	71,503	78,097
Department of Defense—Civil	80	90	96
Department of the Interior	1,145	1,286	1,564
Department of Justice	132,092	161,664	176,414
Department of Transportation	2	2	2
Program total	196,902	234,545	256,173

Table M-4. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)—Continued

Major program and agency	Outlays		
	1973 actual	1974 estimate	1975 estimate
Rehabilitation of offenders:			
The Judiciary	9,533	11,304	13,002
Department of Defense—Civil	856	948	962
Department of Health, Education, and Welfare	47,837	48,270	48,270
Department of Housing and Urban Development	5,300	5,300	2,000
Department of the Interior	391	400	429
Department of Justice	322,661	480,066	487,988
Department of Labor	11,184	5,000	5,000
Program total	397,762	551,288	557,651
Planning and coordination of crime reduction programs:			
Executive Office of the President	.....	4,215	5,000
Department of Justice	53,822	63,578	62,885
Department of State	904	1,035	1,133
Program total	54,726	68,828	69,018
Total Federal outlays	2,293,694	2,825,187	2,952,504

[1] Does not include Department of Defense—Military and U.S. Postal Service.

Table M–5. SELECTED CRIME REDUCTION DATA (dollars in thousands)

	1971	1972	1973
Federal outlays for crime reduction:			
Federal crime reduction outlays assisting States and localities	$414,773	$674,785	$966,863
Federal crime reduction outlays for reduction of Federal crimes	$937,982	$1,131,608	$1,326,831
Total Federal outlays for reduction of crime	$1,352,755	$1,806,393	$2,293,694
Federal personnel:			
Full-time Federal criminal investigators [1]	15,489	17,507	19,117
U.S. attorneys and assistant attorneys (man-years on criminal workload)	712	763	722
Attorneys—criminal division (man-years)	239	271	[2] 366
U.S. district court judgeships	402	498	498
State and local crimes: [3]			
Serious crimes recorded (UCR—table 2)	5,955,200	5,891,900	([4])
Violent crimes recorded (UCR—table 2)	810,020	828,150	([4])
Rate of serious crimes per 100,000 inhabitants (UCR—table 2)	2,907	2,830	([4])
Rate of violent crimes per 100,000 inhabitants (UCR—table 2)	393	398	([4])
Percent index crimes cleared by arrest (UCR—table 13 in 1971, table 15 in 1972)	20.9	22.0	([4])
Percent found guilty of persons charged by police (UCR—table 15 in 1971, table 18 in 1972)	64.7	65.2	([4])
Federal investigations:			
FBI, investigative matters received	828,059	824,252	774,579
Immigration and Naturalization Service (investigations completed)	28,542	30,245	30,940
Postal Service, criminal caseload	510,220	462,671	339,350
IRS, cases closed	7,381	8,518	8,500
U.S. Customs Service, cases closed	38,062	40,076	40,276
Secret Service, cases closed	132,750	[5] 158,871	124,389
Bureau of Alcohol, Tobacco, and Firearms, cases closed	6,339	6,964	5,403
Disposition of Federal criminal matters:			
Investigative matters presented for prosecutive decision—prosecution declined	94,032	119,064	93,926
Federal criminal cases commenced [6]	41,290	47,043	40,367
Federal criminal cases terminated [6]	37,715	46,090	41,389
Federal criminal cases pending [6]	24,485	25,438	24,416
Federal criminal cases pending over 6 months [7]	6,602	5,462	5,114
Federal criminal defendants convicted	33,604	39,587	37,261
High echelon organized crime figures convicted	61	60	69
Corrections:			
Average Federal jail population	4,733	5,160	5,870
Average Federal prison population	20,949	21,329	22,294
Court commitments to Federal institutions	12,613	13,677	15,677
Average Federal prison sentences (months)	47.8	47.9	51.0
Persons under supervision of Federal probation system (end of year)	42,549	49,023	54,346
Federal paroles granted	5,851	6,174	6,339
Warrants issued for violation of conditions of release from prison	2,044	1,906	1,635
Executive clemency petitions granted	173	255	207

[1] CSC jobs classified in series 1811 as of October 31.
[2] Includes internal security functions transferred into the Criminal Division.
[3] From FBI uniform crime report.
[4] Not available.
[5] Reflects closing out case backlog where no further investigation was warranted.
[6] Excludes transfers.
[7] Excludes pending cases of fugitives.

SPECIAL ANALYSIS M

FEDERAL PROGRAMS FOR THE REDUCTION OF CRIME

Federal programs for the reduction of crime are a cooperative effort of many Federal agencies. While the Department of Justice and the Federal Judiciary are charged with the broad basic functions relating to reduction of crime, other executive departments and agencies have crime prevention and suppression functions growing out of their primary program activities or ability to bring special knowledge and competence to the solution of crime problems. Strong emphasis is given to cooperation with State and local criminal justice agencies with funds and technical assistance provided to improve their effectiveness and joint efforts undertaken with respect to many crime problems. The objective is to generate an effective response to the crime problem by all elements of the Nation's criminal justice system.

Accomplishments of the Past Year

Notable progress has been made the past year to improve the effectiveness of law enforcement and upgrade the quality of the criminal justice process. Accomplishments of particular significance include:

- The FBI crime index increased only 1% during the first three quarters of 1972, which is the lowest rate of growth since 1960 when the statistics were first collected.
- Creation of the Office for Drug Abuse Law Enforcement, under direction of the Special Consultant to the President for Drug Abuse Law Enforcement, has brought integrated and comprehensive Federal, State, and local resources to bear on the heroin distribution networks in over 40 cities.
- Enactment of legislation for the protection of foreign officials and official guests of the United States, sponsored by the Administration, strengthens Federal law pertaining to attacks on and demonstrations against representatives of foreign nations in order to deter increasing harassment of and violence directed at foreign officials, particularly from the Soviet Union and Middle East nations.
- Establishment of the Office of National Narcotics Intelligence within the Department of Justice provides more effective collection and use of information on drug trafficking.
- Control of aircraft hijacking has been strengthened by issuance of new Federal Aviation Administration regulations requiring airports to station armed guards at passenger checkpoints and airlines to provide 100% inspection of all passengers and their carry-on baggage.

1974 Budget Highlights

In 1974, Federal outlays for the reduction of crime will total almost $2.6 billion. This compares with $2.4 billion in 1973 and $1.8 billion

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in 1972. It is estimated that crime reduction expenditures at all levels of government—Federal, State, and local—will total $18 billion in 1974. Of the $2.6 billion in Federal expenditures in 1974, $1,187 million or 46% of the total will be directed to assisting State and local governments in their crime reduction activities. Comparable figures were 37% in 1972 and 42% in 1973. The remainder of the 1974 outlays will fund direct Federal involvement in criminal justice activities.

The Department of Justice spends the largest amount on crime reduction with $1,563 million estimated for 1974. Special emphasis will be directed toward controlling the illicit distribution of narcotics and dangerous drugs, combating organized crime, preventing terrorist activities aimed at foreign officials and domestic government institutions, and rehabilitating criminal offenders.

Legislation will be proposed to merge several of the Law Enforcement Assistance Administration (LEAA) categorical grants into Law Enforcement Revenue Sharing (LERS). In 1974, $800 million in assistance to State and local government will be allocated through LERS and LEAA discretionary funding for the various crime reduction activities highlighted in this analysis.

Table M–1. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY AGENCY [1] (in thousands of dollars)

Agency	Outlays		
	1972 actual	1973 estimate	1974 estimate
The Judiciary	71,476	77,820	85,012
Executive Office of the President	13,403	52,871	32,700
Agency for International Development	4,968	23,800	35,600
Department of Agriculture	5,459	5,544	5,615
Department of Commerce	1,127	1,467	1,767
Department of Defense—Civil	4,676	5,102	5,531
Department of Health, Education, and Welfare	125,387	175,657	226,473
Department of Housing and Urban Development	29,339	34,222	35,220
Department of the Interior	32,103	40,251	39,709
Department of Justice	1,011,447	1,315,876	1,562,534
Department of Labor	84,146	157,700	86,900
Department of State	829	1,037	1,095
Department of Transportation	41,929	48,722	32,297
Department of the Treasury	215,219	262,297	285,286
General Services Administration	75,269	102,113	82,957
National Aeronautics and Space Administration	722	254	----------
Veterans Administration	53,252	74,856	79,364
Other independent agencies	35,642	36,402	[2] 1,163
Total Federal outlays	1,806,393	2,415,991	2,599,223

[1] Does not include Department of Defense—Military.
[2] Excludes $36,357 thousand of outlays for the U.S. Postal Service which are included in the Annexed Budget for 1974.

Crime Reduction Program by Activities

Budget outlays reported in this special analysis cover all Federal programs directly related to or closely associated with crime reduction,

except outlays associated with programs of the Defense Department.[1] The analysis includes estimated costs of criminal adjudication by the judiciary. It excludes general social programs, even though such programs may indirectly reduce crime, unless they are clearly within the context of crime reduction or prevention, e.g. vocational training of prisoners or treatment and rehabilitation of narcotic addicts. The analysis does not include background investigations for employment, administrative inspections, or investigations of a regulatory nature which may in rare cases result in the application of criminal sanctions. Where activities involve both criminal and civil proceedings, e.g. operation of the courts, an allocation of outlays to the criminal function has been estimated.

Crime research and statistics.—Crime research and statistics includes the various Federal activities designed to produce statistics, performance data, and quantitative knowledge concerning crime, criminals, and the criminal justice system, and to develop improved methods and techniques for operation of that system.

- Outlays of $96 million will be devoted to crime research and statistics in 1974. Of this amount $32 million will be spent for statistical collection and $64 million for research. In 1973, $74 million is being allocated for research and statistics.
- The newly organized National Criminal Justice Reference Service in the Law Enforcement Assistance Administration will offer a national computerized data base of research information in 1974.
- The National Institute of Law Enforcement and Criminal Justice within the Law Enforcement Assistance Administration has entered into agreements with other Federal agencies to stimulate enforcement research and statistics in 1974. The U.S. Air Force will attempt to translate equipment needs into practical hardware systems, the Bureau of the Census will conduct a series of surveys of victims of crime, and the U.S. Army Missile and Munitions Center will conduct project studies on civil disorders.
- Research to develop techniques and devices for discouraging aircraft hijackers, identifying potential hijackers, detecting concealed weapons, and finding explosives hidden aboard aircraft will be funded by the Federal Aviation Administration in 1974.
- The U.S. Postal Service will conduct applied research into systems designed to improve the security of the mails—expanded electronic alarm devices, high-speed systems to detect contraband in the mail flow, an apparatus for identifying explosives and narcotics, and an improved mail-tracing system for use in mail traps.
- In order to improve the handling of mentally disordered offenders in the criminal justice system, the National Institute of Mental Health is conducting research projects to develop more precise clinical criteria for determining pretrial competency and "dangerousness" for purposes of involuntary commitment to mental hospitals.

[1] Defense Department outlays for crime reduction are not included in this analysis. However, a summary of Defense Department outlays for law enforcement are estimated as follows (in thousands of dollars):

	1972	1973	1974
Department of the Army	247,260	264,431	260,907
Department of the Navy	15,396	24,363	21,737
Department of the Air Force	292,941	348,895	343,449
Total, Department of Defense	555,597	637,689	626,093

Table M–2. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND SELECTED ACTIVITY [1] (in thousand of dollars)

Major program and selected activity	Outlays		
	1972 actual	1973 estimate	1974 estimate
Crime research and statistics:			
Statistics on crime, criminals, and criminal justice system	12,878	27,080	31,511
Research on criminal behavior and sociology of crime	27,878	47,240	64,590
Program total	40,756	74,320	96,101
Reform of criminal laws	1,742	2,514	4,110
Services for prevention of crime:			
Public education on law observance, enforcement, and crime prevention	24,574	33,896	41,863
Special programs for the rehabilitation of narcotic addicts	73,008	158,067	201,932
Prevention and control of juvenile delinquency	62,386	74,393	77,606
Development of other community crime prevention services	109,092	188,566	129,328
Program total	269,060	454,922	450,729
Criminal law enforcement:			
Investigations into violations of Federal criminal law	663,121	766,270	728,730
Federal police	90,292	103,218	103,748
Assistance to State and local governments for enforcement	105,519	129,321	174,421
Program total	858,932	998,809	1,006,899
Law enforcement support:			
Criminal intelligence and information systems	20,329	29,412	38,325
Education and training of enforcement officers	108,499	140,874	139,548
Laboratories and criminalistics	23,529	27,796	34,040
International programs in support of domestic law enforcement	10,053	31,614	43,414
Program total	162,410	229,696	255,327
Administration of criminal justice:			
Conduct of Federal criminal prosecutions	46,514	55,416	61,955
Operation and support of Federal court systems	74,042	80,165	86,011
Assistance to States and localities for improved administration of justice	28,220	36,534	52,419
Other supporting programs	79	101	129
Criminal defense for the poor	13,360	14,769	15,522
Program total	162,215	186,985	216,036
Rehabilitation of offenders:			
Operation of Federal correctional institutions	100,010	136,417	153,433
Federal probation, parole, and community treatment	10,817	12,556	13,374
Federal inmate education and training	20,862	23,318	19,646
Federal inmate medical treatment	13,862	15,761	16,639
Other programs supporting Federal corrections	1,959	2,272	2,270
Assistance to States and localities for improved correctional programs	125,827	216,029	315,999
Program total	273,337	406,353	521,361
Planning and coordination of crime reduction programs	37,941	62,392	48,660
Total Federal outlays	1,806,393	2,415,991	2,599,223

[1] Does not include Department of Defense—Military.

Reform of criminal laws.—Criminal law reform encompasses Government efforts to improve the effectiveness of the Nation's criminal laws and assure that they accurately reflect the values and standards of our society.

- Approximately $4.1 million will be spent for law reform in 1974, including $3.0 million to support efforts to revise State and local criminal statutes and regulations.
- In 1974 the Criminal Code Revision Unit within the Justice Department will support legislation to revise the Federal criminal laws. Once a revised criminal code is enacted, the Unit will prepare revisions to criminal prosecuting procedures and hold training sessions for U.S. attorneys.
- During 1974 a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance will begin studying the effects of provisions of the Omnibus Crime Control and Safe Streets Act of 1968 and other applicable State and Federal law concerning wiretapping in order to submit recommendations to the President and Congress.
- The Commission to Review National Policy Toward Gambling will undertake a study of existing statutes relating to control and taxation of gambling in United States in 1974.
- Thirty-five States and territories have now adopted the State Uniform Controlled Substances Act. Efforts will continue within the Bureau of Narcotics and Dangerous Drugs to foster enactment by as many States as possible.

Prevention of crime.—Crime prevention consists of government efforts to preclude, limit, or render less probable the commission of criminal acts by means other than direct enforcement or general correctional activities as an important element in crime reduction. Included are certain programs in public education, drug addict rehabilitation, treatment of juvenile delinquents, and police-community relations.

- Total outlays for Federal crime prevention programs will exceed $450 million in 1974. Included in this amount is $78 million for prevention and control of juvenile delinquency.
- The Urban Mass Transportation Administration will offer grants to State and local governments for purchase of public transit equipment with crime prevention and reduction devices such as two-way radios and computerized command and control systems.
- Although all 170 Veterans Administration hospitals treat veterans with drug problems, 44 specially designated treatment units will care for 31,000 drug-dependent veterans in 1974, a 15% increase over 1973.
- The National Institute of Mental Health will place new emphasis in 1974 on the development of training models and programs for mental health service professionals, behavioral and social science researchers, and personnel evaluating action programs on crime and delinquency.

Criminal law enforcement.—Criminal law enforcement entails direct efforts by the Federal Government to detect, identify, and apprehend violators of criminal laws. Federal support of State and local enforcement activities is also included in this category. This assistance may underwrite programs to combat organized crime, control narcotics and drug abuse, or help finance general improvements in the operation of State and local criminal justice systems aimed at the reduction of crime.

- Criminal law enforcement will have $1,007 million in outlays during 1974, including $174 million in support of State and local enforcement programs.
- The recently established Bureau of Alcohol, Tobacco, and Firearms will expand its investigation of violations of Federal firearms and explosives laws in 1974.
- With the active cooperation and participation by State and local police departments, attorneys, and courts, the Office of Drug Abuse Law Enforcement plans to expand its full-scale operations against middle- and street-level heroin traffickers into six additional large metropolitan areas in 1974.
- The Securities and Exchange Commission will continue investigations of security frauds in 1974 which have led to indictments against 16 members of organized crime.
- The Bureau of Customs will expand its drug detector dog force in 1974 and add new equipment to support its air and sea intrusion program.
- The Border Patrol of the Immigration and Naturalization Service expects to apprehend 510,000 deportable aliens in 1974, a substantial increase over the 366,881 illegal aliens located in 1972.
- The U.S. Postal Service will intensify efforts to reduce the amount of cash and stamp stock lost annually in post office burglaries and seek to cut losses in parcel post, registered mail, and insured mail.
- The Secret Service will provide protection for an increasing number of foreign dignitaries in 1974.
- In 1974, 177 investigators and support personnel from the Labor-Management Services Administration in the Department of Labor will work with the strike forces against organized crime to identify, investigate, and prosecute labor racketeers who manipulate welfare and pension funds.

Law enforcement support.—Law enforcement support consists of activities which contribute to the effectiveness of direct enforcement activities. Included in this category are the operation of criminal intelligence and information systems, education and training of enforcement officers, forensic laboratories, and international programs supporting domestic enforcement efforts, primarily in the area of narcotics control.

- Outlays of $255 million are projected for law enforcement support in 1974. Of this amount, $181 million will assist State and local enforcement by funding laboratories, training programs, and criminal intelligence networks.

- The Internal Revenue Service will train a limited number of State revenue officers in its basic school for special agents in 1974.
- In 1974 the newly created Office of National Narcotics Intelligence will maintain a narcotics intelligence system for the analysis and dissemination of data collected from both overseas and domestic sources.
- Training of State and local enforcement officers in the FBI National Academy will be expanded to 2,000 students in 1974.
- The Veterans Administration expects to fund on-the-job training for 17,200 State and local policemen in 1974.
- In addition to protecting international fish and wildlife resources under Federal law, officers of the Bureau of Sport Fisheries and Wildlife have been granted authority to enforce the wildlife conservation laws of States in which they are located during 1974.
- The Bureau of Narcotics and Dangerous Drugs will conduct 36 intensive training programs in 1974 for foreign police officials participating in the international effort to deter narcotics trafficking.
- Matching grants of $6.3 million provided by the Office of Education will support vocational and technical education programs for 126,000 State and local police officers in 1974.
- An estimated 14,500 narcotic evidence exhibits will be analyzed in 1974 for State and local enforcement agencies by laboratories of the Bureau of Narcotics and Dangerous Drugs.

Administration of criminal justice.—This category includes the preparation and prosecution of criminal cases, operation of court systems, trial of cases, provision of adequate defense, and related and supporting activities.

- Expenditures of $216 million will support all programs for the prosecution of criminal cases and the administration of criminal justice in 1974, over $52 million of which will assist State and local prosecution agencies and courts. Operation of the Federal court system will require outlays of $86 million in 1974, and $62 million will be spent on criminal prosecutions.
- The Federal court system will increase the level of its support personnel by almost 12% in order to expedite an expanded caseload in 1974.
- The Criminal Division of the Justice Department will conduct a pilot program to establish Federal-State law committees to develop policy for prosecution of offenses with concurrent Federal-state jurisdiction, such as cargo thefts and auto thefts.
- Indian courts, sponsored by the Bureau of Indian Affairs, expect to handle over 100,000 cases in 1974, a 16% increase over the actual caseload in 1972.
- The Prosecutors Management Information System of the U.S. Attorney Office in the District of Columbia Superior Court, funded by a grant from the Law Enforcement Assistance Administration, will be made available in manual or computerized form to every district attorney's office in the United States in 1974.

- As a result of increased number of tax investigations in 1972 and 1973, the Tax Division of the Department of Justice projects an increase of over 20% in the number of criminal prosecutions in 1974, as compared to the 1972 level.
- U.S. Attorneys will devote additional manpower to the preparation and prosecution of Federal criminal cases which continue to increase in volume and complexity.

Rehabilitation of offenders.—These programs include government custody and rehabilitation of criminal offenders. Specific activities include operation of correctional institutions, inmate training programs, probation and parole services, and construction of buildings and facilities.

- Over $521 million of Federal funds will be expended for rehabilitation of offenders in 1974, as compared to $406 million in 1973 and $273 million in 1972. Of the 1974 total, $316 million will be allocated to State and local correctional programs.
- Bureau of Prisons staff assigned to the regional offices of the Law Enforcement Assistance Administration will provide technical assistance to State and local governments planning improvements in jails, prisons, and community correctional programs.
- The Office of Education will support offender rehabilitation programs in 1974 by offering vocational training to 40,000 inmates and sponsoring adult education classes for 51,800 inmates.
- State vocational rehabilitation agencies, using increased grants from the Social and Rehabilitation Service in HEW, will offer programs in vocational education to youths charged with minor offenses in 1974.
- The Bureau of Prisons will operate three additional Federal correctional facilities in 1974. In addition, the Bureau will be negotiating with certain State and local correctional authorities for joint utilization of facilities.

Planning and coordination.—Included in this category are Federal support of State and local planning of crime reduction activities and coordination of Federal enforcement activities internally and with respect to international enforcement efforts.

- Outlays of $49 million will support planning and coordination of crime reduction programs in 1974, consisting primarily of $43 million to assist State and local governments conduct planning and evaluation of criminal justice programs.
- A Cabinet Committee on International Narcotics Control, chaired by the Secretary of State, will establish overall policy for Federal enforcement activities intended to disrupt the flow of narcotics into the United States.
- During 1974 the Special Action Office for Drug Abuse Prevention plans to undertake the development and implementation of management systems for drug abuse prevention, assist State and local governments to conduct such activities, and establish guidelines for poly-drug abuse treatment.
- In 1974 senior State Department officials will continue to work with foreign governments and international organizations to prevent illegal production and distribution of narcotics and will coordinate the drug programs of all Federal agencies abroad.

Table M-3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)

Major program and agency	Outlays		
	1972 actual	1973 estimate	1974 estimate
Crime research and statistics:			
The Judiciary	274	337	441
Executive Office of the President	1,503	1,271	----------
Department of Defense—Civil	13	14	15
Department of Health, Education, and Welfare	4,821	5,172	5,460
Department of Justice	31,748	63,023	85,446
Department of Transportation	931	3,166	2,347
Department of the Treasury	462	780	2,392
National Aeronautics and Space Administration	722	254	----------
Other independent agencies	282	303	([2])
Program total	40,756	74,320	96,101
Reform of criminal laws:			
Department of Justice	1,742	2,514	3,450
Other independent agencies	----------	----------	660
Program total	1,742	2,514	4,110
Services for prevention of crime:			
Executive Office of the President	10,800	46,100	27,000
Department of Defense—Civil	118	148	153
Department of Health, Education, and Welfare	72,861	115,622	153,085
Department of Housing and Urban Development	24,991	29,150	30,000
Department of the Interior	860	876	883
Department of Justice	73,445	96,571	138,308
Department of Labor	68,900	140,500	74,800
Department of Transportation	----------	334	1,000
Veterans Administration	17,059	25,593	25,500
Other independent agencies	26	28	([2])
Program total	269,060	454,922	450,729
Criminal law enforcement:			
Department of Agriculture	5,459	5,544	5,615
Department of Defense—Civil	3,594	3,822	4,168
Department of the Interior	29,679	37,098	36,550
Department of Justice	459,979	510,401	569,441
Department of Labor	3,286	3,500	3,200
Department of State	829	1,037	1,095
Department of Transportation	40,939	45,157	28,879
Department of the Treasury	211,158	257,036	275,694
General Services Administration	69,446	100,046	81,754
Other independent agencies	34,563	35,168	[2] 503
Program total	858,932	998,809	1,006,899

See footnotes at end of table.

Table M–3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)—Con.

Major program and agency	Outlays		
	1972 actual	1973 estimate	1974 estimate
Law enforcement support:			
Agency for International Development	4,968	23,800	35,600
Department of Commerce	1,127	1,467	1,767
Department of Defense—Civil	95	130	134
Department of Health, Education, and Welfare	5,310	5,820	6,300
Department of the Interior	278	354	201
Department of Justice	104,189	141,348	148,989
Department of Transportation	57	63	69
Department of the Treasury	3,599	4,481	7,200
General Services Administration	5,823	2,067	1,203
Veterans Administration	36,193	49,263	53,864
Other independent agencies	771	903	(2)
Program total	162,410	229,696	255,327
Administration of criminal justice:			
The Judiciary	64,014	69,696	75,767
Department of Defense—Civil	45	68	75
Department of Health, Education, and Welfare	56	60	----
Department of the Interior	976	1,127	1,279
Department of Justice	97,122	116,032	138,913
Department of Transportation	2	2	2
Program total	162,215	186,985	216,036
Rehabilitation of offenders:			
The Judiciary	7,188	7,787	8,804
Department of Defense—Civil	811	920	986
Department of Health, Education, and Welfare	42,339	48,983	61,628
Department of Housing and Urban Development	4,348	5,072	5,220
Department of the Interior	310	796	796
Department of Justice	206,381	329,095	435,027
Department of Labor	11,960	13,700	8,900
Program total	273,337	406,353	521,361
Planning and coordination of crime reduction programs:			
Executive Office of the President	1,100	5,500	5,700
Department of Justice	36,841	56,892	42,960
Program total	37,941	62,392	48,660
Total Federal outlays	1,806,393	2,415,991	2,599,223

[1] Does not include Department of Defense—Military.
[2] Excludes outlays for the U.S. Postal Service which are included in the Annexed Budget for 1974.

Table M–4. SELECTED CRIME REDUCTION DATA (dollars in thousands)

	1970	1971	1972
Federal outlays for crime reduction:			
Federal crime reduction outlays assisting States and localities	$177,251	$414,773	$674,785
Federal crime reduction outlays for reduction of Federal crimes	679,665	937,982	1,131,608
Total Federal outlays for reduction of crime	856,916	1,352,755	1,806,393
Federal personnel:			
Full-time Federal criminal investigators [1]	14,610	15,489	17,507
U.S. attorneys and assistant attorneys (man-years on criminal workload)	630	712	763
Attorneys—criminal division (man-years)	190	239	271
U.S. district court judgeships	402	402	498
State and local crimes: [2]			
Serious crimes recorded (UCR—table 2)	5,568,200	5,995,200	(3)
Violent crimes recorded (UCR—table 2)	731,400	810,020	(3)
Rate of serious crimes per 100,000 inhabitants (UCR—table 2)	2,740	2,907	(3)
Rate of violent crimes per 100,000 inhabitants (UCR—table 2)	360	393	(3)
Percent index crimes cleared by arrest (UCR—table 13)	21.0	20.9	(3)
Percent found guilty of persons charged by police (UCR—table 15)	66.8	64.7	(3)
Federal investigations:			
FBI, investigative matters received	882,254	828,059	824,252
Immigration and Naturalization Service (investigations completed) [4]	28,718	28,542	30,245
Postal Service, criminal caseload	211,166	[5] 510,220	[5] 462,671
IRS, cases closed [6]	7,908	7,381	8,518
Bureau of Customs, cases closed	32,040	38,062	40,076
Secret Service, cases closed	99,390	104,743	132,018
Bureau of Alcohol, Tobacco, and Firearms, cases closed	7,867	6,339	6,964
Disposition of Federal criminal matters:			
Investigative matters presented for prosecutive decision—prosecution declined	89,139	94,032	119,064
Federal criminal cases commenced [7]	38,102	41,290	47,043
Federal criminal cases terminated [7]	34,962	37,715	46,090
Federal criminal cases pending [7]	20,910	24,485	25,438
Federal criminal cases pending over 6 months [8]	5,710	6,602	5,462
Federal criminal defendants convicted	29,005	34,579	40,812
High echelon organized crime figures convicted	33	51	60
Corrections:			
Average Federal jail population	4,284	4,733	5,160
Average Federal prison population	20,687	20,949	21,329
Court commitments to Federal institutions	11,060	12,613	13,677
Average Federal prison sentences (months)	46.8	47.8	47.9
Persons under supervision of Federal probation system (end of year)	38,409	42,549	49,023
Federal paroles granted	5,142	5,851	6,174
Warrants issued for violation of conditions of release from prison	2,369	2,044	1,906
Executive clemency petitions granted	96	173	255

[1] CSC jobs classified in series 1811 as of October 31.
[2] From FBI uniform crime report, calendar year 1971.
[3] Not available.
[4] Includes investigations of criminal, immoral, narcotic, fraud, and subversive activity.
[5] Represents a new workload reporting system which reflects individual complaints in a specific case series.
[6] Includes tax fraud investigations of narcotics traffickers and organized crime figures.
[7] Excludes transfers.
[8] Excludes pending cases of fugitives.

SPECIAL ANALYSIS O

FEDERAL PROGRAMS FOR THE REDUCTION OF CRIME

The Federal crime reduction program is a combination of direct action on the Federal level and support for criminal justice systems at the State and local level. The objective is to generate a comprehensive, cooperative, and effective national response to the crime problem by all elements of the total criminal justice system. This analysis reflects, therefore, Federal enforcement and correction activities, that portion of judicial functions related to the criminal justice process, Federal research into the causes of crime and the means of controlling it, and Federal support of State and local crime reduction programs. Illicit drug traffic and organized crime are special targets of Federal law enforcement efforts, and these efforts are being intensified, with special attention to specific crimes at the local level. In the drug area, increased emphasis is being directed at the breakup of local drug distribution networks. Also, local governments are being encouraged to develop, with Federal technical and financial assistance, programs targeted to those specific crime situations where analysis indicates a concentrated effort can produce significant results in the reduction of crime.

Accomplishments of the Past Year

During the past year a number of actions have been taken to improve the effectiveness of the criminal justice system. Events of particular importance were:

- The Special Action Office for Drug Abuse Prevention was established in the Executive Office of the President to develop overall Federal strategy for drug abuse prevention, education, treatment, rehabilitation, training, and research programs in all Federal agencies.
- New initiatives undertaken in the fight against drug abuse include expansion of the drug treatment and rehabilitation programs within the Veterans Administration and Department of Defense, increased funding for narcotics enforcement by the Departments of Justice and Treasury, and efforts to secure international cooperation in suppressing illegal drug traffic.
- A national conference on corrections was convened in Williamsburg, Va., to analyze corrections problems and recommend specific approaches for improving correctional programing. Proposed by the Attorney General was a prison reform program, which will include minority hiring, intensive education programs for offenders, and creation of a National Corrections Academy as a center for correctional research, education and training for Federal, State, and local correctional personnel.
- A computerized system was established to enable Federal, State, and local law enforcement agencies to obtain criminal

history records in minutes over the FBI's National Crime Information Center communications network. In addition to personal identification information, the file shows arrest charges, the disposition of each case, sentencing details, and custody and supervision status. The purpose of the new system is to coordinate efficiently the exchange of criminal history information between computerized State information systems and Federal agencies.

- An interdepartmental council was named to plan the coordination of all Federal juvenile delinquency programs. Established under amendments to the Juvenile Delinquency Prevention and Control Act of 1968, the council is composed of representatives of Federal agencies with responsibilities for administering juvenile delinquency programs.
- The Omnibus Crime Control Act of 1970 strengthens State and local correctional programs by requiring that a fixed portion of grants made by the Law Enforcement Assistance Administration be used for improvements in correctional activities. The act provides for a variety of improvements in Federal law enforcement, including reorganization of the Law Enforcement Assistance Administration, increased protection for the President and members of Congress, and creation of a Wiretap Commission.
- The National Advisory Commission on Criminal Justice Standards and Goals was formed to carry out a complete study of the Nation's criminal justice system. The Commission will establish national goals, performance standards, and priorities to help all criminal justice planners in the nation. The study is expected to take 1 year.

Table O–1. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY AGENCY[1] (in thousands of dollars)

Agency	Outlays		
	1971 Actual	1972 estimate	1973 estimate
The Judiciary	60,703	76,132	96,194
Executive Office of the President	---	2,800	6,500
Office of Economic Opportunity	15,500	18,200	21,500
Department of Agriculture	4,511	4,665	4,665
Department of Commerce	800	1,100	1,100
Department of Defense—Civil	4,551	4,605	4,749
Department of Health, Education, and Welfare	98,510	166,197	204,428
Department of Housing and Urban Development	17,228	26,450	34,465
Department of the Interior	22,916	25,104	27,309
Department of Justice	742,641	1,043,907	1,277,454
Department of Labor	14,373	32,700	43,300
Department of State	53,598	141,771	141,771
Department of Transportation	38,958	51,497	42,887
Department of the Treasury	167,894	228,592	250,856
Atomic Energy Commission	104	---	---
General Services Administration	38,513	43,551	42,068
National Aeronautics and Space Administration	1,342	987	350
Postal Service	32,654	39,054	42,922
Veterans Administration	37,560	66,034	77,753
Other independent agencies	399	255	262
Total Federal outlays	**1,352,755**	**1,973,601**	**2,320,533**

[1] Does not include Department of Defense—Military.

1973 Budget Highlights

The 1973 budget provides for outlays of $2,321 million related to reduction of crime, an increase of $347 million over comparable expenditures in 1972 and $968 million more than 1971 outlays. It is estimated that expenditures for crime reduction programs at all levels of government—Federal, State, and local—will exceed $17 billion in 1973. Of the $2,321 million of Federal outlays in 1973, $923 million or 40% of the total will directly support State and local crime reduction activities. In 1972, 36% of Federal expenditures assisted State and local governments in this area; in 1971, 31% were devoted to this purpose. In dollar terms, the increase in 1973 is $218 million more than Federal outlays directed to State and local law enforcement in 1972.

Application of resources to the reduction of the illicit drug traffic, a major contributor to crime in America, will be expanded throughout the full range of Federal programs. The Departments of Justice and Treasury will give special emphasis to combatting the manufacture, distribution and smuggling of illicit narcotics and dangerous drugs. A total of $273 million will be spent on all Federal narcotics enforcement programs in 1973. In addition, the Department of Health, Education, and Welfare, Veterans Administration and Office of Economic Opportunity will conduct significantly expanded drug treatment and rehabilitation programs. Outlays for this purpose will be approximately $162 million in 1973. Another aspect of the Federal Government's fight against drug abuse involves suppression of the cultivation, refinement, and distribution of illicit narcotics abroad. Outlays of $36 million in 1973, compared to $12 million in 1972, will support international drug control.

Crime Reduction Program by Activities

The budget outlays reported by this special analysis cover all domestic Federal programs directly related to or closely associated with crime reduction, except outlays associated with military programs of the Defense Department. The analysis also includes estimated costs of the criminal adjudication function of the judiciary. It excludes general social programs, even though such programs may indirectly reduce crime, unless they are clearly within the context of crime reduction or prevention, e.g., vocational training of prisoners, treatment of juvenile delinquents. Also, the analysis does not include background investigations for employment, administrative inspections, or investigations primarily of a regulatory nature which may in rare cases result in the application of criminal sanctions. Where activities involve both civil and criminal proceedings, e.g., operation of courts, an allocation of outlays to the criminal function has been estimated.

Crime research and statistics.—Crime research and statistics encompass Federal activities designed to produce data and information concerning crime, criminals, and the criminal justice system. Also included are programs to develop improved methods and techniques for operation of the criminal justice system.

- Over $70 million of Federal funds will be expended for crime research and statistics in 1973, as compared with $46 million in 1971 and $31 million in 1972. Total outlays in 1973 consist of $25 million for statistical activities and $45 million for research.

Table O–2. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND SELECTED ACTIVITY [1] (in thousands of dollars)

Major program and selected activity	Outlays		
	1971 actual	1972 estimate	1973 estimate
Crime research and statistics:			
Statistics on crime, criminals, and criminal justice system	7,545	13,070	25,363
Research on criminal behavior and sociology of crime	23,122	32,960	44,720
Program total	30,667	46,030	70,083
Reform of criminal laws	1,293	1,835	2,313
Services for prevention of crime:			
Public education on law observance, enforcement and crime prevention	10,705	17,815	22,627
Special programs for rehabilitation of alcoholics and narcotics	57,749	133,432	161,894
Prevention and control of juvenile delinquency	45,409	65,636	80,967
Development of other community crime prevention services	24,998	37,606	46,789
Program total	138,861	254,489	312,277
Federal criminal law enforcement:			
Enforcement in support of Federal systems	236,448	257,833	262,929
General Federal law enforcement	288,397	468,457	480,293
Federal police	56,526	68,885	70,255
Specialized activities against organized crime	66,577	82,681	86,600
Support for Federal law enforcement	27,939	35,634	33,195
Program total	675,887	913,490	933,272
Assistance to State and local police activities:			
Intelligence and information systems	10,052	17,736	24,358
Education and training of enforcement officers	61,913	87,302	111,203
Laboratory support	9,398	14,740	18,074
General police activities	53,562	74,260	86,015
Control of civil disorders	4,673	7,537	9,357
Combating organized crime	7,524	12,446	15,454
Other	6,834	11,497	14,624
Program total	153,956	225,518	279,085
Administration of criminal justice:			
Conduct of Federal criminal prosecutions	29,018	35,168	41,008
Operation and support of Federal court systems	56,441	71,261	83,221
Assistance to States and localities for improved administration of justice	17,905	29,482	37,725
Other supporting programs	682	742	1,310
Criminal defense for the poor	5,854	12,524	13,527
Program total	109,900	149,177	176,791
Rehabilitation of offenders:			
Operation of Federal correctional institutions	85,124	106,076	152,827
Federal probation, parole and community treatment	18,486	19,664	27,467
Federal inmate education and training	6,943	8,750	9,045
Federal inmate medical treatment	12,491	14,996	15,826
Other programs supporting Federal corrections	5,220	9,591	14,446
Assistance to States and localities for improved correctional programs	85,149	186,697	264,055
Program total	213,413	345,774	483,666
Planning and coordination of crime reduction programs	28,778	37,288	63,046
Total Federal outlays	1,352,755	1,973,601	2,320,533

- The National Bureau of Standards within the Department of Commerce, in cooperation with the National Institute of Law Enforcement and Criminal Justice within LEAA, will continue development of law enforcement equipment standards in order to advise police departments on criteria for purchasing equipment.
- The Bureau of Narcotics and Dangerous Drugs is continuing research to identify new esoteric material appearing in illicit traffic, facilitate identification of the source of legitimate drugs diverted into illegal markets, perfect equipment for remote detection of illicit drug manufacturing, and develop new analytical methods for the analysis of abusable substances.
- The Federal Aviation Administration is continuing research and development projects to perfect automated techniques for detection of weapons and explosives aboard aircraft and identification of potential hijackers.
- The Law Enforcement Assistance Administration will begin publication of estimates of the incidence and socioeconomic cost of crime as determined by the National Crime Panel. Efforts will also be directed to developing comprehensive data centers on criminal justice statistics in the States.

Reform of criminal laws.—Criminal law reform includes Government efforts to improve the effectiveness of the Nation's laws.

- Total outlays for reform of criminal laws will be $2.3 million in 1973. Over $1.9 million of this amount will support projects to reform State and local laws.
- The Department of Justice is evaluating the recommendations of the National Commission on Reform of Federal Criminal Laws and will submit legislation to provide both substantive and procedural reforms in 1973.
- There will be established during 1973 a Commission on the Review of the National Policy Toward Gambling, pursuant to the Organized Crime Control Act of 1970. The purpose of the Commission is to study Federal, State, and local policy and practices with respect to gambling activities and to recommend codification, revision, or repeal of existing statutes pertaining to gambling.
- Twenty-four States and three island possessions have now adopted the Uniform Controlled Dangerous Substance Act. Efforts will continue within the Bureau of Narcotics and Dangerous Drugs to foster enactment by as many States as possible.
- The Department of Justice has drafted a Model State Explosives Act which has been submitted to the Council of State Governments for approval. The proposal is designed to reflect the regulatory pattern created by the recently enacted Federal explosives law.

Prevention of crime.—Crime prevention includes Government efforts to limit or render less probable the commission of criminal acts by means other than direct enforcement or general correctional activities. Included are public education, alcoholic and drug addict rehabilitation, treatment of juvenile delinquents, and projects to improve police-community relations.

- Outlays of $312 million will be devoted to crime prevention programs in 1973. This expenditure represents an increase of $58 million over 1972 and 550% over the outlay level in 1969.
- The Office of Education in the Department of HEW is strengthening its program to improve the education of delinquent children in institutions with the objective of returning these children to their communities with a better attitude toward themselves, their parents, school, and work.
- The Veterans Administration will open up to 12 additional drug dependence units and 15 additional alcoholism treatment units. The goal is to offer treatment and rehabilitation services to an estimated 20,000 addicts in the 44 special treatment units to be operated in 1973. A total of 7,500 veterans will be treated for alcoholism.
- The Special Action Office for Drug Abuse Prevention will develop a national strategy for the reduction of drug addiction and drug abuse by developing drug abuse programs, setting program goals and objectives, formulating policies and standards for operating agencies, and evaluating the performance of all drug abuse programs.
- The Bureau of Prisons will operate the former Public Health hospital at Fort Worth as the sixth Federal institution offering drug treatment in addition to other rehabilitation programs. Early indicators of progress with specialized treatment efforts point to substantial success in deterring a return to criminal activity by inmates designated as high-risk offenders.

Federal criminal law enforcement and Federal police.—Law enforcement involves direct Federal Government efforts to detect, identify, and apprehend violators of criminal laws. Representative programs include criminal investigations, policing of certain Federal areas, and special concerted programs against organized crime, and illicit narcotics trafficking.

- Expenditures of $933 million will support Federal investigative and police activities in 1973. This compares with total outlays of $913 million in 1972 and $676 million in 1971 for this purpose.
- The Criminal Division of the Department of Justice returned indictments against 2,122 defendants in organized crime cases in 1971, mainly through use of organized crime strike forces operating in 17 cities. Expanded resources applied to this program in 1973 are expected to produce increased indictments.
- Resources of Federal and local governments will be combined to mount an intensive effort in 24 major cities against the street and mid-level traffic in illegal drugs and narcotics.
- The Internal Revenue Service will conduct over 7,000 tax fraud investigations in 1973 and will continue to enforce the revenue laws related to alcohol, tobacco, and firearms. Special emphasis will be given to suppression of illicit drugs through investigations of drug traffickers.
- The U.S. Marshals Service will improve its ability to conduct operations through installation of a modern communications network connecting deputy marshals with central offices and linking the 93 Marshals with the Department of Justice.

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- Increased resources will be directed to the Joint State-Federal Narcotics Task Force in New York City. During 1971, its first full year of operation, 110 drug-related arrests were made by the task force, which is aimed at middle-level traffickers.
- The Treasury Department will spend $6 million for further construction of the $53 million training center at Beltsville, Md. The facility is expected to be operational by 1975 and will provide recruit, advanced, specialized, and refresher training for over 8,500 students each year from participating Federal enforcement agencies.
- The National Park Service will enlarge the training curriculum for Park Rangers to reflect the expanding role of the Ranger in law enforcement, accident investigation, and fire suppression.
- The Immigration and Naturalization Service expects to apprehend an estimated 455,000 deportable aliens in 1973, a substantial increase over the 400,000 illegal aliens located in 1971. In addition, Border Patrol agents seized 48,500 pounds of marihuana, over 50 pounds of heroin and cocaine, and 750,000 capsules of dangerous drugs in 1971. It is anticipated that narcotics seizures by INS agents will increase by one-third in 1973.
- An Indian Police Academy is being operated by the Bureau of Indian Affairs to train Federal and tribal officers performing enforcement duties. Approximately 300 officers will attend a 10 week course of instruction in 1973.
- Under authority of the Water Quality Improvement Act of 1970, the Coast Guard will enforce regulations governing discharge of oil from vessels by boarding and inspecting ships in U.S. navigable waters.
- The Securities and Exchange Commission will continue its investigation of persons suspected of organized crime activities who appear to be involved in manipulation of the securities markets and the illegal use of investment companies registered under foreign jurisdiction.
- As a result of recent legislation, the investigative activities of the U.S. Postal Service in 1973 will reflect increased enforcement responsibilities concerning shipment of narcotics and dangerous drugs and broader investigation of bombs and bomb threats.

Assistance to State and local police.—Included in this category are Federal efforts to provide or improve activities which support or upgrade State and local police and investigative agencies:

- Outlays of $279 million will be devoted to assisting State and local law enforcement activities in 1973, an increase of $54 million over 1972 and $125 million over 1971. Approximately $111 million will be spent to train State and local police and $15 million will support State and local efforts against organized crime.
- The bulk of Federal assistance to State and local law enforcement will be provided by the Law Enforcement Assistance Administration. In 1973 LEAA will award block grants of $480 million to finance programs selected by State planning agencies. Additional grants will be awarded for technological improvements, collection of statistics, and development and implementation of statewide

plans. Moreover, law enforcement education program funds will provide loans and stipends to approximately 100,000 State and local policemen, court employees, and correctional personnel.

- LEAA discretionary grants to States and localities will be made in support of a concentrated attack on urban crime—homicide, rape, robbery, and burglary—in eight selected cities. The program will stress the achievement of an early and significant impact on crime by the development of new techniques and strategies which can be adopted in other urban areas.
- Several Federal investigative agencies offer training to State and local police. In 1973 the Bureau of Narcotics and Dangerous Drugs will train over 85,000 police officers, and the FBI will graduate approximately 2,000 State and local police from the National Academy and other specialized courses at Quantico, Va.
- During 1973 an estimated 89,000 persons will be enrolled in vocational education classes in Law Enforcement Training and Police Science Technology, supported by $3.6 million in grants from the Office of Education in HEW.
- In cooperation with experts in the field of law enforcement, the Veterans Administration has developed a model on-the-job training program for policemen, leading to a journeyman's status for the trainee. In 1973, 20,000 participants are expected to attend State training programs patterned after this model.

Administration of criminal justice.—This category includes the preparation and prosecution of criminal cases, operation of court systems, trial of cases, provision of defense counsel in certain cases, and related activities.

- Expenditures of $177 million will be applied to the administration of criminal justice and the prosecution of criminal cases in 1973, including $33 million to assist State and local court systems. Operation of the Federal courts will require outlays of $83 million and $41 million will be spent to conduct criminal prosecutions.
- In 1973 U.S. attorneys will file over 53,000 criminal cases, terminate an estimated 49,200 cases, handle 201,000 criminal complaints, and conduct over 35,000 proceedings before grand juries.
- The U.S. Marshal Service will support the administration of criminal justice by serving an estimated 350,000 processes, executing over 27,000 warrants, and transporting approximately 40,000 prisoners. Marshals will continue to preserve order in Federal courtrooms, as well as insure the safety of judges, juries, and witnesses.
- The Bureau of Narcotics and Dangerous Drugs will expand its program of training State prosecutors to handle cases under the newly enacted State Uniform Controlled Substances Acts.
- The Federal court system will increase the level of its support personnel by almost 20% in order to expedite an expanded caseload in 1973.

Rehabilitation of offenders.—These programs include Government custody and rehabilitation of criminal offenders. Included are the supervision and operation of correctional institutions, inmate and

offender treatment and training programs, probation and parole services, and other supportive functions.

- Outlays for rehabilitation of offenders are projected at $484 million in 1973, as compared with $346 million in 1972 and $213 million in 1971. Of the 1973 total, $264 million will be allocated to State and local correctional programs, an increase of 41% over the 1972 level and 210% over the 1971 figure.
- In 1973 the Bureau of Prisons plans to have construction underway on five metropolitan correctional centers (New York, Chicago, San Diego, Philadelphia/New Jersey, and San Francisco), a behavorial research center at Butner, N.C., and a West Coast Youth complex. In addition, planning and site acquisition will proceed for four future facilities.
- A variety of programs designed to assist offender rehabilitation will be conducted by the Office of Education in HEW. Included are programs which fund the training of adult education personnel working in correctional institutions, support vocational training for inmates in State institutions, and provide library services for correctional activities.
- The Law Enforcement Assistance Administration will award grants totaling $261 million for support of State and local correctional activities in 1973, as compared to $88 million in 1971. Funding will take the form of block action grants, discretionary grants, and grants earmarked for correctional programs.
- The Department of Labor will spend $40 million to finance ongoing offender rehabilitation projects and to initiate a new comprehensive correctional program which will assist States in coordinating available Federal and State resources for trainees.

Planning and coordination.—Included in this category are outlays supporting State and local planning and coordination of crime reduction activities.

- Expenditures of $63 million are provided for planning and coordination of federally-supported crime reduction programs in 1973. The major Federal agency involved in this activity is the Law Enforcement Assistance Administration.

Table O-3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)

Major program and agency	Outlays		
	1971 actual	1972 estimate	1973 estimate
Crime research and statistics:			
The Judiciary	145	292	360
Office of Economic Opportunity	1,600	1,700	1,500
Department of Defense—Civil	11	12	12
Department of Health, Education, and Welfare	5,435	5,478	9,557
Department of Justice	20,629	36,058	56,875
Department of Transportation	660	953	1,200
Atomic Energy Commission	104	----------	----------
National Aeronautics and Space Administration	1,342	987	350
Postal Service	741	550	229
Program total	30,667	46,030	70,083
Reform of Criminal laws:			
Department of Justice	1,132	1,835	2,313
Other independent agencies	161	----------	----------
Program total	1,293	1,835	2,313
Services for prevention of crime:			
Office of Economic Opportunity	13,900	16,500	20,000
Department of Defense—Civil	93	96	98
Department of Health, Education, and Welfare	55,692	110,682	128,872
Department of Housing and Urban Development	13,619	22,500	28,250
Department of the Interior	538	629	661
Department of Justice	43,932	73,072	94,550
Department of Transportation	454	350	1,000
Postal Service	60	64	70
Veterans Administration	10,573	30,596	38,776
Program total	138,861	254,489	312,277
Federal criminal law enforcement:			
Department of Agriculture	4,511	4,665	4,665
Department of Commerce	800	1,100	1,100
Department of Defense—Civil	3,654	3,764	3,871
Department of the Interior	19,300	20,604	21,672
Department of Justice	314,419	377,256	380,399
Department of Labor	3,265	3,300	3,300
Department of State	53,598	141,771	141,771
Department of Transportation	37,842	50,192	40,685
Department of the Treasury	167,894	228,592	250,856
General Services Administration	38,513	43,551	42,068
Postal Service	31,853	38,440	42,623
Other independent agencies	238	255	262
Program total	675,887	913,490	933,272
Assistance to States and local police activities:			
Department of Health, Education, and Welfare	2,555	3,055	3,655
Department of the Interior	1,416	1,671	1,963
Department of Justice	122,998	185,354	234,490
Veterans Administration	26,987	35,438	38,977
Program total	153,956	225,518	279,085

Table 0-3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)—Continued

Major program and selected activity	Outlays		
	1971 actual	1972 estimate	1973 estimate
Administration of criminal justice:			
The Judiciary	45,170	59,702	72,476
Department of Defense—Civil	59	68	72
Department of Health, Education, and Welfare	685	685	1,235
Department of the Interior	833	1,136	1,377
Department of Justice	63,151	87,584	101,629
Department of Transportation	2	2	2
Program total	109,900	149,177	176,791
Rehabilitation of offenders:			
The Judiciary	15,388	16,138	13,358
Department of Defense—Civil	734	665	696
Department of Health, Education, and Welfare	34,143	46,297	61,109
Department of Housing and Urban Development	3,609	3,950	6,215
Department of the Interior	829	1,064	1,636
Department of Justice	147,602	248,260	350,652
Department of Labor	11,108	29,400	40,000
Program total	213,413	345,774	483,666
Planning and coordination of crime reduction programs:			
Executive Office of the President	----------	2,800	6,500
Department of Justice	28,778	34,488	56,546
Program total	28,778	37,288	63,046
Total Federal outlays	1,352,755	1,973,601	2,320,533

[1] Does not include Department of Defense—Military.

Table O–4. SELECTED CRIME REDUCTION DATA (dollars in thousands)

	1969	1970	1971
Federal outlays for crime reduction:			
Federal crime reduction outlays assisting States and localities	$103,739	$177,251	$414,773
Federal crime reduction outlays for reduction of Federal crimes	554,614	679,665	937,982
Total Federal outlays for reduction of crime	658,353	856,916	1,352,755
Federal personnel:			
Full-time Federal criminal investigators [1]	12,818	14,610	15,489
U.S. attorneys and assistant attorneys (man-years on criminal workload)	560	630	712
Attorneys—Criminal Division (man-years)	168	190	239
U.S. district court judgeships	341	402	402
State and local crimes: [2]			
Serious crimes recorded (UCR—table 2)	5,001,400	5,568,200	([3])
Violent crimes recorded (UCR—table 2)	655,100	731,400	([3])
Rate of serious crimes per 100,000 inhabitants (UCR—table 2)	2,477	2,740	([3])
Rate of violent crimes per 100,000 inhabitants (UCR—table 2)	324	360	([3])
Percent index crimes cleared by arrest (UCR—table 13)	20.6	21.0	([3])
Percent found guilty of persons charged by police (UCR—table 15)	65.5	66.8	([3])
Federal investigations:			
FBI, investigative matters received	859,666	882,254	828,059
Immigration and Naturalization Service (investigations completed)	11,394	12,794	12,618
Postal Service, criminal caseload	200,812	211,166	[4] 510,220
IRS, tax fraud investigations	8,135	7,711	6,866
Bureau of Customs (cases closed)	28,175	32,040	37,995
Secret Service (cases closed)	79,892	99,390	104,743
Disposition of Federal criminal matters:			
Investigative matters presented for prosecutive decision—prosecution declined	83,608	89,139	94,032
Federal criminal cases commenced [5]	33,585	38,102	41,290
Federal criminal cases terminated [5]	30,578	34,962	37,715
Federal criminal cases pending [5]	17,770	20,910	24,485
Federal criminal cases pending over 6 months [6]	5,078	5,710	6,202
Federal criminal defendants convicted	29,450	29,005	34,579
High echelon organized crime figures convicted	29	33	61
Corrections:			
Average Federal jail population	3,866	4,284	4,733
Average Federal prison population	20,239	20,687	20,949
Court commitments to Federal institutions	11,162	11,060	13,327
Average Federal prison sentences (months)	45.2	46.8	47.0
Persons under supervision of Federal probation system (end of year)	36,985	38,409	42,549
Federal paroles granted	5,445	5,142	5,851
Warrants issued for violation of conditions of release from prison	2,521	2,369	2,044
Executive clemency petitions granted	---	96	173

[1] CSC jobs classified in series 1811 as of October 31.
[2] From FBI uniform crime report, calendar year 1970.
[3] Not available.
[4] Represents a new workload reporting system which reflects individual complaints in a specific case series.
[5] Excludes transfers.
[6] Excludes pending cases of fugitives.

SPECIAL ANALYSIS M

FEDERAL PROGRAMS FOR THE REDUCTION OF CRIME

The Federal crime reduction program is designed to reverse the trend of rising crime in our Nation, and to limit the great losses in both economic and human resources associated with the trend. Recognizing that State and local governments have the broadest responsibilities for controlling crime, the Federal Government will provide increased technical and financial assistance to State and local law enforcement. Federal law enforcement will be improved and intensified in certain areas of high national priority such as attacking the problem of organized crime, and controlling large scale trafficking in narcotics and dangerous drugs. The Federal crime reduction program is a comprehensive effort to: (1) determine the nature and extent of the crime problem and the causes of criminal behavior; (2) prevent crime through programs directed at acute national problems such as juvenile delinquency, alcoholism, narcotic addiction, and drug abuse; (3) increase the deterrent to criminal action by improving the effectiveness of police and investigators at all levels of government; (4) develop a system of corrections, both in institutions and in the community, that can truly rehabilitate men; and (5) assure that the criminal law is responsive to the needs of society, and is administered with fairness and efficiency.

Accomplishments of the Past Year

There were numerous accomplishments during the past year, including a variety of legislative enactments which will permit more effective crime reduction activities. Among the most significant accomplishments were:

- Enactment of the Organized Crime Control Act of 1970 which will increase in a variety of ways the ability of the Government to investigate and prosecute members of organized crime. The act will permit broader Federal investigations of large-scale illegal gambling activities and thereby reduce gambling profits available to organized crime for investment in other enterprises. Also, title XI of the act will permit greater control to be exercised over the illegal distribution and use of explosive materials.
- Establishment by the Attorney General in June 1970 of a National Council on Organized Crime to coordinate Federal organized crime enforcement. The Council has set a goal of breaking up organized crime within 6 years. In 1970, FBI investigations alone led to the conviction of 461 organized crime and gambling figures, and the Justice Department has supervised the prosecution and conviction of 33 top echelon organized crime leaders.
- Enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970. This major reform of our narcotics and dangerous drug laws will enhance our enforcement ability, and provide for expanded prevention and rehabilitation programs. Earlier in the year, the President announced greatly expanded

Federal programs for drug education and training. In addition, Federal enforcement of drug laws has been intensified during the year. The Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs are now engaged in cooperative efforts which are destroying major criminal systems for illegally importing and distributing narcotics and drugs. Also, during the year, the United States has devoted particular attention to seeking and obtaining improved international cooperation in controlling the illegal traffic in narcotics and drugs.

- Progress in carrying out the President's directive of last year to initiate reforms in our correctional systems. Several Federal agencies now have programs underway to provide special institutions and treatment for juvenile offenders, addicts, and mentally disturbed and violent offenders. Comprehensive community correctional centers are now being planned or constructed in a number of urban areas. The recent enactment of the Omnibus Crime Control Act of 1970 authorizes a new program in the Law Enforcement Assistance Administration for improving correctional programs and facilities. This authority will permit great improvements in probation and parole services throughout the country.
- A landmark statement by the Chief Justice of the United States concerning problems of the Federal courts. The Chief Justice suggested the trial of criminal cases within 60 days after indictment, and called for consideration of a variety of reforms to increase the efficiency of the courts. The Congress authorized 61 additional district court judgeships during the year, enacted an increase to provide court executives for each of the 11 Federal circuit courts, and amended the Criminal Justice Act to assure improved defense services for poor persons.

Table M–1. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY AGENCY [1] (in thousands of dollars)

	Outlays		
	1970 actual	1971 estimate	1972 estimate
The Judiciary [2]	57,125	62,375	79,370
Office of Economic Opportunity	5,732	15,540	16,330
Department of Agriculture	3,307	3,945	4,074
Department of Health, Education, and Welfare	59,923	86,723	99,880
Department of Housing and Urban Development	4,550	23,055	27,480
Department of the Interior	17,198	18,630	21,222
Department of Justice	508,584	929,312	1,259,107
Department of Labor	5,888	8,103	32,525
Department of Transportation	10,032	40,857	66,600
Treasury Department	115,868	158,620	176,361
Atomic Energy Commission	116	136	153
General Services Administration	19,013	31,918	43,585
National Aeronautics and Space Administration	1,000	1,395	1,270
Postal Service	26,394	32,923	37,215
Veterans Administration	21,866	29,874	34,686
Other independent agencies	320	485	300
Total Federal outlays	856,916	1,443,891	1,900,158

[1] Does not include Department of Defense or nondomestic outlays for crime reduction.
[2] Outlays estimated by the Office of Management and Budget.

- The completion of a major study by the National Commission on Reform of Federal Criminal Laws which recommends comprehensive revisions in the structure and substance of Federal criminal law. These recommendations will now be studied by the executive departments and other interested organizations and will provide a focus for future discussions and action to reform criminal law.
- Progress in the effort to reduce crime in the District of Columbia. The number of police on the streets of the District has been increased, a greater number of narcotic addicts are being treated and thereby taken off the streets, reforms have been realized in the court system with the enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970, and improvements are being made in the correctional system. This combination of programs has slowed the increasing rate of crime in the District, and demonstrated that a concerted systemwide effort to reduce crime in a large city can work.

1972 Budget Highlights

Federal outlays for programs to reduce crime will total $1,900 million in 1972. This compares with $1,444 million in 1971 and is 122% more than was spent for these programs in 1970. It is estimated that expenditures of all governments—State, local, and Federal—for crime reduction programs will be almost $11.5 billion in 1972. Of the $1,900 million of Federal expenditures in 1972, $804 million or 42% of the total will be directed to assisting State and local governments. This compares with 38% of Federal expenditures devoted to such purposes in 1971, and 21% in 1970. Assistance to State and local governments for all aspects of law enforcement will be increased by 45% in 1972.

The Departments of Justice and Treasury have the largest crime reduction programs with expenditures in 1972 of $1,259 million and $176 million, respectively. In 1971 and 1972 these Departments are emphasizing programs for the control of (1) the narcotics and drug traffic, (2) organized crime, and (3) terrorist activities, bombings and illegal use of explosives. Other agencies with rapidly expanding crime reduction programs are the Department of Labor (manpower development programs for offenders), and the Department of Transportation (protection of air commerce and control of aircraft hijacking).

Crime Reduction Program by Activities

The budget outlays reported by this special analysis cover all domestic Federal programs directly related to or closely associated with crime reduction, except outlays associated with programs of the the Defense Department.[1] The analysis includes certain programs of

[1] Defense Department outlays for crime reduction are not included in the tables and totals used in this analysis. However, a summary of Defense Department outlays for law enforcement are estimated as follows (in millions of dollars):

	1970	1971	1972
Department of the Air Force	281,601	297,231	296,729
Department of the Navy	8,788	11,805	12,616
Department of the Army	314,928	306,483	295,552
Total Department of Defense	605,317	615,519	604,897

the judiciary even though the basic function of the judiciary is to assure the administration of justice rather than to reduce crime. It excludes general social programs (even though such programs may indirectly reduce crime) unless they are clearly within the context of crime reduction or prevention (e.g., vocational training of prisoners; treatment of juvenile delinquents). Also, the analysis does not include background investigations for employment, administrative inspections, guarding functions not requiring police powers, or investigations primarily of a regulatory nature which may in rare cases result in the application of criminal sanctions. Where activities involve both civil and criminal proceedings (e.g., operation of courts) an allocation of outlays to the criminal function has been estimated by the Office of Management and Budget.

Table M-2. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND SELECTED ACTIVITY [1] (in thousands of dollars)

Major program and selected activity	Outlays		
	1970 actual	1971 estimate	1972 estimate
Crime research and statistics:			
Statistics on crime, criminals, and criminal justice system	1,866	4,612	7,535
Research on criminal behavior and sociology of crime	12,636	37,840	51,825
Program total	14,502	42,452	59,360
Reform of criminal laws	634	1,387	1,461
Services for prevention of crime:			
Public education on law observance, enforcement, and criminal justice	3,122	5,934	4,765
Special programs for rehabilitation of alcoholics and narcotic addicts	19,886	51,692	65,367
Prevention and control of juvenile delinquency	19,996	41,182	50,718
Development of other community crime prevention services	9,240	25,587	29,012
Program total	52,244	124,395	149,862
Federal criminal law enforcement and Federal police:			
Enforcement in support of Federal systems	221,037	242,022	252,221
General Federal law enforcement	150,174	233,651	306,042
Federal police	31,699	50,592	62,427
Specialized activities against organized crime	44,725	68,411	75,597
Support for Federal law enforcement	11,967	20,926	29,616
Program total	459,602	615,602	725,903
Assistance to State and local police activities:			
Intelligence and information systems	2,662	14,630	20,734
Education and training of enforcement officers	44,679	84,409	104,298
Laboratory support	2,790	9,676	12,865
General police activities	33,392	130,565	171,797
Control of civil disorders	2,971	24,993	34,211
Combating organized crime	1,918	14,311	18,939
Other	429	3,431	4,405
Program total	88,841	282,015	367,249

See footnotes at end of table.

Table M-2. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND SELECTED ACTIVITY[1] (in thousands of dollars)—Con.

Major program and selected activity	Outlays		
	1970 actual	1971 estimate	1972 estimate
Administration of criminal justice:			
Conduct of Federal criminal prosecutions	22,845	28,523	31,875
Operation and support of Federal court systems[2]	54,786	60,303	72,649
Assistance to States and localities for improved administration of justice	1,717	19,816	27,276
Other supporting programs	5,501	7,986	12,506
Program total	84,849	116,628	144,306
Rehabilitation of offenders:			
Operation and construction of Federal correctional institutions	78,095	95,640	147,258
Federal probation, parole, and community treatment	15,635	16,599	19,771
Federal inmate education and training	5,979	7,659	9,712
Federal inmate medical treatment	5,057	5,735	9,481
Other programs supporting Federal corrections	430	637	1,032
Assistance to States and localities for improved correctional programs	34,150	104,364	221,847
Program total	139,346	230,634	409,101
Planning and coordination of crime reduction programs	16,898	30,778	42,916
Total Federal outlays	856,916	1,443,891	1,900,158

[1] Does not include Department of Defense or nondomestic outlays for crime reduction.
[2] Outlays estimated by the Office of Management and Budget.

Crime research and statistics.—Crime research and statistics includes those Government activities designed to produce statistics and knowledge concerning crime, criminals, and the criminal justice system, and those which develop improved methods and techniques for the operation of the system.

- Outlays of $59 million will be devoted to crime research and statistics in 1972. Of this amount $7.5 million is for statistical activities and $51.8 million for research. This compares with $42.5 million spent for research and statistics in 1971.
- LEAA will fund a "pilot cities program" which is designed to determine the value of comprehensive systemwide applications of improved law enforcement methods and technologies in several medium sized cities. New statistical programs of LEAA will be utilized to measure the impact of these improved methods on crime in the pilot cities.
- The National Institute of Mental Health will continue studies of a wide range of issues in the areas of crime, delinquency, corrections, and individual violence, and will conduct basic and applied research on the nature and causes of law-violating behavior, recognizing that progress toward more effective crime prevention will depend upon a sound knowledge base.
- NIMH is also conducting an in-depth study and analysis of the entire juvenile justice system in the 50 States and the District of Columbia.

- LEAA, in cooperation with the National Bureau of Standards, will develop a laboratory to define performance standards for law enforcement equipment and develop uniform procedures for measuring its quality.
- The Atomic Energy Commission is continuing to work with LEAA and the Bureau of Narcotics and Dangerous Drugs to find new applications of neutron activation analysis and other techniques in scientific crime investigations.
- The Office of Economic Opportunity will devote over $2 million in 1972 to research concerning the process by which felony offenders can best be reintegrated into community life, and how State and local laws can be best utilized to assist in this process.

Reform of criminal laws.—Criminal law reform includes Government efforts to improve the effectiveness of the Nation's laws and assure that they accurately reflect the values and standards of society.

- Over $1.4 million will be spent for law reform in 1972. Over $1.1 million of this amount will support law reform efforts of State and local governments.
- The Department of Justice and other Federal agencies will study the recommendations of The National Commission on Reform of Federal Criminal Laws with a view to modernizing our criminal law to assure that it is responsive to our present social needs.
- The Justice Department has developed and proposed a model State narcotics and dangerous drug law. This model law has been adopted by the National Conference of Commissioners on Uniform State Laws and made available to the States. Several States have already enacted the law.
- LEAA is supporting projects to develop a criminal law revision clearing house which will collect and distribute information about law revision activities throughout the United States.

Prevention of crime.—Crime prevention includes Government efforts to limit or render less probable the commission of criminal acts by means other than direct enforcement or general correctional activities. Included are public education, alcoholic and addict rehabilitation, treatment of juvenile delinquents, and projects to improve police-community relations.

- Total outlays for Federal crime prevention programs will be $149.9 million in 1972. This is 20% more than was spent for such purposes in 1971, and 187% more than the $52.2 million devoted to crime prevention in 1970.
- In 1972 increased attention will be devoted to the problems of juvenile delinquency. LEAA grants will support a great variety of projects and programs for the rehabilitation of juvenile offenders, and for prevention of delinquency among groups of youth where the risk of delinquency is high.
- The Youth Development and Delinquency Prevention Administration in HEW will give emphasis to the development of model

systems for the prevention and control of delinquency and provide technical assistance to utilize the knowledge obtained from the model systems developed.

- The National Institute of Mental Health will conduct both institutional and community based treatment programs for narcotic addicts. In 1972, treatment and rehabilitative after care will be provided for an estimated 24,000 addicts.
- Both the Office of Economic Opportunity and the Veterans Administration will fund alcoholism and drug addict treatment units in 1972. The VA will add 17 alcoholism treatment units and 14 drug dependence units to provide effective treatment and rehabilitation of veterans.
- A 3-year drug information program will be undertaken jointly by the Department of Health, Education, and Welfare, the Department of Justice, and the Department of Defense. A series of publications will be produced to provide accurate and factual information on drugs.

Federal criminal law enforcement and Federal police.—Law enforcement involves direct Federal Government efforts to detect, identify, and apprehend violators of criminal laws. Representative programs include criminal investigations, policing of certain Federal areas, and special concerted programs against organized crime and air piracy.

- $725.9 million in outlays will support Federal investigative and police activities in 1972. This compares with total outlays of $615.6 million in 1971 and $459.6 million in 1972 for this purpose. Outlays for Federal efforts against organized crime will be $75.6 million in 1972 or an increase of 69% over funds spent to combat organized crime in 1970.
- In a statement of September 11, 1970, the President said that the menace of air piracy must be met immediately and effectively. A special program has been developed to place highly trained "sky marshals" on commercial flights and to greatly increase security measures at air terminals to prevent weapons and explosives from being carried aboard aircraft.
- The Bureau of Narcotics and Dangerous Drugs has developed an intelligence system which concentrates on identifying the major drug trafficking organizations responsible for most of the hard narcotics brought into the country. The Bureau of Customs has established a new intelligence system to help identify smugglers at border stations and other points of entry, and is employing a number of new enforcement techniques to limit the introduction of narcotics and drugs into the country.
- The FBI will increase efforts to destroy major organized crime operations, investigate terrorist bombings, and carry out investigations of a variety of Federal crimes.
- Both the U.S. Marshals and the General Services Administration will increase personnel assigned to assure the safety of Federal

judges and provide necessary security for Federal courtrooms and other Federal buildings. Over $46.6 million will be spent for these programs in 1972.

- The U.S. Marshals Service is increasing training for its personnel in order to meet the increased demands upon it, including those resulting from air piracies, courtroom violence, and increased need for witness security.
- The Treasury Department will spend $7.5 million in 1972 for further construction of the Federal Law Enforcement Training Center which will train 8,700 agents annually from 17 participating Federal enforcement organizations.
- The Internal Revenue Service will conduct over 7,700 tax fraud investigations in 1972, and will carry out a variety of new responsibilities under title XI of the Organized Crime Control Act of 1970, concerning the licensing and control of explosives.
- In 1970, for the first time, the Tax Division in the Department of Justice received more than 1,000 tax fraud cases including 106 involving racketeers. Over 600 defendants were convicted, including 25 in the racketeer category.
- The Secret Service obtained over 3,000 convictions in 1970 involving check and bond forgeries and counterfeiting. The Secret Service will continue to participate with other Federal enforcement agencies in the organized crime program.
- The Immigration and Naturalization Service's Border Patrol officers located 18,747 smuggled aliens in 1970. This was a 59% increase over the number of smuggled aliens in 1969 which was a previous all-time record. The Patrol also apprehended 3,298 persons for smuggling aliens into the country.
- In 1970, U.S. game management agents and other personnel made 7,000 apprehensions of violators of Federal wildlife conservation laws that resulted in jail sentences of 15,370 days and 147,620 days of probation.

Assistance to State and local police.—This includes Federal efforts to provide or improve activities which support or upgrade State and local police and investigative agencies.

- Outlays to assist State and local police will total $367.2 million in 1972, an increase of $85.2 million over 1971, and $278.4 million over 1970. Over $104 million will be spent to train and educate State and local police and almost $19 million will support State and local efforts against organized crime.
- Several Federal investigative agencies provide direct training assistance to State and local police. In 1970 the FBI provided training to over 260,000 police officers in over 8,500 training sessions. In the same year the Bureau of Narcotics and Dangerous Drugs trained 60,103 officers in a total of 980 2-week law enforcement schools and shorter 1- to 3-day seminars.
- The LEAA program has been the principal source of Federal funds for improving police operations. LEAA will spend $295 million in 1972 for a broad range of projects determined to be priority needs by State and local governments. Almost 50% of LEAA's total program is for direct support and improvement in police activities. Police improvement projects are being undertaken in all the States and major cities of the country.

- The Veterans Administration, in cooperation with experts in the field of law enforcement, has developed a model on-the-job training program for policemen. It provides 13 months of training and related academic instruction, leading to a journeyman's status for the trainee. Over 30,000 men will participate in this program in 1972.
- LEAA's law enforcement education program provides financial assistance to State and local police officers to gain college credits. In 1970, 38,229 police officers availed themselves of assistance under this program.
- In 1972, the FBI will provide indexing services for Project Search, an automated system for exchanging criminal records among Federal, State, and local law enforcement and criminal justice agencies.

Administration of criminal justice.—This category includes the preparation and prosecution of criminal cases, operation of court systems, trial of cases, provision of defense counsel in certain cases, and related and supportive activities.

- Expenditures of $144.3 million will support all programs for the prosecution of criminal cases and the administration of criminal justice in 1972, over $27 million of which will be to assist State and local prosecution and courts. The operation of Federal court systems will require outlays of $72.6 million in 1972 and $31.9 million will be spent to conduct criminal prosecutions.
- During 1970, there were (excluding transfers) 38,102 criminal cases commenced in the U.S. district courts, compared with 33,585 in 1969. The district courts terminated 34,962 criminal cases in 1970 as compared with 30,578 in 1969. As of June 30, 1970, there were 20,910 pending criminal cases in the district courts. Appeals in criminal cases and appeals in habeas corpus cases and other prisoner cases again are the fastest growing part of the caseload in the courts of appeals. In 1970, the increase in appeals from district court cases was reflected in habeas corpus appeals by Federal prisoners, up 16.7%, and in appeals from denials of motions to vacate sentence, up 26.3%.
- Indian courts disposed of about 79,323 criminal cases during 1970 and the trend for the current year indicates this figure will exceed 80,000.
- At the State and local level LEAA is financing studies of integrated court systems; providing court management studies; training juvenile court judges; and funding a number of projects to upgrade both prosecutive services and public defender systems.

Rehabilitation of offenders.—These programs include Government custody and rehabilitation of criminal offenders. Specific projects include the supervision and operation of correctional institutions, inmate and offender treatment and training programs, probation and parole services, and other supportive functions.

- Over $409 million of Federal funds will be devoted to the custody and rehabilitation of criminal offenders in 1972. This compares with $230.6 million spent in 1971 and $139.3 million in 1970. Over

$221.8 million will be for assistance to State and local correctional systems and programs. This is an increase of 113% of such assistance provided in 1971 and 550% more than assistance provided in 1970.

- In 1972 the Bureau of Prisons plans to have construction underway on four new prison facilities, including a specialized research prison for violent offenders. Also, funds are budgeted to plan seven additional facilities, including five metropolitan correctional centers. The Fort Worth narcotic addict treatment facility will be converted to a prison medical center.
- During 1970, 13,000 Federal inmates (63% of the total Federal inmate population of 20,687) participated in educational programs. High school equivalency testing was administered for 2,471 inmates with 1,845 or 75% passing and becoming eligible for the diploma equivalent. Over 5,240 were trained through vocational programs.
- In 1972 the Office of Education will spend about $1 million to improve library services for approximately 69,000 inmates in 250 institutions.
- The Department of Labor has developed a five-State model program to provide State employment security agencies with the staff to link inmates to existing manpower resources. The Department of Labor will also fund expanded inmate training programs (during 1970, 49 projects were funded, serving 3,248 trainees) and will continue an experimental program of pretrial diversions to determine whether intensive counseling and manpower services can provide a successful alternative to the usual process of arraignment, trial and sentencing.
- In 1971, LEAA will begin implementation of a new correctional system improvement program authorized by the Omnibus Crime Control Act of 1970. Over $97 million will be budgeted for this program in 1972. The program will provide State and local governments up to 75% of the cost of developing and implementing projects for new or improved correctional facilities and programs. These funds will be used to improve rehabilitative programs both in institutions and in the community and will be available for expanded probation and parole services.
- Under the President's authority with respect to clemency matters, 82 pardons and 14 commutations of sentence were granted in 1970, and 432 pardon petitions and 266 commutation petitions were denied.

Planning and coordination.—Included are Federal support of State and local planning and coordination of crime reduction activities.

- Outlays of $42.9 million will support planning and coordination of federally guided crime reduction programs in 1972. The principal funding agency for supporting State and local law enforcement planning is the Law Enforcement Assistance Administration in the Department of Justice.

Table M-3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY [1] (in thousands of dollars)

Major program and agency	Outlays		
	1970 actual	1971 estimate	1972 estimate
Crime research and statistics:			
The Judiciary [2]	80	144	253
Office of Economic Opportunity		300	2,200
Department of Health, Education, and Welfare	4,751	5,435	5,478
Department of Justice	7,227	32,900	48,316
Department of Transportation	485	1,195	1,254
Atomic Energy Commission	116	136	153
National Aeronautics and Space Administration	1,000	1,395	1,270
Postal Service	843	947	436
Program total	14,502	42,452	59,360
Reform of criminal laws:			
Department of Justice	387	1,202	1,461
Other independent agencies	247	185	
Program total	634	1,387	1,461
Services for prevention of crime:			
Office of Economic Opportunity	3,400	12,800	13,330
Department of Health, Education, and Welfare	32,352	55,737	66,449
Department of Housing and Urban Development	3,565	19,000	22,500
Department of the Interior	469	545	624
Department of Justice	3,896	24,690	33,095
Department of Transportation	508	1,063	800
Postal Service	54	60	64
Veterans Administration	8,000	10,500	13,000
Program total	52,244	124,395	149,862
Federal Criminal law enforcement and Federal police:			
Department of Agriculture	3,307	3,945	4,074
Department of the Interior	15,389	16,454	18,310
Department of Justice	274,692	338,875	385,244
Department of Labor	594	3,103	3,125
Department of Transportation	9,037	38,597	64,544
Treasury Department	115,000	157,094	174,806
General Services Administration	16,013	25,318	38,785
Postal Service	25,497	31,916	36,715
Other independent agencies	73	300	300
Program total	459,602	615,602	725,903
Assistance to States and local police activities:			
Department of Health, Education, and Welfare	2,077	2,575	3,075
Department of the Interior	483	540	714
Department of Justice	68,547	251,400	335,419
Treasury Department	868	1,526	1,555
General Services Administration	3,000	6,600	4,800
Veterans Administration	13,866	19,374	21,686
Program total	88,841	282,015	367,249

See footnotes at end of table.

Table M-3. FEDERAL OUTLAYS FOR THE REDUCTION OF CRIME BY MAJOR PROGRAM AND AGENCY[1] (in thousands of dollars)—Continued

Major program and selected activity	Outlays		
	1970 actual	1971 estimate	1972 estimate
Administration of criminal justice:			
The Judiciary [2]	43,959	48,723	62,880
Department of Health, Education, and Welfare	703	700	700
Department of the Interior	135	234	309
Department of Justice	40,050	66,969	80,415
Department of Transportation	2	2	2
Program total	84,849	116,628	144,306
Rehabilitation of offenders:			
The Judiciary [2]	13,086	13,508	16,237
Office of Economic Opportunity	2,332	2,440	800
Department of Health, Education, and Welfare	20,040	22,276	24,178
Department of Housing and Urban Development	725	4,055	4,980
Department of the Interior	722	857	1,265
Department of Justice	97,147	182,498	332,241
Department of Labor	5,294	5,000	29,400
Program total	139,346	230,634	409,101
Planning and coordination of crime reduction programs:			
Department of Housing and Urban Development	260	----------	----------
Department of Justice	16,638	30,778	42,916
Program total	16,898	30,778	42,916
Total Federal outlays	856,916	1,443,891	1,900,158

[1] Does not include Department of Defense or nondomestic outlays for crime reduction.
[2] Outlays estimated by the Office of Management and Budget.

Table M-4. SELECTED CRIME REDUCTION DATA (dollars in thousands)

	1968	1969	1970
Federal outlays for crime reduction:			
Federal crime reduction outlays assisting States and localities	(1)	$103,739	$177,251
Federal crime reduction outlays for reduction of Federal crimes	(1)	554,614	679,665
Total Federal outlays for reduction of crime	$530,643	658,353	856,916
Federal personnel:			
Full-time Federal criminal investigators	[2] 12,618	[2] 12,818	[2] 14,610
U.S. attorneys and assistant attorneys (man-years on criminal workload)	480	560	630
Attorneys—Criminal division (man-years)	168	168	206
U.S. district court judgeships	341	341	402
State and local crimes: [3]			
Serious crimes recorded (UCR—table 2)	4,466,600	4,989,700	(1)
Violent crimes recorded (UCR—table 2)	588,800	655,100	(1)
Rate of serious crimes per 100,000 inhabitants (UCR—table 2)	2,235	2,471	(1)
Rate of violent crimes per 100,000 inhabitants (UCR—table 2)	295	324	(1)
Percent index crimes cleared by arrest (UCR—table 13)	20.9	20.6	(1)
Percent found guilty of persons charged by police (UCR—table 15)	66.7	65.5	(1)
Federal investigations:			
FBI, investigative matters received	820,830	859,666	882,254
Immigration and Naturalization Service (investigations completed)	9,268	11,394	12,794
Postal Service, criminal caseload	181,153	200,812	211,166
IRS, tax fraud investigations	9,372	8,135	7,711
Bureau of Customs (cases closed)	27,989	28,175	32,040
Secret Service (cases closed)	87,197	79,892	99,390
Disposition of Federal criminal matters:			
Investigative matters presented for prosecutive decision—prosecution declined	79,891	83,608	89,139
Federal criminal cases commenced [4]	30,714	33,585	38,102
Federal criminal cases terminated [4]	29,492	30,578	34,962
Federal criminal cases pending [4]	14,763	17,770	20,910
Federal criminal cases pending over 6 months [5]	4,340	5,078	5,710
Federal criminal defendants convicted	26,660	29,450	30,500
High echelon organized crime figures convicted	23	29	33
Corrections:			
Average Federal jail population	3,438	3,866	4,284
Average Federal prison population	19,677	20,239	20,687
Court commitments to Federal institutions	11,653	11,162	11,300
Average Federal prison sentences (months)	44.5	45.2	46.0
Persons under supervision of Federal Probation System (end of year) [6]	36,785	36,985	38,409
Federal paroles granted	5,840	5,445	5,142
Warrants issued for violation of conditions of release from prison	2,891	2,521	2,369
Executive clemency petitions granted	16	----------	96

[1] Not available.
[2] CSC jobs classified in series 1811 as of October 31.
[3] From uniform crime reports—calendar years 1968 and 1969 (FBI).
[4] Excludes transfers.
[5] Excludes pending cases of fugitives.
[6] Includes probation, parole, and mandatory release; estimate by the Office of Management and Budget.

DEPARTMENT OF THE TREASURY

The Department of the Treasury is responsible for the fiscal, debt management and monetary operations of the Federal Government. It also has major responsibility for prescribing Federal policies affecting the U.S. balance of payments. The Treasury program structure reflects the operating elements of the Department, which are funded principally by annual appropriations and, to a lesser extent, through reimbursements and miscellaneous funds.

The Department's functions are grouped into five program categories. Expansion of revenue collection operations, particularly auditing of tax returns, as a result of growth in the number and complexity of tax returns filed, requires substantially increased program funding. Not included in the program structure are interest on the public debt, which accounts for most of the Department's budget authority, and several permanent appropriations. These are aggregated in the adjusting entry in the table.

Table S–11. PROGRAM DISTRIBUTION OF BUDGET AUTHORITY
DEPARTMENT OF THE TREASURY (in millions of dollars)

Program category and subcategory	1970 actual	1971 estimate	1972 estimate
Administration of Government finances:			
Public debt	65.0	70.4	77.2
Issuance, payment, and servicing of Government checks	47.7	46.8	49.6
General activities	5.4	7.1	7.4
Category total	118.1	124.3	134.2
Collection of revenue:			
Revenue accounting and processing	171.3	189.0	221.4
Taxpayer assistance and services	86.1	93.8	102.2
Delinquent accounts operation	101.2	106.8	114.5
Delinquent returns operation	25.8	25.2	28.0
Audit of tax returns	293.5	299.8	339.3
Tax fraud investigations--taxpayers in general	34.3	34.0	36.6
Taxpayer appeals	37.9	40.8	43.5
Alcohol and tobacco revenue and regulatory controls	19.4	21.8	23.6
Collection of customs duties	85.4	94.7	109.5
General activities	66.4	74.7	79.2
Category total	921.3	980.6	1,097.8
Manufacture and distribution of coins, currency, and other financial instruments	20.0	20.2	30.3
Special law enforcement:			
Tax fraud investigations—racketeer segment	16.7	30.7	34.4
Alcohol and firearms investigations	29.6	39.8	43.9
Other investigations	43.2	49.7	56.8
Security responsibilities	16.0	25.8	37.5
General activities	17.7	25.9	[1] 56.7
Category total	123.2	171.9	229.3
Policy determination and related activities	9.7	10.2	11.2
Total distributed to programs above	1,192.3	1,307.2	1,502.8
Items not included in the program structure:			
Interest	19,424.9	20,923.7	21,273.4
Other appropriations not included in the program structure	200.4	357.7	397.8
Deductions for offsetting receipts	−1,187.8	−1,590.2	−1,878.2
Intragovernmental transactions	−84.3	−89.1	−90.5
Total budget authority, Department of the Treasury	19,545.7	20,909.4	21,205.4

[1] Includes $36.5 million for construction of facilities, Federal Law Enforcement Training Center.

Twelve Month Report of the Treasury/IRS
Narcotics Trafficker Tax Program

During the first year of operation--July 1, 1971, to June 30, 1972--the Treasury/IRS Narcotics Trafficker Program has accomplished the following:

1. 793 major targets in 40 states, 53 metropolitan areas and the District of Columbia were selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 410 Treasury Agents and 112 support personnel are presently conducting the intensive tax investigations. In addition, 565 minor traffickers are under tax action.

2. $54.2 million in taxes and penalties have been assessed under the program, of which more than $8.5 million has already been collected in the form of cash or valued property. This is $1 million more than the $7.5 million appropriated for the program by Congress. We are now using the drug traffickers' illegal profits to put them out of business (see attached Table II).

3. Six men have been convicted on criminal tax charges; 15 other criminal tax cases are pending in Federal District Courts in New York, Miami, Detroit, Los Angeles, San Francisco, Indianapolis, Baltimore, and Washington, D.C.; and another 35 investigations have been completed with prosecution recommendations. Investigations were completed in an additional 78 cases with civil assessments and penalties determined in 64 cases.

We believe this represents a substantial achievement. By focusing attention on the persons responsible for the narcotics distribution, this program is making a major additional contribution to the President's offensive against drug abuse.

The word for the drug traffickers is to get out of the illegal drug traffic or face up to intensive tax investigation. This word should be spread in every city and town in the United States. We have institutionalized this program. Everyone in this illegal business should realize that they will be subjected to tough tax scrutiny.

The program's objectives--to take the profit out of the illegal traffic in narcotics and thereby further disrupt the traffic--are accomplished in two ways:

1. Major targets: by conducting systematic tax investigations of middle and upper echelon narcotics traffickers, smugglers, and financiers. These are the people who frequently are insulated from the daily operations of the drug traffic through intermediaries.

2. Minor targets: by the systematic drive underway to seize--to be applied to taxes and penalties owing--the substantial amounts of cash that are frequently found in the hands of minor narcotics traffickers--those below the middle and upper echelon level.

Computers are now being used in this program to facilitate the year in, year out scrutiny of the finances of these narcotics traffickers. By computerizing our information, we will be able to examine systematically and quickly each major and minor trafficker targeted under this program.

Although all of the penalties and taxes that have been assessed may not be collected, the impact of this program on the narcotics traffic is already substantial and increasing each month.

TWELVE MONTH REPORT

TABLE I

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Alabama	Mobile	2	
Alaska	Anchorage	1	
Arizona	Phoenix-Tucson-Yuma	35	4
Arkansas	Little Rock	2	
California	Los Angeles-San Diego	39	10
	San Francisco-Oakland	33	3
Colorado	Denver	8	
Connecticut	Hartford	12	3
Delaware	Wilmington	1	
District of Columbia	Washington	17	4
Florida	Miami	64	17
Hawaii	Honolulu	10	2
Georgia	Atlanta	19	6
Illinois	Chicago	40	7
	Springfield	4	
Indiana	Indianapolis	8	2
Louisiana	New Orleans	12	4
Maine	Bangor	1	
Maryland	Baltimore	6	1
Massachusetts	Boston	12	1
Michigan	Detroit	53	6
Minnesota	St. Paul- Minneapolis	2	
Mississippi	Gulfport	1	
Missouri	St. Louis-Kansas City	10	2
Nevada	Las Vegas	3	

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
New Hampshire	Portsmouth	2	1
New Jersey	Newark-Camden	52	6
New Mexico	Albuquerque	9	2
New York	Albany	4	
	Buffalo	9	
	New York City & Suburbs	130	30
North Carolina	Greensboro-Charlotte	16	1
Ohio	Cincinnati-Dayton	9	
	Cleveland	7	
Oregon	Portland	11	1
Pennsylvania	Philadelphia	40	1
	Pittsburgh	15	5
Rhode Island	Providence	1	
South Carolina	Columbia	5	1
Tennessee	Nashville-Memphis	5	
Texas	Austin-Houston-El Paso	41	11
	Dallas	3	1
Utah	Salt Lake City	2	
Virginia	Richmond-Norfolk	24	
	Arlington-Alexandria		
Washington	Seattle	11	2
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	1	
		793	134

Treasury Department
Office of Law Enforcement

June 30, 1972

TWELVE MONTH REPORT

TABLE II

Major Target Assessments:	Number	Amounts
Regular Assessments	18	$ 4,373,126
Jeopardy Assessments 1/	19	18,764,281
Tax Year Termination Assessments 2/	23	7,974,616
Total	70	$31,112,023
Minor Target Assessments: 3/		
Jeopardy Assessments	36	$ 863,712
Tax Year Termination Assessments	529	22,256,438
Total	565	$23,120,150
Total Assessments involving Narcotic Traffickers		$54,232,173

Seizures involving Narcotic Traffickers:

	Major Targets	Minor Targets	
Currency	$ 1,763,213	$ 5,449,923	$ 7,213,136
Property	86,738	1,249,828	1,336,566
Total Dollars Seized			$ 8,549,702

Cases Recommended for Prosecution	35
Criminal Tax Cases in U. S. Courts awaiting Trial	15
Criminal Tax Convictions	6

1/ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

2/ Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize collection of the revenue.

3/ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

Treasury Department
Office of Law Enforcement

June 30, 1972

CONTINUED

3 OF 8

Seventeen Month Report of the Treasury/IRS
Narcotics Trafficker Tax Program

During November, Treasury Agents and support personnel of the Internal Revenue Service seized and collected $2.4 million from narcotics traffickers and made assessments of $5.4 million. In addition, 68 new major targets were selected and 157 minor targets were placed under tax action.

In the Courts, 2 traffickers were convicted, and 4 indictments were returned. The Treasury has recommended an additional 11 cases for prosecution.

The additional targets expanded the program into one new state, South Dakota, and eight metropolitan areas--Aberdeen, South Dakota; Augusta, Georgia; Peoria, Illinois; Annapolis, Maryland; Reno, Nevada; Chattanooga, Tennessee; Fort Worth, Texas, and Bridgeport, Connecticut.

The 17 months result of this program are as follows:

1,175 Major Targets and 1,239 Other Traffickers

In 46 states, 82 metropolitan areas and the District of Columbia, 1,175 targets have been selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 550 Treasury Agents and 112 support personnel are presently conducting these investigations.

The Congress has passed a supplemental appropriation of $4.5 million which will increase the number of Treasury Agents to 648.

In addition, 1,239 minor targets traffickers are under tax action.

$82.5 Million Assessed--$15.6 Million Collected

$82.5 million in taxes and penalties have been assessed under the program, of which more than $15.6 million have already been collected. The drug traffickers illegal profits are being used to put them out of business (see attached Tables II and III).

20 Convictions + 44 Indictments + 61 Prosecution Recommendations = 125

Twenty men have been convicted on criminal tax charges; 44 other criminal tax cases are pending in Federal District Courts in Atlanta, Miami, Detroit, Los Angeles, San Francisco, Seattle, Boston, Indianapolis, Baltimore, and Washington, D.C., and in other areas; and another 61 investigations have been completed with prosecution recommendations (see attached Tables II and III).

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Mississippi	Gulfport	3	
Missouri	St. Louis-Kansas City	21	8
Nebraska	Omaha	3	
Nevada	Las Vegas-Reno	5	
New Hampshire	Portsmouth	4	2
New Jersey	Newark-Camden-Trenton	67	7
New Mexico	Albuquerque	11	5
New York	Albany	14	1
	Buffalo-Rochester	20	3
	New York City	157	55
North Carolina	Greensboro-Charlotte	17	1
Ohio	Cincinnati-Dayton-Columbus	17	
	Cleveland-Toledo	24	
Oklahoma	Oklahoma City	3	
Oregon	Portland	18	4
Pennsylvania	Philadelphia	42	3
	Pittsburgh	39	6
Rhode Island	Providence	6	
South Carolina	Columbia	5	2
South Dakota	Aberdeen	1	
Tennessee	Nashville-Memphis-Chattanooga	8	
Texas	Austin-Houston-El Paso	51	11
	Dallas-Ft. Worth	8	2
Utah	Salt Lake City	6	
Virginia	Richmond-Norfolk	28	2
	Arlington-Alexandria		
Washington	Seattle	24	5
West Virginia	Parkersburg	1	
Wisconsin	Milwaukee	5	1
		1175	239

Office of Law Enforcement
Treasury Department

SEVENTEEN MONTH REPORT

DEPARTMENT OF THE TREASURY TABLE I

TREASURY/INTERNAL REVENUE SERVICE NARCOTICS TRAFFICKER PROGRAM

RESULTS AS OF DECEMBER 1, 1972

STATE	METROPOLITAN AREAS	TARGETS	COMPLETED INVESTIGATIONS
Alabama	Mobile	13	2
Alaska	Anchorage	1	
Arizona	Phoenix-Tucson-Yuma	61	9
Arkansas	Little Rock	3	
California	Los Angeles-San Diego San Francisco-Oakland	45 42	22 7
Colorado	Denver	12	2
Connecticut	Hartford-Bridgeport	16	2
Delaware	Wilmington	1	
District of Columbia	Washington	22	5
Florida	Miami-Jacksonville Tampa-Orlando	95	27
Hawaii	Honolulu	10	1
Georgia	Atlanta-Augusta	31	12
Illinois	Chicago-Springfield Peoria	61	7
Indiana	Indianapolis-Gary	12	3
Iowa	Des Moines	4	
Kansas	Lawrence	1	
Kentucky	Louisville-Covington Newport	6	
Louisiana	New Orleans	16	2
Maine	Bangor	1	
Maryland	Baltimore-Annapolis	14	3
Massachusetts	Boston	24	3
Michigan	Detroit	71	15
Minnesota	St. Paul-Minneapolis	5	

SEVENTEEN MONTH REPORT
TABLE II

Major Target Assessments:	Number	Amounts
Regular Assessments	189	$11,052,523
Jeopardy Assessments 1/	43	19,450,434
Tax Year Termination 2/	51	9,172,179
Total	283	$39,675,136
Minor Target Assessments: 3/		
Jeopardy Assessments	91	$ 2,862,639
Tax Year Termination	1148	39,997,320
Total	1239	$42,859,959
Total Assessments involving Narcotic Traffickers		$82,535,095

Collections and Seizures involving Narcotic Traffickers:

	Major Targets	Minor Targets	
Currency	$3,163,904	$10,237,426	
Property	141,463	2,082,999	
Total Dollars Seized & Collected			$15,625,792
Cases Recommended for Prosecution			61
Criminal Tax Cases in U.S. Courts awaiting Trial			44
Criminal Tax Conviction			20
Total Criminal Cases			125

1/ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

2/ Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize the revenue.

3/ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

Treasury Department
Office of Law Enforcement

December 1, 197

SEVENTEEN MONTH REPORT

TABLE III

U. S. Treasury Department
Office of Law Enforcement

Metropolitan Areas	Major Target Program						Minor Target Program			Collections
	Number	Assessments	Dollars Seized	P.R.	I.	C.	Number	Assessments	Dollars Seized	
Atlanta, Ga.	14	$ 415,977	$ 28,511	5	4	0	37	$ 476,433	$ 136,797	$ 67,877
Austin-Houston-El Paso, Tex.	15	1,576,515	54,220	3	1	0	91	1,629,038	817,487	
Baltimore, Md. - Washington, D.C.	11	1,362,862		3	1	5	2	238,834	44,879	93,636
Boston, Mass.	5	5,561,815	22,183	2	1	1	67	2,132,887	542,582	
Buffalo, N.Y.	3	16,383		1	0	0	19	149,326	82,122	
Cleveland, Ohio				0	0	0	12	690,646	113,375	
Chicago-Springfield, Ill.	10	311,713	16,850	3	2	0	78	2,264,421	178,008	
Detroit, Mich.	17	1,252,166	13,555	4	3	2	69	1,310,544	367,806	692,000
Charlotte-Greensboro, N.C.	3	163,933	15,240	2	0	1	34	320,480	53,989	10,052
Miami-Jacksonville-Tampa, Fla.	32	10,183,653	1,300	2	11	4	49	762,032	593,594	142,877
Los Angeles-San Deigo, Calif.	25	915,441	59,238	4	1	1	177	10,291,836	1,325,802	
Newark-Camden-Trenton, N.J.	14	3,721,819	1,656	0	2	0	27	1,502,991	869,319	
New York City	53	7,503,738	1,621,027	10	3	1	108	7,794,275	3,766,264	
Philadelphia, Penna.	5	206,195	16,000	1	0	0	41	714,073	320,447	
Phoenix-Tucson, Ariz.	10	280,422	5,620	3	2	0	58	1,416,699	337,765	
Pittsburgh, Penna.	4	36,689	2,843	3	1	1	11	451,202	120,752	8,144
San Francisco-Oakland, Calif.	12	760,888	79,684	2	3	0	61	2,582,650	531,163	
Seattle-Tacoma, Wash.	5	137,838	35,000	1	2	1	13	224,932	122,204	
St. Louis, Mo.	9	1,019,793	5,573	2	2	2	8	247,712	27,071	
Richmond-Norfolk-Arlington, Va.	3	146,734	11,274	1	0	0	7	264,880	15,836	26,895
Other	33	4,100,782	274,114	9	5	1	270	7,393,868	1,953,073	
Totals	283	$39,675,136	$ 2,263,888	61	44	20	1239	$42,859,959	$ 12,320,425	$ 1,041,461

Dollars Seized includes both property and currency
P.R. - Cases Recommended for Prosecution
I. - Criminal Cases in U. S. Courts awaiting Trial
C. - Criminal Convictions

December 1, 1972

Calendar No. 904

94TH CONGRESS, 2d Session | SENATE | REPORT No. 94-953

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATIONS BILL, 1977

JUNE 16, 1976.—Ordered to be printed

Mr. MONTOYA, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 14261]

The Committee on Appropriations to which was referred the Bill (H.R. 14261) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for fiscal year ending September 30, 1977, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended.

Amount of House bill	$8,267,636,000
Amount of increase by Senate	+33,524,000
Amount of bill as reported to Senate	8,301,160,000
Amount of budget estimates of new (obligational) authority, fiscal year 1977	8,004,892,000
Amount of new budget (obligational) authority, fiscal year 1976	6,810,141,500
Senate bill as reported compared with:	
Amount of budget estimates of new (obligational) authority, fiscal year 1977 (as amended)	+296,268,000
Amount of new budget (obligational) authority, fiscal year 1976	+1,491,018,500

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SUMMARY OF THE BILL

The bill provides a total amount of $8,301,160,000, which is $1,491,018,500 above the appropriations for 1976, $296,268,000 above the amendment estimates for 1977, and an increase of $33,524,000 above the appropriations in the House bill of $8,267,636,000.

The following table summarizes the amounts of new budget (obligational) authority recommended in the bill for fiscal year 1977 compared with amounts appropriated to date for fiscal year 1976 and with the amended 1977 budget estimates and the House bill. The tabulation by appropriation item is included at the end of the report.

Internal Revenue Service

SUMMARY

Appropriation, 1976	[1] $1,691,520,000
Budget estimate, 1977	1,671,500,000
House allowance	1,671,500,000
Committee recommendation	1,672,500,000
Bill compared with:	
Appropriation, 1976	−19,020,000
Budget estimate, 1977	+1,000,000
House allowance	−9,000,000

[1] Includes $45,520,000 contained in the Second Supplemental Appropriations Act, 1976.

The Committee recommends an appropriation of $1,672,500,000 for activities of the Internal Revenue Service. The recommendation is a reduction of $9,000,000 below the House allowance and $19,020,000 below the fiscal year 1976 appropriation. It is an increase of $1,000,000 above the budget estimate.

TAX ADMINISTRATION SYSTEM (TAS)

The Internal Revenue Service has proposed a complete redesign and restructuring of the current income tax processing system to provide tax administration data processing capability in the 1980's. The new plan, referred to as the Tax Administration System (TAS), has evolved from studies begun in 1969 to explore viable alternatives for a new automatic data processing system in the future. IRS maintains the present system is inadequate as four different computer systems are being used and they are not compatible, the equipment is aging, technological limitations exist, and future workload demands will surpass the capabilities of the existing system.

The Committee is in sympathy with the needs of IRS. The present system was designed as a batch oriented system and became operational in the early 1960's with centralized master records of all taxpayers processed and maintained at the National Computer Center. Two major technological improvements have been made to the system:

Installation of the Direct Data Entry System (DDES) was completed in the 10 service centers in 1969. This eliminated keypunch cards and allowed operators to transcribe tax data directly from tax returns to magnetic tape.

The Integrated Data Retrieval System (IDRS) was installed in the service centers by 1974 to provide immediate access to relatively current information, based on probability of inquiry, for about ten percent of the taxpayers' master records.

The TAS proposal is based on a decentralized data processing system involving new computers at the service centers and the present National Computer Center would become the National Communications Center to function as a switching center for data transmission between service centers. Service centers would maintain the master record files on-line and perform all data processing associated with tax return information.

The economic life of TAS is projected at ten years with an estimated cost of $649 million for system design, implementation and

operating costs during this period. These are fiscal year 1974 costs and have not been escalated to reflect inflation. A cost-benefit study by IRS in 1974 projects that gross benefits of $2.1 billion could accrue—including $328 million in personnel savings and $1.8 billion in increased revenue generated by a projection of improvement in the productivity of revenue producing personnel.

The General Accounting Office is currently reviewing the 1974 IRS cost-benefit analysis and considering potential privacy aspects of the proposed system. In addition, the Office of Science and Technology will convene a symposium in the near future to explore the technological implications of TAS on our society.

It is the understanding of the Committee that the proposed procurement is the largest data processing project ever undertaken by the Federal Government. Other large procurements of computers have experienced cost overruns and development problems. For example, the Air Force Advanced Logistics System was recently cancelled after more than $175 million had been spent on software development. Other recent computer development projects that have experienced difficulty have been the U.S. Army's Combat Service Support System, the Department of Defense Worldwide Military Command and Control System, and the Federal Aviation Agency's Manpower and Personnel Information System.

Software development is acutely important to the successful implementation of TAS. The system must be capable of managing at each service center a data base of 64 billion characters to be stored on discs and mass storage devices that are readily accessible within 5 seconds at a rate of approximately 100,000 transactions per hour. This must interface with a data communications system containing about 800 terminals per service center. The Committee believes that the software required for this system is not commercially available, and vendors will be required to customize off-the-shelf software or develop new software to accomplish the data base requirements.

It is not the intent of the Committee to delay unduly the redesign and revitalization of the tax-processing system. However, it is incumbent upon the Committee to insure that the approach utilized minimizes the risks of failure, disruption, cost overrun, and waste of taxpayers' dollars. For this reason, it is the recommendation of the Committee that IRS proceed to implement the redesign and revitalization of the tax-processing system in a more evolutionary manner. This should substantially improve the probability of success and reduce the inherent risk.

The Committee view is that initiation of procurement for TAS is premature at this time. The 1974 cost-benefit analysis must be updated to reflect price escalation through the procurement period and results of the General Accounting Office studies must be reviewed and their recommendations incorporated in the system procurement plan. Alternative evolutionary system development plans must be considered by IRS which will provide for improving the probability of successfully implementing an optimum systems solution while reducing the probability of cost overruns and failure of the system. An example would be for the IRS to utilize its currently available technol-

ogy and equipment where feasible while performing the initial pilot and prototype testing to insure the feasibility and effectiveness of major critical system components and subsystems. This approach should reduce the cost and expedite the testing and development process.

The Internal Revenue Service is directed to provide the Committee with complete details of the revised cost-benefit analysis and procurement, development, and implementation plans prior to implementing any action toward procurement of the Tax Administration System.

SALARIES AND EXPENSES

Appropriation, 1976	[1] $45, 825, 000
Budget estimate, 1977	46, 700, 000
House allowance	46, 700, 000
Committee recommendation	46, 700, 000
Bill compared with:	
Appropriation, 1976	+875, 000
Budget estimate, 1977	----------
House allowance	----------

[1] Includes $1,325,000 contained in the Second Supplemental Appropriations Act, 1976.

The Committee recommends concurrence with the House allowance and the budget estimate of $46,700,000 and 1,774 permanent personnel positions. This is an increase of $875,000 and a reduction of 92 positions from the fiscal year 1976 level of activity.

The Salaries and Expenses appropriation provides for the overall direction of the Internal Revenue Service, for program planning and determining resource needs, for managing its administrative support, and for the maintenance of employee integrity and internal controls. The appropriation consists of two activities, Executive Direction and Internal Audit and Security.

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

Appropriation, 1976	[1] $791, 740, 000
Budget estimate, 1977	789, 900, 000
House allowance	795, 900, 000
Committee recommendation	790, 900, 000
Bill compared with:	
Appropriation, 1976	—840, 000
Budget estimate, 1977	+1, 000, 000
House allowance	—5, 000, 000

[1] Includes $20,240,000 contained in the Second Supplemental Appropriations Act, 1976.

The Committee recommends an appropriation of $790,900,000 and 35,132 permanent personnel positions. This is a reduction of $840,000 and 1,421 positions from the fiscal year 1976 appropriation and a reduction of $5,000,000 and 701 positions from the House allowance.

The Accounts, Collection and Taxpayer Service (ACTS) appropriation provides funding for four activities: Data Processing Operations, Statistical Reporting, Collection, and Taxpayer Service.

The Data Processing Operations Activity is responsible for receiving and processing tax returns, issuing refunds and notices, and accounting for revenues. Statistical Reporting includes preparation of statistical information on income and other aspects of the tax system. The Collection Activity is responsible for collecting unpaid taxes and securing unfiled returns. Taxpayer Service aids voluntary compliance

with Federal tax laws on the part of all taxpayers by informing them of their responsibilities and by providing service which will assist them in meeting their obligations.

The Committee is concerned with the proposed reduction of 1,577 positions from this appropriation. Testimony revealed that approximately 1,700,000 fewer taxpayers would receive assistance in fiscal year 1977 than in 1976. Therefore, the Committee recommends denial of the proposed reduction of 156 positions and $1 million from the fiscal year 1976 level for taxpayer assistance. This Committee has been instrumental in providing resources for this activity and the Internal Revenue Service is directed to continue the resources for taxpayer assistance at the fiscal year 1976 level.

COMPLIANCE

Appropriation, 1976	[1] $853,955,000
Budget estimate, 1977	834,900,000
House allowance	838,900,000
Committee recommendation	834,900,000
Bill compared with:	
Appropriation, 1976	—19,055,000
Budget estimate, 1977	
House allowance	—4,000,000

[1] Includes $23,955,000 contained in the Second Supplemental Appropriations Act, 1976.

The Committee recommends concurrence with the budget estimate of $834,900,000 and 38,409 permanent personnel positions. This is a reduction of $19,055,000 and 761 positions from the fiscal year 1976 appropriation and $4,000,000 and 675 positions from the House allowance.

The Compliance appropriation provides funds for those activities of the Internal Revenue Service which are primarily responsible for assuring compliance with the tax laws. It also funds special law enforcement programs assigned to the Service.

Major programs include audit of tax returns, the appellate process, tax fraud and special investigations, technical rulings, legal services, and the Employee Plan and Exempt Organizations activities.

The Committee is concerned with the magnitude of the reduction proposed by the administration for this activity. However, it is the view of the Committee that abuses of authority have occurred under activities funded by this appropriation. During recent years, over $28 million and 1,277 positions funded from this appropriation were involved with Department of Justice strike forces and related activities around the country. The Committee believes these resources could be more properly used to ensure compliance with the tax laws of the United States.

Calendar No. 286

94TH CONGRESS, 1st Session | SENATE | REPORT No. 94-294

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1976

JULY 22 (legislative day, JULY 21), 1975.—Ordered to be printed

Mr. MONTOYA, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 8597]

The Committee on Appropriations, to which was referred the bill (H.R. 8597) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies for the fiscal year ending June 30, 1976, and the period ending September 30, 1976, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended:

Amount of House bill	$6,265,532,152
Amount of increase by Senate	+73,422,848
Amount of bill as reported to Senate	6,338,955,000
Amount of budget estimates of new (obligational) authority, fiscal year 1976	6,330,463,000
Amount of new budget (obligational) authority, fiscal year 1975	8,193,909,500
Senate bill as reported compared with:	
Amount of budget estimates of new (obligational) authority, fiscal year 1976 (as revised)	+8,492,000
Amount of new budget (obligational) authority, fiscal year 1975	−1,854,954,500

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SUMMARY OF THE BILL

The bill provides a total amount of $6,338,955,000 which is $1,854,954,500 under the appropriations for 1975, $8,492,000 over the revised estimates for 1976, and an increase of $73,422,848 over the appropriations in the House bill of $6,265,532,152.

The following tables summarize the amounts of new budget (obligational) authority recommended in the bill for fiscal year 1976 compared with amounts appropriated to date for fiscal year 1975 and with the revised 1976 budget estimates and the House bill. The tabulation by appropriation item is included at the end of the report.

Internal Revenue Service

SUMMARY

Appropriation, fiscal year 1975	[1] $1,586,570,000
Budget estimate, fiscal year 1976	1,655,778,000
Transition period (July–September 1976)	415,000,000
House allowance	1,634,000,000
Transition period (July–September 1976)	408,500,000
Committee recommendation	1,649,000,000
Transition period (July–September 1976)	412,250,000
Bill compared with:	
Appropriation, fiscal year 1975	+62,430,000
Budget estimate, fiscal year 1976	−6,778,000
House allowance	+15,000,000
Transition period (July–September 1976)	+3,750,000

[1] Includes $42,500,000 contained in the Second Supplemental Appropriations Act (Public Law 94–32) and a rescission of $530,000 contained in Public Law 94–14.

The Committee recommends an appropriation of $1,649,000,000 for activities of the Internal Revenue Service. This is an increase of $15,000,000 over the House allowance, a reduction of $6,778,000 from the budget estimate and an increase of $62,430,000 over the fiscal year 1975 appropriation.

The additional funding for personnel recommended above the House allowance will provide staffing to support increased tax administration responsibilities of the Internal Revenue Service relating to the Freedom of Information Act, the Privacy Act, the Tax Reduction Act, the Employee Retirement Income Security Act, and the Social Security Amendments of 1974.

SALARIES AND EXPENSES

Appropriation, fiscal year 1975	[1] $41,970,000
Budget estimate, fiscal year 1976	45,260,000
Transition period (July–September 1976)	11,620,000
House allowance	44,000,000
Transition period (July–September 1976)	11,000,000
Committee recommendation	44,500,000
Transition period (July–September 1976)	11,125,000
Bill compared with:	
Appropriation, fiscal year 1975	+2,530,000
Budget estimate, fiscal year 1976	−760,000
House allowance	+500,000
Transition period (July–September 1976)	+125,000

[1] Includes $1,500,000 contained in the Second Supplemental Appropriations Act (Public Law 94–32) and a rescission of $530,000 contained in Public Law 94–14).

The Committee recommends an appropriation of $44,500,000 and 1,866 permanent positions. This is an increase of $500,000 and 24 positions over the House allowance, a reduction of $760,000 and 16 positions from the budget estimate, and an increase of $2,530,000 and 61 positions above the fiscal year 1975 appropriation.

The Salaries and Expenses appropriation provides for the overall direction of the Internal Revenue Service, for program planning and determining resource needs, for managing its administrative support, and for the maintenance of employee integrity and internal controls.

The appropriation consists of two activities, Executive Direction and Internal Audit and Security.

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

Appropriation, fiscal year 1975	[1] $733,600,000
Budget estimate, fiscal year 1976	772,881,000
Transition period (July–September 1976)	193,805,000
House allowance	765,000,000
Transition period (July–September 1976)	191,250,000
Committee recommendation	771,500,000
Transition period (July–September 1976)	192,875,000
Bill compared with:	
Appropriation, fiscal year 1975	+37,900,000
Budget estimate, fiscal year 1976	−1,381,000
House allowance	+6,500,000
Transition period (July–September 1976)	+1,625,000

[1] Includes $21,000,000 contained in the Second Supplemental Appropriations Act (Public Law 94-32).

The Committee recommends an appropriation of $771,500,000 and 36,641 permanent positions. This is an increase of $6,500,000 and 381 additional positions above the House allowance, a reduction of $1,381,000 from the budget estimate, and an increase of $37,900,000 and 881 positions above the fiscal year 1975 appropriation.

The Committee believes the taxpayer assistance programs of the Internal Revenue Service have been extremely innovative and successful. These programs are of definite value to the American taxpayer and are to be continued.

The Accounts, Collection and Taxpayer Service (ACTS) Appropriation provides funding for four activities: Data Processing Operations, Statistical Reporting, Collection, and Taxpayer Service.

The Data Processing Operations Activity is responsible for receiving and processing tax returns, issuing refunds and notices, and accounting for revenues. Statistical Reporting includes preparation of statistical information on income and other features of the tax system. The Collection Activity is responsible for collecting unpaid taxes and securing unfiled returns. Taxpayer Service, which became a separate organization apart from Collection in FY 1975, aids voluntary compliance with Federal tax laws on the part of all taxpayers by informing them of their responsibilities and by providing service which will assist them in meeting their obligations.

This Appropriation funds the Office of the Assistant Commissioner (Accounts, Collection and Taxpayer Service) and the Accounts and Data Processing, Collection, and Taxpayer Service Divisions in the National Office; the Offices of the Assistant Regional Commissioner (ACTS) and Collection and Taxpayer Service field operations; the National Computer Center at Martinsburg, West Virginia; the IRS Data Center at Detroit, Michigan; and the ten IRS Service Centers.

COMPLIANCE

Appropriation, fiscal year 1975	[1] $811,000,000
Budget estimate, fiscal year 1976	837,637,000
Transition period (July–September 1976)	209,575,000
House allowance	825,000,000
Transition period (July–September 1976)	206,250,000
Committee recommendation	833,000,000
Transition period (July–September 1976)	208.250,000
Bill compared with:	
Appropriation, fiscal year 1975	+22,000,000
Budget estimate, fiscal year 1976	−4,637,000
House allowance	+8,000,000
Transition period (July–September 1976)	+2,000,000

[1] Includes $20,000,000 contained in the Second Supplemental Appropriations Act (Public Law 94–32)

The Committee recommends an appropriation of $833,000,000 and 39,358 permanent positions. This is an increase of $8,000,000 and 400 positions above the House allowance, a reduction of $4,637,000 and 97 positions from the budget estimate, and an increase of $22,000,000 and 408 positions over the fiscal year 1975 appropriation.

The Compliance appropriation provides funds for those activities of the Internal Revenue Service which are primarily responsible for assuring compliance with the tax laws. These tax administration responsibilities are substantial. Our country's system of taxation is one of self-assessment. It depends for its success on the willingness of taxpayers to assess their own tax correctly. The overwhelming majority of taxpayers properly assess themselves and pay their fair share. Some do not, however. A substantial portion of the Service's resources must be devoted to detecting noncompliance and correcting it.

The Committee recommends $8,000,000 and the additional 400 personnel positions to provide assurance to the public that the Government is administering the tax laws fairly and equitably.

The Audit activity of the Compliance appropriation is responsible for encouraging voluntary compliance with the tax laws by examining selected returns, correcting errors, and reviewing corrections with the taxpayers concerned. The IRS Audit program includes the examination of returns in such diverse areas as individual and fiduciary taxes, corporation taxes, estate and gift taxes, excise and employment taxes, and related areas. The Audit program is the foundation of our voluntary compliance system. The Committee directs the Commissioner of the Internal Revenue Service to publish selected information and statistics on its Audit program similar to the information previously provided in "The Audit Story," which was discontinued. The Committee feels that such data is useful for its deliberations, as well as to scholars and students of tax administration.

The Committee is concerned that in recent revelations of past activities, such as Operation Leprechaun, the Service exceeded its traditional and accepted role of tax administrator, and became involved in non-tax-related matters which drained valuable resources from tax administration and seriously impaired the goodwill of the American taxpayer toward a tax system which is largely voluntary in nature. The dangers adherent in this type of activity are obvious, and the Committee expects that in the future the Internal Revenue Service will confine itself to proper tax administration and enforcement.

Calendar No. 988

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-1028

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1975

JULY 24, 1974—Ordered to be printed

Mr. MONTOYA, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 15544]

The Committee on Appropriations, to which was referred the bill (H.R. 15544) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies for the fiscal year ending June 30, 1975, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended:

SUMMARY OF THE BILL

The bill provides a total amount of $5,563,508,000 which is $679,659,000 under the appropriations for 1974, $54,688,000 under the revised estimates for 1975, and an increase of $59,714,000 over the appropriations in the House bill totaling $5,503,794,000.

The following tables summarize the amounts of new budget (obligational) authority recommended in the bill for fiscal year 1975 compared with amounts appropriated to date for fiscal year 1974 and with the revised 1975 budget estimates and House bill. The tabulation by items of appropriation is included at the end of the report.

B. INFRINGEMENT ON TAXPAYER RIGHTS

Perhaps the most serious problem reported in the testimony before the committee was that of potential infringement of taxpayer rights.

While discussing the use and alleged abuse of Jeopardy Assessments, witnesses stressed that no guidelines (other than individual discretion) currently exist to determine the need for assessment, the size of assessment, or abatement of assessment. The Code Sections 6851 and 6861 allow the IRS great latitude in making Jeopardy Assessments. IRS regulations only slightly narrow this power. There presently exists no quick, post-assessment judicial review of such an assessment. One witness asked that provision for a mandatory hearing in the proper district court be made so that the government would be forced to prove that a Jeopardy Assessment was necessary and that its size was reasonable. IRS witnesses objected to this criticism on the grounds that time is critical and financial factors are not always easily or clearly defined in these cases. However, it was the feeling of witnesses that when the service knows enough about an individual's activities to want to make a Jeopardy Assessment, it should know enough to moderate the size of the assessment and present reasonable grounds for decisions it has made.

In discussion of a related problem, witnesses brought to the attention of the Subcommittee a mechanism called "Termination of the Taxable Year" (IRC Section 6851). If, in the eyes of the IRS, a taxpayer plans to do anything" . . . tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year . . .", the IRS may immediately terminate the tax year, issue a notice of deficiency, and declare the taxes due and payable. Collection procedures may then be initiated.

The problem in this instance is that sometimes individuals undergoing audit are asked to extend the period covered by the statute of limitations in order to allow the IRS more time. If the taxpayer refuses, the IRS can initiate the termination procedure. Commissioner Alexander has assured the Subcommittee that IRS instructions prohibit making actual Jeopardy Assessments on an individual simply because he refuses to grant an extension of the statute of limitations. The record will include copies of the IRS directions which regulate Jeopardy Assessments and terminations. However, the Commissioner stated for the record that "if a taxpayer's return is under examination and if the period of limitations is about to expire, and the taxpayer does not cooperate in extending the statute of limitations, we should do something about it." There is clearly a difference of viewpoint between the testimony of some witnesses and the testimony of the IRS. The statute of limitations was enacted to provide some relief from the red pencil of the auditor. In normal cases, IRS is legally allowed three years to complete the audit. If the taxpayer is truly faced with the choice of extending that period or facing immediate and unreviewable assessment, the intent and value of the statute itself seems to be in question.

C. PROBLEMS RELATED TO THE USE OF U.S. TAX COURT

Testimony was received which indicated that small taxpayers who decide not to respond to an IRS audit notice, but instead petition to the U.S. Tax Court, are subjected to unfair treatment by the IRS. The allegation was made that in cases where the taxpayer decides to forego audit and go directly to the court, his petition is delivered by IRS into the audit division of IRS and to a "small case coordinator" these audit personnel then contact the taxpayer directly in order to achieve immediate settlement.

A Commissioner of the Tax Court testified that this procedure can—and has—led to harassment of the taxpayer by audit employees. Commissioner Alexander defended this procedure, citing the Chief Judge of the Tax Court as an advocate. When contacted, the Chief Judge indicated that he has personally seen no abuse of this process.

Of course, the natural inclination at the IRS audit division is to settle cases for the maximum amount and in favor of the government. The Subcommittee needs to probe further on the effects of the current petition referral procedure and on the statistics concerning amounts settled for in varying circumstances. At the present time the evidence the Subcommittee has received indicates that when settlement occurs at the examining level the government nets more money than when the case goes to tax court. Are the rights of the taxpayer properly served if government revenue is increased by encouraging the taxpayer to avoid use of the tax court? This question is clearly an important area which must be explored.

D. SUFFICIENCY OF AMOUNTS EXEMPT FROM LEVY

The American Bar Association testimony before the Subcommittee indicated a concern that the amount of money exempt from levy by the IRS was inadequate. A qualified ABA representative stated that "In an era where a succession of laws has been enacted providing for support and subsidy payments by governments to low income individuals and families who are living at a poverty or bare subsistence level, it is anachronistic for the Treasury to levy total earnings where to do so would take all funds even if committed to other creditors and could leave such a taxpayer living at a sub-subsistence level." The Bar's recommendations include making at least an additional one hundred dollars per week for up to four weeks exempt from levey. This would require revision of the tax code.

E. ALLEGATIONS OF A QUOTA SYSTEM USED BY IRS AGENTS

The Subcommittee received repeated testimony indicating that taxpayers believe there is an audit and collection "quota system" in IRS. Evidence submitted to the committee suggests that there is at least an informal goal system in existence. Commissioner Alexander and his associates are making an effort to eliminate remnants of this arrangement, but clearly the problem may require more serious reform than has been achieved so far.

The quota issue results from the fact that agent evaluation is based on measurable achievement and also that personal satisfaction of agents

and especially of revenue officers is based on numbers of cases closed or seizures made. It must be clear that the Committee's estimate is derived in part from many informal talks between Members and ex-IRS personnel, as well as staff reports. It may be necessary to make an effort to restructure the goals and change the criteria used for measuring success in an agent. The stress should be in finding a fair decision in every case, rather than on the number of dollars collected by the agent or revenue officer.

Informally, many tax authorities acknowledge the existence of quota pressure on agents. The thousands of letters that have come to the Subcommittee since these hearings opened confirm the belief of many citizens that "production goals and quotas are the name of the game.". One high ranking IRS administrator recently informed the staff that the quota pressure was an enduring by-product of our emphasis on "firm compliance" and higher revenue levels.

It is clear to taxpayers that a quota system is liable to breed an unfair tax system. This feeling is strongly expressed in the testimony of Mrs. Barbara Hutchinson, a witness who claims to represent the frustrated taxpayers who find little to cheer for in either IRS administration and services or in Congressional "tax decency."

If left to smolder, this kind of taxpayer anger can be ignited in unhealthy and uncontrollable reaction. The taxpayer revolt predicted by Mrs. Hutchinson in her testimony before our committee is unpleasant to contemplate. Lack of access to information about tax questions, agent arbitrariness, and an intolerant, rigid "compliance" attitude on the part of representatives of the government will surely increase the chances of such a revolt.

From the testimony summarized in the above remarks, from information received at last year's hearings, and from independent investigation by the staff of the Subcommittee, the following recommendations are offered for consideration by the Congress and IRS:

1. *Immediate effort and tangible progress in reaching older taxpayers with better information and service.* It is urged that IRS computers be used to assist in providing direct contact with elderly taxpayers, and that the social security network be used to assist this effort to reach older taxpayers. Some Taxpayer service representatives should be specifically equipped to handle the special problems of the aged who can come to IRS offices. For those who are unable to come to the Offices, IRS telephone assistance operators must be specifically prepared to anticipate and ferret out the possibly inarticulate queries of the elderly.

2. *Inclusion of Publication 556, "Audit of Returns, Appeal Rights, and Claims for Refund," in the letter to the taxpayer which notifies him or her of an impending audit.* This publication is currently sent to the taxpayer only upon request. The Subcommittee has repeatedly urged that it be sent automatically to the taxpayer who needs the information it contains. In addition, the Subcommittee suggests some modest improvements in the publication itself. Taxpayer options must be set out in clear language, and the taxpayers must be fully informed of their rights *before* an audit.

3. *Post Jeopardy Assessment Judicial Review.* The Subcommittee has requested that IRS make clear to the Subcommittee within a few

weeks their reasons for believing that post-Jeopardy Assessment Judicial Review would be deleterious to fair collection of tax revenue. Jeopardy Assesment implies a de facto seizure of property, and the Subcommittee feels that a court hearing soon after the Assessment would properly require the government to persuade the court of the necessity for and the size of the assessment.

4. *Review of the current IRS practice involving petitions referred from the tax court to IRS.* The Subcommittee will insist on assurance that the taxpayer is not subject to hardship or embarrassment in an audit contact procedure which he has attempted to avoid through his petition to the court. The present method of disposing of certain small tax cases which have been appealed to the tax court does not appear to be completely fair and evenhanded. It may be that the Congressional intent in Internal Revenue Code Sections 7456 and 7463 is not being correctly interpreted in these cases.

5. *Continued production, compilation and dissemination of information complied previously in Doc. 5667, The Audit Story.* The documents used by IRS in compiling this document should be available to both the Congress and the public. The Library of Congress should be supplied with this information, and with any other IRS documents and working statistics which this Committee and Congress deem necessary for appropriate oversight of IRS.

6. *Increased training for taxpayer service representatives.* The Subcommittee urges that an effort be made by IRS to revise training procedures and methods, and to lengthen the time allowed for training taxpayer service representatives. The training period now is two to three weeks long. This does not seem to be sufficient time to equip these personnel with needed skills to assist the taxpayer at the local level. It should be stressed that these representatives are usually the only individuals who represent the IRS to the taxpaying public, and as such are the most important and potent force for creating either a good or a bad image in the eyes of the public.

7. *Inquiry into charges of IRS secrecy concerning Freedom of Information related and statistical information.* The Subcommittee has heard many charges that IRS is renumbering statistical tables, overcharging for printed and xeroxed material, or allowing too much time to elapse before information requests are acknowledged and complied with. There may be honest disputes concerning what information can or should be released or concerning the cost of reproducing information. However, it is suggested that where cost alone is the factor, the government should bear a greater share of the cost in the interest of improving taxpayer information and access. Public confidence in the audit and collection activities of IRS will result from more open access to information and statistics. IRS is urged to re-examine ts poley concering administrative secrecy and confidentiality.

8. *Inquiry into the continued charges of quota systems.*

The Subcommittee has requested ongoing and periodic reports from IRS concerning the efforts being made to assure that undue production pressure is not being exerted on agents and officers, and, through them, on taxpayers. The Subcommittee is fully aware of the difficulty attending the complete elimination of these pressures. In addition we

are aware of the personal judgments which are made concerning the existence of such pressure. However, the weight of testimony clearly indicates that a pervasive belief in the existence of a "quota system" continues. Initiative and aggressive action by IRS administrators will be required to bring this situation under better control.

IRS IMPROVEMENTS

While this report has stressed charges and allegations made by witnesses before the Subcommittee concerning faults in the IRS taxpayer services it is pleasing to also report on the major improvements which have been made by IRS in these service areas in the last year.

First, there has been an increase of IRS authority at the District Conference level of Appeal. This change allows IRS District conferees to consider the hazards of litigation in conference, and, allows the taxpayer the opportunity to compromise at the early appeals level. The change marks a victory for taxpayers.

Second, IRS has initiated a new Taxpayer Service Division. This Division will be more autonomous than the old Audit, Collection and Taxpayer Service Branch. We cannot yet assess the effect this new Division will have for taxpayers, but it is a step in the right direction, and IRS is to be commended. The Subcommittee's only reservation concerns supervision of the new Division, which still seems to be under the influence of the Collections Division. Without total separation of the management and supervision of these two activities, the change could be merely one of name.

Third, IRS is to be commended for the ongoing effort to improve form letters used in contacting taxpayers. IRS machine-generated correspondence has been significantly changed for the better. The Notice of Audit (L–04) now contains language to reassure frightened taxpayers that an audit does not mean suspicion of fraud or wrongdoing on the taxpayer's part. Although it is inadequate (see Recommendation #2 above), mention is made in this notice of the availability of appeals information, which is an improvement on past letters. Overall, IRS letters are now friendlier in tone and exhibit proper respect for the taxpayer.

In summation the Subcommittee feels this year's hearings have produced much good information and many worthwhile suggestions from both taxpayers and professionals. It is clear that we have not yet achieved the taxpayer reforms which are needed, but that progress is being made. The Subcommittee will therefore continue to insist on review of IRS practices and periodic reports from IRS on progress being made to achieve the goals of recommendations made in this report.

When additional appropriations are requested, the Subcommittee will carefully consider the evaluation of progress in these areas. Particular consideration will be given to any additional needs to carry out the recommendations of the Subcommittee.

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Internal Revenue Service

SALARIES AND EXPENSES

Appropriation, fiscal year 1974	$37,087,000
Budget estimate, fiscal year 1975	41,500,000
House allowance	40,000,000
Committee recommendation	41,000,000
Bill compared with:	
Appropriation, fiscal year 1974	+3,913,000
Budget estimate, fiscal year 1975	−500,000
House allowance	+1,000,000

The Committee recommends an appropriation of $41,000,000 for salaries and expenses of the Internal Revenue Service for fiscal year 1975. The amount recommended is $3,913,000 more than the amount appropriated for 1974; and $1,000,000 over the House allowance.

This appropriation provides for the overall direction of the Internal Revenue Service, for program planning and determining resource needs, for managing its administrative support and for the maintenance of employee integrity and internal controls.

The Committee has inserted language in this and the other IRS appropriations to retain the long-time authorization to the Commissioner to establish rates of payment for expert witnesses without regard to the Civil Service laws and regulations. This authority is used to enable the Service to hire expert, and frequently expensive, witnesses in tax court cases. While the courts have held that an official who is authorized to conduct litigation may contract for expert witnesses when this action is necessary to properly defend the Government's interest, there is no specific authority for the Commissioner to hire expert witnesses at required levels of compensation other than the inserted provision.

The manpower financed by this appropriation has stayed roughly constant for several years, but workload has increased substantially. The IRS as a whole has grown, requiring more and more kinds of support programs; three new service centers have been opened, requiring the full range of Internal Audit and Internal Security programs; Service management has found real value in "on-line audits," a technique for evaluating new programs in their initial stages so that flaws can be corrected, and is making greater use of this effective but man-

power consuming technique; a concentrated effort is being made to monitor program performance and assure that the requirements of law, regulation, and Service policy are fully complied with; the transfer of responsibility for budgeting for space acquisition and maintenance costs from GSA to customer agencies has and will continue to require increased attention to their physical facilities; the emphasis on various Equal Employment Opportunity programs, including Upward Mobility and the Sixteen-Point program for the Spanish-speaking, all of which require a substantial manpower input; and union relations program, including multi-district, multi-service center, and multi-regional agreements, have placed a substantial additional workload on a static work force. These are only a few examples of a clear and continuing trend.

A further problem is the return of employees from the Economic Stabilization Program. Approximately 45 people are returning to Administration and Planning and Research. These are career employees with return rights and who were given clear guarantees of jobs in tax administration after termination of the Stabilization program. IRS planned to finance these returnees in part from savings in the support cost area and in part from the additional jobs requested in the FY 1975 budget. The House allowance would, of course, eliminate the latter alternative. To live within the House allowance, IRS would have to eliminate the increases proposed in the budget for Internal Audit, sharply restrict replacing vacancies that may occur in Executive Direction, and restrict spending for support costs, including training, travel, and purchases of supplies and equipment.

The Committee's recommendation of $41,000,000 would maintain these critical responsibilities and provide for 1,792 permanent positions.

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

Appropriation, fiscal year 1974	$610, 683, 000
Budget Estimate, fiscal year 1975	[1] 721, 025, 000
House allowance	705. 000, 000
Committee recommendation	712, 600, 000
Bill compared with:	
Appropriation, fiscal year 1974	+101, 917, 000
Budget estimate, fiscal year 1975	−8, 425, 000
House allowance	+7, 600, 000

[1] Includes a budget amendment of $7,625,000 for rate increases for postage, health benefits, and mileage (S. Doc. 93-83).

The Committee recommends an appropriation of $712,600,000 for the Accounts, Collection and Taxpayer Service of the Internal Revenue Service for fiscal year 1975. The amount recommended is $101,917,000 more than the amount appropriated for 1974; and $7,600,000 over the House allowance of $705,000,000.

This appropriation is comprised of three major activities: Data Processing Operations, Collection and Taxpayer Service, and Statistical Reporting. The Data Processing and Statistical Reporting Activities are responsible for receiving and processing tax returns, issuing refunds and notices, revenue accounting and preparation of statistical information on income and other features of the tax system. The Collection and Taxpayer Service activity is responsible for assisting taxpayers and for collecting unpaid taxes and securing unfiled returns.

It is estimated that the total number of tax returns filed will increase from about 120.2 million to about 122.9 million. Refunds scheduled to taxpayers are expected to increase from about 63.5 million to 64.7 million. These increases in volume require increases in both funding and personnel and the recommended appropriation will cover the full request of 35,750 positions. The Committee has increased the amount allowed by the House by $7,600,000 to cover the mandatory increases in the budget amendment.

COMPLIANCE

Appropriation, fiscal year 1974	$664,430,000
Budget estimate, fiscal year 1975	[1] 807,940,000
House allowance	780,000,000
Committee recommendation	791,000,000
Bill compared with:	
Appropriation, fiscal year 1974	+126,570,000
Budget estimate, fiscal year 1975	−16,940,000
House allowance	+11,000,000

[1] Includes a budget amendment of $4,640,000 for rate increases for postage, health benefits, and mileage (S. Doc. 93-83).

The Committee recommends an appropriation of $791,000,000 for Compliance for fiscal year 1975. The amount recommended is $126,570,000 more than the amount appropriated for 1974; and $11,000,000 over the House allowance of $780,000,000.

This appropriation provides funds for those activities of the Internal Revenue Service which are primarily responsible for assuring compliance with the tax laws and for carrying out special law enforcement programs assigned to the Revenue Service.

The county's self-assessment system of taxation depends for its success on voluntary compliance, the willingness of taxpayers to assess their own tax correctly. Noncompliance with tax laws takes several forms. Some taxpayers simply fail to file returns. Others file but do not report all their income. Many taxpayers claim deductions, credits or exemptions to which they are not entitled. Noncompliance, willful or otherwise, means billions of dollars which should be but are not part of the Government's annual tax receipts. It also represents inequity, for the many who comply must shoulder the burden of the few who do not. Adequate, evenhanded IRS enforcement is vital to the public's confidence that the government is administering the tax laws fairly and equitably.

The Service deals with the various forms of noncompliance by combining the capacities of the Audit, Appellate and Intelligence functions. Audit of tax returns is the most important of resources applied, in additional revenue yield and in salutary effect on voluntary compliance. The Appellate program is an important supplement to the audit process. In those instances where the taxpayer disagrees with audit findings, the appeals program provides an independent administrative review within the Service itself. Intelligence plays an important part in promoting tax compliance by investigating taxpayers where tax fraud is indicated. When the facts developed by the investigation warrant, prosecution is recommended for criminal tax violation.

The Committee was advised that the House allowance would permit about 2,550,000 examinations, or 160,000 less than proposed. The improvements proposed for the tax fraud programs would have to be scaled back to a similar degree. This would further delay attaining the

program levels necessary on a recurring basis for an effective tax administration system. Secondly, the return to tax administration jobs employees who took the assignments with the Economic Stabilization program will require that the allocation of more money to the Audit program than the House action provides for. Within the appropriation approved by the House, the additional funds required for the commitment to returning revenue agents could only have been obtained by reducing funds for Tax Fraud, Technical Rulings, and Legal Services by an equivalent dollar amount.

The Committee's recommendation, in addition to covering the mandatory increases in the budget amendment, will allow for the absorption of the returning Economic Stabilization employees and raise the audit coverage from 2.2 to 2.3 percent.

FEDERAL TAX LIEN REVOLVING FUND

Appropriation, fiscal year 1974	----------
Budget Estimate, fiscal year 1975	$500,000
House allowance	500,000
Committee recommendation	500,000
Bill compared with:	
Appropriation, fiscal year 1974	+500,000
Budget estimate, fiscal year 1975	----------
House allowance	----------

The Committee recommends an appropriation of $500,000 for the Federal Tax Lien Revolving Fund for fiscal year 1975. The amount recommended is $500,000 over the amount appropriated for 1974; and the same as the House allowance.

This appropriation will provide the full $1,000,000 capitalization of this fund which is used by the Internal Revenue Service to purchase properties of delinquent taxpayers undergoing forced sale in order to protect the Government's interest.

The Committee has several concerns about the way IRS uses this ability and intends to look into the situation in subsequent hearings.

Calendar No. 235

92D CONGRESS
1st Session

SENATE

REPORT
No. 92-243

TREASURY, POSTAL SERVICE, AND GENERAL GOVERNMENT APPROPRIATION BILL, 1972

JUNE 28, 1971.—Ordered to be printed
Filed, under authority of the order on June 28, 1971

Mr. MONTOYA, from the Committee on Appropriations, submitted the following

REPORT

[To accompany H.R. 9271]

The Committee on Appropriations, to which was referred the bill (H.R. 9271) making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies for the fiscal year ending June 30, 1972, and for other purposes, reports the same to the Senate with various amendments and presents herewith information relative to the changes recommended:

SUMMARY OF THE BILL

The bill provides a total amount of $4,740,702,690, which is $826,756,210 under the appropriations for 1971, $68,513,310 under the revised estimates for 1972, and an increase of $253,026,500 over the appropriations in the House bill totaling $4,487,676,190.

The following tables summarize the amounts of new budget (obligational) authority recommended in the bill for fiscal year 1972 compared with amounts appropriated to date for fiscal year 1971 and with the revised 1972 budget estimates and House bill. The tabulation by items of appropriation is included at the end of the report.

INTERNAL REVENUE SERVICE

COMPLIANCE

Appropriation, fiscal year 1971	$712,026,000
Budget estimate, fiscal year 1972	[1] 808,511,000
House allowance	780,000,000
Committee recommendation	797,500,000
Bill compared with:	
Appropriation, fiscal year 1971	+85,474,000
Budget estimate, fiscal year 1972	—11,011,000
House allowance	+17,500,000

[1] Includes proposed amendment for an additional $7,500,000 (H. Doc. 92-133), not considered by House.

The Committee recommends an appropriation of $797,500,000 for Compliance activities of the Internal Revenue Service for fiscal 1972. The amount allowed provides (1) for assistance to taxpayers in understanding and complying with the tax laws and (2) for detecting and correcting instances of noncompliance. The additional funds allowed for 1972 are necessary to strengthen the compliance enforcement capacity of the tax administration system and permit progress toward program levels which will insure a continued high degree of voluntary compliance with the internal revenue laws. The Committee's recommendation includes the requested increase of $7,500,000 and 541 positions to permit the Internal Revenue Service to launch a systematic drive, in cooperation with other Federal, State, and local law enforcement agencies, against distributors and financiers involved in narcotics traffic for possible civil or criminal violations of the Internal Revenue Code as requested by special amendment for the President's all-out antinarcotic effort.

A total of 50,020 permanent positions was requested, an increase of 3,281 over 1971. The Committee has no objection to this proposed increase in personnel provided it can be accomplished within the funds allowed.

INTERNAL REVENUE SERVICE

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For necessary expenses of the Internal Revenue Service, not otherwise provided for, including executive direction, administrative support, and internal audit and security; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$44,500,000] *$46,700,000.*

[For "Salaries and expenses" for the period July 1, 1976, through September 30, 1976, $11,125,000.] (*Title 26 U.S.C.; Treasury Department Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0911-0-1-803		1975 act.	1976 est.	TQ est.	1977 est.
	Program by activities:				
	Direct program:				
	1. Executive direction	18,056	20,069	5,075	20,127
	2. Internal audit and security	23,313	25,756	6,510	26,573
	Total direct program	41,369	45,825	11,585	46,700
	Reimbursable program:				
	1. Executive direction	1,632	1,654	415	1,663
	2. Internal audit and security	1	312	78	314
	Total reimbursable program	1,633	1,966	493	1,977
	Total program costs, funded [1]	43,002	47,791	12,078	48,677
	Change in selected resources (states and undelivered orders)	238			
10	Total obligations	43,240	47,791	12,078	48,677
	Financing:				
	Receipts and reimbursements from:				
11	Federal funds	−1,581	−1,888	−423	−1,899
14	Non-Federal sources	−92	−78	−20	−78
25	Unobligated balance lapsing	363			
	Budget authority	41,970	45,825	11,585	46,700
	Budget authority:				
40	Appropriation	41,970	44,500	11,125	46,700
44.20	Supplemental now requested for civilian pay raises		1,325	460	
	Relation of obligations to outlays:				
71	Obligations incurred, net	41,607	45,825	11,585	46,700
72	Obligated balance, start of period	3,322	2,117	2,293	2,355
74	Obligated balance, end of period	−2,117	−2,293	−2,265	−2,715
77	Adjustments in expired accounts	14			
90	Outlays, excluding pay raise supplemental	42,825	44,380	11,095	46,252
91.20	Outlays from civilian pay raise supplemental		1,269	418	98

[1] Includes capital outlay as follows: 1975, $375 thousand; 1976, $340 thousand; TQ, 185 thousand; 1977, $355 thousand.

This appropriation provides for the overall planning and direction of the Internal Revenue Service, for management of the Service's support programs and for internal audit and internal security.

1. *Executive direction.*—This activity sets policies and goals; provides the research and planning necessary for orderly and effective accomplishment of the Revenue Service's mission; provides leadership and direction in the execution of plans; and provides for the administrative support of all operations.

2. *Internal audit and security.*—This activity establishes and verifies maintenance of quality controls in the Revenue Service. It provides a continuing and independent review of all Revenue Service operations, thereby assuring the Commissioner and operational managers that appropriated funds are spent only for authorized purposes, that tax revenues are properly safeguarded, and that public confidence in the integrity of Revenue Service employees is maintained.

General and special funds—Continued

SALARIES AND EXPENSES—Continued

Object Classification (in thousands of dollars)

Identification code 15-45-0911-0-1-803	1975 act.	1976 est.	TQ est.	1977 est.
Direct program:				
Personnel compensation:				
11.1 Permanent positions	30,610	33,587	8,511	32,237
11.3 Positions other than permanent	957	850	215	850
11.5 Other personnel compensation	868	698	177	695
Total personnel compensation	32,435	35,135	8,903	33,782
12.1 Personnel benefits: Civilian	3,098	3,577	895	3,620
21.0 Travel and transportation of persons	2,127	2,710	677	3,044
22.0 Transportation of things	302	346	87	364
23.0 Rent, communications, and utilities	1,551	1,826	463	3,567
24.0 Printing and reproduction	429	428	107	456
25.0 Other services	789	1,160	290	932
26.0 Supplies and materials	311	368	92	349
31.0 Equipment	375	340	85	155
42.0 Insurance claims and indemnities	5	5	1	5
Total costs, funded	41,369	45,825	11,585	46,700
94.0 Change in selected resources	238			
Total direct program	41,607	45,825	11,585	46,700
Reimbursable program:				
Personnel compensation:				
11.1 Permanent positions	1,272	1,630	410	1,640
11.3 Positions other than permanent	13	37	9	37
11.5 Other personnel compensation	75			
Total personnel compensation	1,360	1,667	413	1,677
12.1 Personnel benefits: Civilian	101	149	38	150
21.0 Travel and transportation of persons	142	150	38	150
22.0 Transportation of things	23			
25.0 Other services	6			
26.0 Supplies and materials	1			
Total reimbursable program	1,633	1,966	493	1,977
99.0 Total obligations	43,240	47,791	12,078	48,677

Personnel Summary

Direct:				
Total number of permanent positions	1,273	1,365		1,374
Full-time equivalent of other positions	106	100		100
Average paid employment	1,267	1,471		1,771
Average GS grade	10.07	10.24		10.32
Average GS salary	$18,621	$19,387		$19,538
Average WG salary	$12,223	$12,103		$13,380
Reimbursable:				
Total number of permanent positions	46	79		79
Full-time equivalent of other positions	2	1		1
Average paid employment	48	80		80
Average GS grade	8.74	8.62		8.62
Average GS salary	$15,225	$15,542		$15,542
Average FC grade established by Administrator, Agency for International Development (75 Stat. 450)	12.40	12.40		12.40
Average FC salary	$33,663	$32,663		$32,663

ACCOUNTS, [COLLECTIONS] *COLLECTION AND TAXPAYER SERVICE*

For necessary expenses of the Internal Revenue Service for processing tax returns, revenue accounting, providing assistance to taxpayers, securing unfiled tax returns, and collecting unpaid taxes; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; including not to exceed $10,000,000 for employees on temporary appointments and not to exceed $183,000 for salaries of personnel engaged in preemployment training of data transcriber applicants; [$771,500,000] *$789,900,000*.

[For "Accounts, collection and taxpayer service" for the period July 1, 1976, through September 30, 1976, $192,875,000.] (*Title 26 U.S.C., Treasury Department Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0912-0-1-803	1975 act.	1976 est.	TQ est.	1977 est.
Program by activities:				
Direct program:				
1. Data processing operations	377,108	411,360	103,784	424,805
2. Collection	221,411	242,992	61,263	229,732
3. Taxpayer service	106,751	123,781	31,107	122,819
4. Statistical reporting	11,795	13,607	3,436	12,544
Total direct program	717,065	791,740	199,690	789,900
Reimbursable program:				
1. Data processing operations	2,126	16,830	11,783	23,523
2. Collection	68			
3. Taxpayer service	186			
4. Statistical reporting	101	13	3	13
Total reimbursable program	2,479	16,843	11,786	23,536
Total program costs, funded	719,544	808,583	211,476	813,436
Change in selected resources (stores, undelivered orders and advances)	15,377			
10 Total obligations	734,921	808,583	211,476	813,436
Financing:				
Receipts and reimbursements from:				
11 Federal funds	−2,066	−16,404	−11,678	−23,091
14 Non-Federal sources	−393	−439	−108	−445
25 Unobligated balance lapsing	1,157			
Budget authority	733,600	791,740	199,690	789,900
Budget authority:				
40 Appropriation	733,600	771,500	192,875	789,900
44.20 Supplemental now requested for civilian pay raises		20,240	6,815	
Relation of obligations to outlays:				
71 Obligations incurred, net	732,442	791,740	199,690	789,900
72 Obligated balance, start of period	69,498	68,774	70,695	71,545
74 Obligated balance, end of period	−68,774	−70,695	−71,545	−72,340
77 Adjustments in expired accounts	−2,071			
90 Outlays, excluding pay raise supplemental	731,096	770,440	192,810	782,603
91.20 Outlays from civilian pay raise supplemental		19,379	6,230	1,145

[1] Includes capital outlay as follows: 1975, $8,582 thousand; 1976, $9,714 thousand; TQ, $1,428 thousand; 1977, $3,976 thousand.

This appropriation provides for processing tax returns and related documents, and maintaining accurate, current taxpayer accounts by means of an automated system. It also provides for taxpayer assistance and for collecting delinquent taxes and securing unfiled returns. Statistical reporting responsibilities of the Internal Revenue Service also come under this appropriation.

1. *Data processing operations.*—This activity provides for all actions associated with the mailing out of tax return forms and instructions, receipt of completed returns and payments, deposit of the payments, and verification through an automated master file system of the accuracy of information provided on the tax returns. It provides for payment of refunds, offset of refunds against delinquent accounts, issuance of notices that payments are overdue, identification of possible nonfilers for investigation, and assistance in the selection of tax returns for audit.

2. *Collection.*—This activity is responsible for collecting unpaid taxes and securing unfiled returns.

3. *Taxpayer service.*—This activity aids voluntary compliance with Federal tax laws on the part of all taxpayers by informing them of their responsibilities and by providing service which will assist them in meeting their obligations.

4. *Statistical reporting.*—This activity prepares statistical information on income and on various features of the tax system, performs other statistical research, and forecasts the number of tax returns to be filed by type, size, and geographical area.

SELECTED WORKLOAD DATA
(in millions)

	1975 act.	1976 est.	TQ est.	1977 est.
Tax returns filed	125.1	[1] 128.0	8.227	128.7
Individual income tax returns:				
(a) To be filed	84.0	86.5	1.596	86.4
(b) Refunds scheduled	[1] 70.9	70.5	1.407	68.1
Taxpayers assisted	41.0	41.9	5.4	40.3
Accounts receivable closed	2.920	2.719	.950	2.232
Delinquent returns secured	.943	.950	.240	.900

[1] Includes 54.7 million tax rebate checks.
[2] Includes 3 million individual returns due to provisions of Tax Reduction Act.

SELECTED REVENUE DATA
[In millions of dollars]

	1975 act.	1976 est.	TQ est.	1977 est.
Gross revenue	293,823	304,000	76,000	358,000
Additional assessments on individual income tax returns from mathematical verification, validation of estimated tax payments, delinquency checks, and duplicate filers	687	700	5	700
Accounts receivable collections	2,870	3,336	1,232	2,914
Delinquent return assessments	548	585	150	465

Object Classification (in thousands of dollars)

Identification code 15-45-0912 0 1 803	1975 act.	1976 est	TQ est	1977 est.
Direct programs:				
Personnel compensation:				
11.1 Permanent positions	387,649	446,418	112,585	432,778
11.3 Positions other than permanent	71,954	68,551	17,350	68,923
11.5 Other personnel compensation	15,317	12,374	3,115	12,461
Total personnel compensation	474,920	527,274	133,051	514,162
12.1 Personnel benefits: Civilian	44,408	47,840	12,062	49,183
21.0 Travel and transportation of persons	14,819	16,740	4,185	15,590
22.0 Transportation of things	12,978	16,530	4,135	13,889
23.0 Rent, communications, and utilities	98,537	114,815	28,731	134,357
24.0 Printing and reproduction	34,673	30,698	7,674	31,386
25.0 Other services	21,749	25,173	6,260	20,302
26.0 Supplies and materials	6,385	6,981	1,746	7,125
31.0 Equipment	8,582	5,114	1,426	3,976
42.0 Insurance claims and indemnities	14	23	5	20
Total costs, funded	717,065	791,743	199,690	789,900
94.0 Change in selected resources	15,377			
Total direct program	732,442	791,743	199,690	789,900
Reimbursable program:				
Personnel compensation:				
11.1 Permanent positions	1,185	3,670	2,717	5,554
11.3 Positions other than permanent	696	10,990	8,229	14,586
11.5 Other personnel compensation	3			
Total personnel compensation	1,884	14,660	10,946	20,140
12.1 Personnel benefits: Civilian	153	1,202	389	1,593
21.0 Travel and transportation of persons	7	76	13	57
23.0 Rent, communications, and utilities	200	94	80	321
24.0 Printing and reproduction	122	20	1	5
25.0 Other services	55	93	18	70
26.0 Supplies and materials	1	18	4	15
31.0 Equipment	7	700	335	1,342
Total reimbursable program	2,479	16,843	11,786	23,536
99.0 Total obligations	734,921	808,583	211,476	813,436

Personnel Summary

Direct:				
Total number of permanent positions	33,917	36,553		34,976
Full-time equivalent of other positions	10,174	9,184		9,680
Average paid employment	42,517	44,248		42,567
Average GS grade	7.06	7.05		7.11
Average GS salary	$12,260	$14,888		$12,866
Average WB salary	$11,566	$10,899		$11,705
Reimbursable:				
Total number of permanent positions	136	339		470
Full-time equivalent of other positions	83	1,168		1,186
Average paid employment	219	1,511		1,656
Average GS grade	4.82	4.77		4.77
Average GS salary	$9,367	$9,570		$9,570

COMPLIANCE

For necessary expenses of the Internal Revenue Service for determining and establishing tax liabilities, and for investigation and enforcement activities, including purchase (not to exceed [three hundred and twenty-six] *one-for* of which [one hundred and ninety-eight] *ninety-one* shall be for replacement only[, for police-type use]) and hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$836,000,000] *$814,000,000*.

[For "Compliance" for the period July 1, 1976, through September 30, 1976, $207,500,000.] *(Title 26 U.S.C., Treasury Department Appropriations Act, 1976.)*

Program and Financing (in thousands of dollars)

Identification code 15 45 0913 0 1 803	1975 act	1976 est	TQ est	1977 est
Program by activities:				
Direct program:				
1. Audit of tax returns	572,228	603,534	152,583	590,900
2. Tax fraud and special investigations	99,569	104,723	26,471	98,139
3. Taxpayer conferences and appeals	36,472	40,106	10,144	38,767
4. Technical rulings and services	17,033	19,756	4,994	19,299
5. Legal services	34,694	37,979	9,603	37,447
6. Employee plans	22,352	27,145	7,014	30,467
7. Exempt organizations	19,135	20,061	5,071	19,881
Total direct program	802,263	853,955	215,840	834,900
Reimbursable program:				
1. Audit of tax returns	211	1,571	392	1,572
2. Tax fraud and special investigations	53			
3. Taxpayer conferences and appeals	10			
5. Legal services	7			
6. Employee plans	8			
7. Exempt organizations	3			
Total reimbursable programs	302	1,571	392	1,572
Total program costs, funded[1]	802,565	855,526	216,232	836,472
Change in selected resources (stores, undelivered orders and advances)	8,399			
10 Total obligations	810,964	855,526	216,232	836,472
Financing:				
11 Receipts and reimbursements from: Federal funds	−322	−1,571	−392	−1,572
25 Unobligated balance lapsing	338			
Budget authority	811,000	853,955	215,840	834,900
Budget authority:				
40 Appropriation	811,000	830,000	207,500	834,900
44.20 Supplemental now requested for civilian pay raises		23,955	8,340	
Relation of obligations to outlays:				
71 Obligations incurred, net	810,642	853,955	215,840	834,900
72 Obligated balance, start of period	64,683	46,814	48,643	49,598
74 Obligated balance, end of period	−46,814	−48,643	−49,598	−55,615
77 Adjustments in expired accounts	−673			
90 Outlays, excluding pay raise supplemental	827,859	829,190	207,295	827,114
91.20 Outlays from civilian pay raise supplemental		22,936	7,590	1,769

[1] Includes capital outlay as follows: 1975, $11,331 thousand; 1976, $5,676 thousand; TQ, $1,419 thousand; 1977, $1,978 thousand.

This appropriation provides for detecting and correcting noncompliance with the tax laws.

1. *Audit of tax returns.*—This activity provides for a selective examination of tax returns to see if taxpayers have properly complied with the internal revenue laws. It corrects errors and explains corrections to the taxpayers. It also makes determinations as to whether certain organizations or funds are exempt from taxation.

2. *Tax fraud and special investigations.*—This activity provides for enforcement of the criminal statutes relating to violations of tax laws. It investigates cases of suspected intent to defraud, recommends prosecution as warranted, and assists in the preparation and trial of criminal tax cases.

3. *Taxpayer conferences and appeals.*—This activity provides for administrative consideration and settlement of taxpayer appeals of audit findings.

4. *Technical rulings and services.*—This activity develops tax return forms, instructions, and guides; issues rulings and opinions as to application of the tax laws, and meets with taxpayer groups to review and resolve special tax problems.

5. *Legal services.*—This activity comprises the legal counsel and legal assistance needed by the Service to administer and enforce the internal revenue laws.

6. *Employee plans.*—This activity monitors private pension plans to insure compliance with the Employee Retirement Income Security Act of 1974.

7. *Exempt organizations.*—This activity determines whether organizations seeking tax-exempt status meet certain tests to qualify, and examines tax returns of those organizations to insure compliance with such an exemption. It also examines the returns of private foundations to insure payment of proper excise taxes.

SELECTED WORKLOAD DATA

[In thousands]

	1975 act.	1976 est.	TQ est.	1977 est.
Returns examined	3,594	3,840	960	4,220
Tax lawyers in general investigations	6.7	7.0	1.3	6.4
Special enforcement program investigations	1.3	1.1	0.2	1.0
Appellate work unit dispositals	18.8	19.9	5.0	19.0
Total technical projects	40.4	41.8	10.4	41.8
Total counsel cases	35.8	33.8	9.7	35.4
EP determination letters, examinations, and investigations	142.0	162.0	62.2	205.0
EO determination letters, examinations, and investigations	63.6	68.0	15.0	60.1

SELECTED REVENUE DATA

[In millions]

Audit assessments[1]	4,526	4,555	1,139	4,480

[1] Includes penalties and interest.

General and special funds—Continued

COMPLIANCE—Continued

Object Classification (in thousands of dollars)

Identification code 15-45-0913-0-1-803	1975 act.	1976 est.	TQ est.	1977 est.
Direct program:				
Personnel compensation:				
11.1 Permanent positions	580,591	622,828	157,845	616,375
11.3 Positions other than permanent	9,373	8,935	2,266	8,837
11.5 Other personnel compensation	6,515	4,821	1,222	4,526
11.8 Special personal services payments	684	701	175	701
Total personnel compensation	597,163	637,285	161,509	630,439
12.1 Personnel benefits: Civilian	59,899	63,764	16,104	66,699
21.0 Travel and transportation of persons	26,959	29,831	7,458	33,060
22.0 Transportation of things	2,879	4,298	1,200	4,417
23.0 Rent, communications, and utilities	78,520	86,136	21,534	73,578
24.0 Printing and reproduction	8,097	8,272	2,068	8,285
25.0 Other services	10,541	11,745	2,936	9,455
26.0 Supplies and materials	6,546	6,406	1,602	6,450
31.0 Equipment	11,331	5,676	1,419	1,978
42.0 Insurance claims and indemnities	34	40	10	40
Total costs, funded	802,263	853,955	215,840	834,900
94.0 Change on selected resources	8,399			
Total direct program	810,662	853,955	215,840	834,900
Reimbursable program:				
Personnel compensation:				
11.1 Permanent positions	102	1,276	319	1,276
11.3 Positions other than permanent	7			
11.5 Other personnel compensation	3			
Total personnel compensation	117	1,276	319	1,276
12.1 Personnel benefits: Civilian	2	110	27	111
21.0 Travel and transportation of persons		60	15	60
23.0 Rent, communications, and utilities	98	60	15	60
24.0 Printing and reproduction	4			
25.0 Other services	51	65	16	65
31.0 Equipment	30			
Total reimbursable program	302	1,571	392	1,572
99.0 Total obligations	810,964	855,525	216,232	836,472

Personnel Summary

Direct:				
Total number of permanent positions	38,272	39,170	.....	38,409
Full-time equivalent of other positions	1,328	1,072	.....	1,033
Average paid employment	37,955	38,042	.....	37,221
Average GS grade	9.09	9.21	.....	9.25
Average GS salary	$15,986	$17,426	.....	$17,567
Average WB salary	$11,962	$11,511	.....	$12,468
Reimbursable:				
Total number of permanent positions	10	30	.....	30
Full-time equivalent of other positions	.....	.....	.....	.....
Average paid employment	10	30	.....	30
Average GS grade	6.41	6.43	.....	6.43
Average GS salary	$12,587	$13,483	.....	$13,483

PAYMENT WHERE CREDIT EXCEEDS LIABILITY FOR TAX

Program and Financing (in thousands of dollars)

Identification code 15-45-0903-0-1-604	1975 act.	1976 est.	TQ est.	1977 est.
Program by activities:				
10 Payment where credit exceeds liability for tax (total costs—obligations) (object class 44.0)	.....	1,200,000	.....	600,000
Financing:				
60 Budget authority (appropriation)	.....	1,200,000	.....	600,000
Relation of obligations to outlays:				
71 Obligations incurred, net	.....	1,200,000	.....	600,000
90 Outlays	.....	1,200,000	.....	600,000

As provided by law, there will be instances wherein the earned income credit will exceed the amount of tax liability owed, resulting in a payment to the filer. The 1977 estimate extends the credit through the first half of 1976, as provided by the Revenue Adjustment Act of 1975 (Public Law 94–164).

REFUNDING INTERNAL REVENUE COLLECTIONS, INTEREST

Program and Financing (in thousands of dollars)

Identification code 15-45-0904-0-1-902	1975 act	1976 est.	TQ est.	1977 est.
Program by activities:				
10 Payment of interest on refunds (total costs—obligations) (object class 43.0)	236,313	334,999	61,940	396,999
Financing:				
17 Recovery of prior-period obligations (repayment of interest, Federal Unemployment Tax Act refunds)	—685	—999	—440	—999
60 Budget authority (appropriation) (permanent, indefinite)	235,628	334,000	61,500	396,000
Relation of obligations to outlays:				
71 Obligations incurred, net	235,628	334,000	61,500	396,000
90 Outlays	235,628	334,000	61,500	396,000

Under certain circumstances, as provided in 26 U.S.C. 6611, interest is paid at 7% per annum on internal revenue collections which must be refunded.

INTERNAL REVENUE COLLECTIONS FOR PUERTO RICO

Program and Financing (in thousands of dollars)

Identification code 15-45-5737-0-2-852	1975 act.	1976 est.	TQ est.	1977 est.
Program by activities:				
10 Internal Revenue collections for Puerto Rico (total costs—obligations) (object class 43.0)	111,758	114,000	23,500	114,000
Financing:				
60 Budget authority (appropriation) (permanent, indefinite, special fund)	111,758	114,000	23,500	114,000
Relation of obligations to outlays:				
71 Obligations incurred, net	111,758	114,000	23,500	114,000
72 Obligated balance, start of period	22,396	12,635	12,635	12,635
74 Obligated balance, end of period	—12,635	—12,635	—12,635	—12,635
90 Outlays	121,519	114,000	23,500	114,000

Taxes collected under the Internal Revenue laws of the United States on articles produced in Puerto Rico and either transported to the United States or consumed on the island are paid to Puerto Rico (26 U.S.C. 7652).

Public enterprise funds:

FEDERAL TAX LIEN REVOLVING FUND

Program and Financing (in thousands of dollars)

Identification code 15-45-4113-0-3-803	1975 act	1976 est.	TQ est.	1977 est.
Program by activities:				
10 Redemption of real property (costs—obligations) (object class 32.0)	401	1,000	250	1,000
Financing:				
14 Receipts and reimbursements from: Non-Federal sources[1]	—287	—1,080	—250	—1,000
21 Unobligated balance available, start of period	—359	—744	—824	—824
24 Unobligated balance available, end of period	744	824	824	824
40 Budget authority (appropriation)	500	.....	.....	.....
Relation of obligations to outlays:				
71 Obligations incurred, net	114	—80	.....	.....
90 Outlays	114	—80	.....	.....

[1] Proceeds of subsequent sales of real property under 26 U.S.C. 7810.

This revolving fund was established pursuant to section 112(a) of the Federal Tax Lien Act of 1966 solely to serve as the source of financing the redemption of real property by the United States. In collecting delinquent taxes,

situations arise where it is to the Government's advantage to buy property on which it has a lien when the property is sold at a foreclosure sale brought by the holder of a lien which is superior to the Government's. The advantage arises when the property is worth substantially more than the first lienholder's equity, but is being sold for an amount that barely covers that equity, thereby leaving no proceeds to apply against delinquent taxes. Under these circumstances if the Government buys the property and subsequently puts it up for sale under more advantageous conditions, it is possible to realize sufficient profit on the transaction to fully or partially collect the amount of taxes due. The revolving fund is reimbursed from the proceeds of the sale in an amount equal to the amount expended from the fund for the redemption. The balance of the proceeds are applied against the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale. The remainder, if any, would revert to the parties legally entitled to it.

INTERNAL REVENUE SERVICE

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For necessary expenses of the Internal Revenue Service, not otherwise provided for, including executive direction, administrative support, and internal audit and security; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$11,600,000] *$15,820,000.*

For "Salaries and expenses" for the period July 1, 1976, through September 30, 1976, $11,620,000. (Title 26 U.S.C.; Treasury Department Appropriations Act, 1976.)

Program and Financing (in thousands of dollars)

Identification code 15-45-0911-0-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
Direct program:			
1. Executive direction	15,709	18,249	19,715
2. Internal audit and security	20,791	23,721	25,555
Total direct program	36,500	41,970	45,270
Reimbursable program:			
1. Executive direction	2,380	2,054	2,029
2. Internal audit and security	291	225	225
Total, reimbursable program	2,671	2,279	2,295
Total program costs, funded[1]	39,171	44,249	47,565
Change in selected resources (stores and undelivered orders)	−47	.....	.....
10 Total obligations	39,124	44,249	47,565
Financing:			
Receipts and reimbursements from:			
11 Federal funds	−2,454	−2,129	−2,145
14 Non-Federal sources	−217	−150	−150
25 Unobligated balance lapsing	109	.....	.....
Budget authority	36,562	41,970	45,270
Budget authority:			
40 Appropriation	37,087	41,000	45,270
Rescission of enacted appropriation now pending (No. R75-41)	.....	−530	.....
41 Transferred to other accounts	−525	.....	.....
43 Appropriation (adjusted)	36,562	40,470	45,270
44, 20 Proposed supplemental for civilian pay raises	.....	1,500	.....
Relation of obligations to outlays:			
71 Obligations incurred, net	36,453	41,970	45,270
72 Obligated balance, start of year	2,603	3,322	2,965
74 Obligated balance, end of year	−3,322	−2,965	−3,705

77	Adjustments in expired accounts	81	.....	.....
90	Outlays, excluding pay raise supplemental	35,815	40,875	44,411
91.20	Outlays from civilian pay raise supplemental	.....	1,452	48

[1] Includes capital outlay as follows: 1974, $543 thousand; 1975, $480 thousand; 1976, $499 thousand.

This appropriation provides for the overall planning and direction of the Internal Revenue Service, for management of the Service's support programs and for internal audit and internal security. This 1976 appropriation request provides for maintaining at adequate levels both the Service's support programs and those programs concerned with sound internal procedures and employee integrity.

1. *Executive direction.*—This activity sets policies and goals; provides the research and planning necessary for orderly and effective accomplishment of the Revenue Service's mission; provides leadership and direction in the execution of plans; and provides for the administrative support of all operations.

2. *Internal audit and security.*—This activity establishes and verifies maintenance of quality controls in the Revenue Service. It provides a continuing and independent review of all Revenue Service operations, thereby assuring the Commissioner and operational managers that appropriated funds are spent only for authorized purposes, that tax revenues are properly safeguarded, and that public confidence in the integrity of Revenue Service employees is maintained.

Object Classification (in thousands of dollars)

Identification code 15-45-0911-0-1-803	1974 actual	1975 est.	1976 est.
Direct program:			
Personnel compensation:			
11.1 Permanent positions	27,037	30,957	32,752
11.3 Positions other than permanent	592	801	820
11.5 Other personnel compensation	732	743	759
Total personnel compensation	28,411	32,501	34,331
12.1 Personnel benefits: Civilian	2,626	2,992	3,470
21.0 Travel and transportation of persons	1,990	2,416	2,727
22.0 Transportation of things	224	253	352
23.0 Rent, communications, and utilities	1,093	1,540	1,879
24.0 Printing and reproduction	228	345	428
25.0 Other services	1,082	1,117	1,196
26.0 Supplies and materials	293	321	373
31.0 Equipment	513	480	499
42.0 Insurance claims and indemnities	10	5	5
Total costs, funded	36,500	41,970	45,260
94.0 Change in selected resources	−47	.....	.....
Total direct program	36,453	41,970	45,260
Reimbursable program:			
Personnel compensation:			
11.1 Permanent positions	2,006	1,911	1,926
11.3 Positions other than permanent	135	.....	.....
11.5 Other personnel compensation	87	25	25
Total personnel compensation	2,228	1,936	1,951
12.1 Personnel benefits: Civilian	171	165	166
21.0 Travel and transportation of persons	181	128	118
22.0 Transportation of things	21	25	25
24.0 Printing and reproduction	70	.....	.....
25.0 Other services	.....	25	25
Total reimbursable program	2,671	2,279	2,295
99.0 Total obligations	39,124	44,249	47,555

Personnel Summary

Direct:			
Total number of permanent positions	1,650	1,792	1,882
Full-time equivalent of other positions	84	100	100
Average paid employment	1,741	1,823	1,896
Average GS grade	10.32	10.22	10.23
Average GS salary	$18,321	$18,414	$18,425
Average WB salary	$12,360	$10,241	$11,448
Reimbursable:			
Total number of permanent positions	69	85	85
Full-time equivalent of other positions	5	.....	.....
Average paid employment	101	85	85
Average GS grade	9.84	8.89	8.89
Average GS salary	$22,057	$22,644	$22,644
Average FC grade established by Administrator, Agency for International Development (75 Stat. 450)	12.00	12.00	12.00
Average FC salary	$28,380	$28,380	$28,380

SALARIES AND EXPENSES

(Supplemental now requested)

Program and Financing (in thousands of dollars)

Identification code 15-45-0911-1-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
1. Executive direction	.....	229	.....
2. Internal audit and security	.....	.....	.....
10 Total obligations	.....	229	.....
Financing:			
40 Budget authority (proposed supplemental appropriation)	.....	229	.....
Relation of obligations to outlays:			
71 Obligations incurred, net	.....	229	.....
72 Obligated balance, start of year	.....	.....	9
74 Obligated balance, end of year	.....	−9	.....
90 Outlays	.....	220	9

A narrative statement, describing the purpose of this request, and proposed appropriation language are included in Part III of this volume.

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

For necessary expenses of the Internal Revenue Service for processing tax returns, revenue accounting, providing assistance to taxpayers, securing unfiled tax returns, and collecting unpaid taxes; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; including not to exceed $10,000,000 for employees on temporary appointments and not to exceed $183,000 for salaries of personnel engaged in preemployment training of data transcriber applicants; [$712,000,000] *$772,881,000.*

For "Accounts, collection and taxpayer service" for the period July 1, 1970, through September 30, 1976, $193,805,000. (*Title 26 U.S.C.; Treasury Department Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0912-0-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
Direct program:			
1. Data processing operations	310,016	390,051	400,469
2. Collection	190,357	218,883	237,288
3. Taxpayer service	85,253	101,895	121,913
4. Statistical reporting	10,606	12,834	13,211
Total direct program	594,232	723,663	772,881
Reimbursable program:			
1. Data processing operations	5,198	3,788	3,809
2. Collection	103	.....	.....
3. Taxpayer service	22	.....	.....

General and special funds—Continued

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE—Continued

Program and Financing (in thousands of dollars)—Continued

Identification code 15-45-0912-0-1-803		1974 actual	1975 est.	1976 est.
	Program by activities—Continued			
	Reimbursable program—Continued			
	4. Statistical reporting	289	486	487
	Total reimbursable program	5,612	4,274	4,296
	Total program costs, funded [1]	599,844	727,937	777,177
	Change in selected resources (stores, undelivered orders and advances)	9,751		
10	Total obligations	609,595	727,937	777,177
	Financing:			
	Receipts and reimbursements from:			
11	Federal funds	−5,690	−4,262	−4,284
14	Non-Federal sources	−12	−12	−12
25	Unobligated balance lapsing	2,587		
	Budget authority	606,570	723,663	772,881
	Budget authority:			
40	Appropriation:			
	Definite	610,683	712,600	772,881
	Indefinite	2,642		
	Rescission of enacted appropriation now pending (No. R75-42)		−9,230	
41	Transferred to other accounts	−6,755		
43	Appropriation (adjusted)	606,570	703,370	772,881
44.20	Proposed supplemental for civilian pay raises		20,293	
	Relation of obligations to outlays:			
71	Obligations incurred, net	603,983	723,663	772,881
72	Obligated balance, start of year	51,991	69,498	63,118
74	Obligated balance, end of year	−69,498	−63,118	−76,798
77	Adjustments in expired accounts	−500		
90	Outlays, excluding pay raise supplemental	585,976	710,404	758,547
91.20	Outlays from civilian pay raise supplemental		19,639	654

[1] Includes capital outlay as follows: 1974, $7,342 thousand; 1975 $6,960 thousand; 1976, $5,941 thousand.

This appropriation provides for processing tax returns and related documents, and maintaining accurate, current taxpayer accounts by means of an automated system. It also provides for taxpayer assistance and for collecting delinquent taxes and securing unfiled returns. Statistical reporting responsibilities of the Internal Revenue Service come under this appropriation.

1. *Data processing operations.*—This activity provides for all actions associated with the mailing out of tax return forms and instructions, receipt of completed returns and payments, deposit of the payments, and verification through an automated master file system of the accuracy of information provided on the tax returns. It provides for payment of refunds, offset of refunds against delinquent accounts, issuance of notices that payments are overdue, identification of possible nonfilers for investigation, and assistance in the selection of tax returns for audit.

2. *Collection.*—This activity is responsible for collecting unpaid taxes and securing unfiled returns.

3. *Taxpayer service.*—This activity, which became a separate organization apart from collection in 1975, aids voluntary compliance with Federal tax laws on the part of all taxpayers by informing them of their responsibilities and by providing service which will assist them in meeting their obligations.

4. *Statistical reporting.*—This activity prepares statistical information on income and on various features of the tax system, performs other statistical research, and forecasts the number of tax returns to be filed by type, size, and geographical area.

The increases requested for 1976 in collection and taxpayer service are to keep pace with workload resulting from growth in population and changes in the economy.

SELECTED WORKLOAD DATA

[In millions]

	1974 actual	1975 estimate	1976 estimate
Tax returns filed	121.6	124.1	126.5
Individual income tax returns:			
(a) To be filed	81.6	83.3	85.3
(b) Refunds scheduled	64.4	65.9	67.5
Taxpayers assisted	34.4	36.1	38.3
Delinquent accounts closed	3.3	3.4	3.5
Delinquent returns secured	.8	1.1	1.2

SELECTED REVENUE DATA

[In millions]

	1974 actual	1975 estimate	1976 estimate
Gross revenue	268,952	288,000	314,000
Additional assessments on individual income tax returns from verifying taxpayer arithmetic, from verifying actual estimated tax payments against credits claimed, and from additional charges for failure to make adequate payments of estimated tax	907	895	790
Delinquent account collections	2,528	2,566	2,668
Delinquent return assessments	477	577	650

Object Classification (in thousands of dollars)

Identification code 15-45-0912-0-1-803		1974 actual	1975 est.	1976 est.
	Direct program:			
	Personnel compensation:			
11.1	Permanent positions	343,631	402,435	431,313
11.3	Positions other than permanent	61,444	63,063	63,937
11.5	Other personnel compensation	12,531	11,738	11,869
	Total personnel compensation	417,606	477,236	507,119
12.1	Personnel benefits: Civilian	37,445	43,444	46,268
21.0	Travel and transportation of persons	13,279	13,502	16,117
22.0	Transportation of things	11,139	14,474	16,539
23.0	Rent, communications, and utilities	59,956	107,185	114,925
24.0	Printing and reproduction	24,481	27,980	33,723
25.0	Other services	26,423	25,874	25,200
26.0	Supplies and materials	5,548	6,988	6,999
31.0	Equipment	7,342	6,960	5,941
42.0	Insurance claims and indemnities	13	20	20
	Total costs, funded	594,232	723,663	772,881
94.0	Change in selected resources	9,751		
	Total direct program	603,983	723,663	772,881
	Reimbursable program:			
	Personnel compensation:			
11.1	Permanent positions	2,455	2,037	2,058
11.3	Positions other than permanent	2,173	1,746	1,746
11.5	Other personnel compensation	30		
	Total personnel compensation	4,658	3,783	3,804
12.1	Personnel benefits: Civilian	386	351	352
21.0	Travel and transportation of persons	16	48	50
22.0	Transportation of things	3		
23.0	Rent, communications, and utilities	286		
24.0	Printing and reproduction	7	7	5
25.0	Other services	128	70	70
26.0	Supplies and materials	127	15	15
31.0	Equipment	1		
	Total, reimbursable program	5,612	4,274	4,296
99.0	Total obligations	609,595	727,937	777,177

Personnel Summary

Direct:			
Total number of permanent positions	32,097	35,712	36,641
Full-time equivalent of other positions	9,357	8,899	8,899
Average paid employment	39,597	42,571	44,051
Average GS grade	6.91	6.91	7.05
Average GS salary	$11,419	$12,048	$12,160
Average WB salary	$10,470	$9,556	$10,329
Reimbursable:			
Total number of permanent positions	148	142	142
Full-time equivalent of other positions	301	147	147
Average paid employment	538	328	328
Average GS grade	4.82	4.76	4.76
Average GS salary	$16,587	$14,490	$14,490

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

(Supplemental now requested)

Program and Financing (in thousands of dollars)

Identification code 15-45-0912-1-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
1. Data processing operations		973	
2. Taxpayer service		964	
10 Total obligations		1,937	
Financing:			
40 Budget authority (proposed supplemental appropriation)		1,937	
Relation of obligations to outlays:			
71 Obligations incurred, net		1,937	
72 Obligated balance, start of year			78
74 Obligated balance, end of year		−78	
90 Outlays		1,859	78

A narrative statement, describing the purpose of this request, and proposed appropriation language are included in Part III of this volume.

COMPLIANCE

For necessary expenses of the Internal Revenue Service, for determining and establishing tax liabilities, and for investigation and enforcement activities, including purchase (not to exceed [two hundred and three of which seventy-eight] *three hundred and twenty-six of which one hundred and ninety-eight* shall be for replacement only, for police-type use) and hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$791,000,000] *$817,817,000*.

For "Compliance" for the period July 1, 1976, through September 30, 1976, $209,676,000. (*Title 26, U.S.C.; Treasury Department Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0913-0-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
Direct program:			
1. Audit of tax returns	489,463	568,674	592,790
2. Tax fraud and special investigations	84,917	100,380	103,408
3. Taxpayer conferences and appeals	32,433	37,745	38,904
4. Technical rulings and services	18,642	18,295	19,196
5. Legal services	30,052	35,516	36,880
6. Employee plans [1]		19,022	26,963
7. Exempt organizations [1]		19,380	19,496
Total direct program	655,507	799,012	837,637
Reimbursable program:			
1. Audit of tax returns	965	1,475	1,475
2. Tax fraud and special investigations	111		
3. Taxpayer conferences and appeals	7		
5. Legal services	1		
Total reimbursable program	1,084	1,475	1,475
Total program costs, funded [2]	656,591	800,487	839,112
Change in selected resources (stores, undelivered orders, and advances)	7,585		
10 Total obligations	664,176	800,487	839,112
Financing:			
Receipts and reimbursements from:			
11 Federal funds	−1,070	−1,459	−1,459
14 Non-Federal sources	−14	−16	−16
25 Unobligated balance lapsing	3,000		
Budget authority	666,092	799,012	837,637
Budget authority:			
40 Appropriation:			
Definite	664,430	791,000	837,637
Indefinite	3,617		
Rescission of enacted appropriation now pending (No. R75-43)		−10,240	
41 Transferred to other accounts	−1,955		
43 Appropriation (adjusted)	666,092	780,760	837,637
44.20 Proposed supplemental for civilian pay raises		18,252	
Relation of obligations to outlays:			
71 Obligations incurred, net	663,092	799,012	837,637
72 Obligated balance, start of year	53,757	64,683	57,465
74 Obligated balance, end of year	−64,683	−57,465	−72,192
77 Adjustments in expired accounts	−278		
90 Outlays, excluding pay raise supplemental	651,888	788,567	822,321
91.20 Outlays from civilian pay raise supplemental		17,663	589

[1] 1974 costs related to these programs are included in activities 1 through 5.
[2] Includes capital outlay as follows: 1974, $9,332 thousand; 1975, $6,788 thousand; 1976, $6,692 thousand.

This appropriation provides for detecting and correcting noncompliance with the tax laws and for meeting the Internal Revenue Service's responsibilities in special law enforcement programs.

Additional funds requested for 1976 are necessary to maintain the Service's ability to assure equitable application and adequate enforcement of the tax laws and thus maintain the high rate of voluntary compliance.

1. *Audit of tax returns.*—This activity provides for selective examination of tax returns to see if taxpayers have properly complied with the internal revenue laws. It corrects errors and explains corrections to the taxpayers.

2. *Tax fraud and special investigations.*—This activity provides for enforcement of the criminal statutes relating to violations of tax laws. It investigates cases of suspected intent to defraud; recommends prosecution as warranted; and assists in the preparation and trial of criminal tax cases. It is responsible for directing Service participation in the drive against organized crime and against narcotics traffickers.

3. *Taxpayer conferences and appeals.*—This activity provides for administrative consideration and settlement of taxpayer appeals of audit findings.

4. *Technical rulings and services.*—This activity develops tax return forms, instructions, and guides; issues rulings and opinions as to application of the tax laws and meets with taxpayer groups to review and resolve special tax problems.

5. *Legal services.*—This activity comprises the legal counsel and legal assistance needed by the Service to administer and enforce the internal revenue laws.

General and special funds—Continued

COMPLIANCE—Continued

6. *Employee plans.*—This activity provides for the review of employee pension plans to determine whether these plans meet the requirement of law.

7. *Exempt organizations.*—This activity provides for the review of organizations' operations to determine whether they are exempt from taxation.

SELECTED WORKLOAD DATA

[In thousands]

	1974 actual	1975 estimate	1976 estimate
Tax returns audited	2,822	3,290	3,290
Taxpayers in general investigations	5.7	6.3	6.4
Special enforcement program investigations	1.5	1.4	1.4
Appellate case dispositals	29.7	31.3	33.0

SELECTED REVENUE DATA

[In millions]

Audit assessments [1]	3,724	4,860	4,245

[1] Includes penalties and interest.

Object Classification (in thousands of dollars)

Identification code 15-45-0913-0-1-803	1974 actual	1975 est.	1976 est.
Direct program:			
Personnel compensation:			
11.1 Permanent positions	507,977	575,898	605,651
11.3 Positions other than permanent	8,547	8,460	8,624
11.5 Other personnel compensation	7,930	6,147	4,650
11.8 Special personal services payments	663	701	701
Total personnel compensation	525,117	591,206	619,626
12.1 Personnel benefits: Civilian	50,192	58,291	62,579
21.0 Travel and transportation of persons	25,983	29,711	30,478
22.0 Transportation of things	3,221	4,072	4,848
23.0 Rent, communications, and utilities	20,020	82,347	86,489
24.0 Printing and reproduction	5,143	6,732	8,276
25.0 Other services	11,190	13,597	12,175
26.0 Supplies and materials	5,061	6,228	6,434
31.0 Equipment	9,552	6,788	6,692
42.0 Insurance claims and indemnities	28	40	40
Total costs, funded	655,507	799,012	837,637
94.0 Change in selected resources	7,585		
Total direct program	663,092	799,012	837,637
Reimbursable program:			
Personnel compensation:			
11.1 Permanent positions	386	687	687
11.3 Positions other than permanent	12		
11.5 Other personnel compensation	15		
Total personnel compensation	413	687	687
12.1 Personnel benefits: Civilian	23	103	103
21.0 Travel and transportation of persons	25	57	60
23.0 Rent, communications, and utilities	44	63	60
24.0 Printing and reproduction	522	500	500
25.0 Other services	53	65	65
31.0 Equipment	4		
Total reimbursable program	1,084	1,475	1,475
99.0 Total obligations	664,176	800,487	839,112

Personnel Summary

Direct:			
Total number of permanent positions	35,292	38,572	39,463
Full-time equivalent of other positions	1,170	1,072	1,072
Average paid employment	34,424	37,882	38,488
Average GS grade	9.12	9.13	9.19
Average GS salary	$15,364	$15,888	$16,571
Average WB salary	$10,768	$10,042	$10,957
Reimbursable:			
Total number of permanent positions	30	50	50
Full-time equivalent of other positions	0	0	0
Average paid employment	26	45	45
Average GS grade	6.43	5.98	5.98
Average GS salary	$12,866	$13,739	$13,739

COMPLIANCE

(Supplemental now requested)

Program and Financing (in thousands of dollars)

Identification code 15-45-0913-1-1-803	1974 actual	1975 est.	1976 est.
Program by activities:			
6. Employee plans		4,419	
7. Exempt organizations		64	
10 Total obligations		4,483	
Financing:			
40 Budget authority (proposed supplemental appropriation)		4,483	
Relation of obligations to outlays:			
71 Obligations incurred, net		4,483	
72 Obligated balance, start of year			179
74 Obligated balance, end of year		−179	
90 Outlays		4,304	179

A narrative statement, describing the purpose of this request, and proposed appropriation language are included in Part III of this volume.

REFUNDING INTERNAL REVENUE COLLECTIONS, INTEREST

Program and Financing (in thousands of dollars)

Identification code 15-45-0904-0-1-902	1974 actual	1975 est.	1976 est.
Program by activities:			
10 Payment of interest on refunds (total costs—obligations) (object class 43.0)	220,921	240,155	390,855
Financing:			
17 Recovery of prior year obligations (repayment of interest, Federal Unemployment Tax Act refunds)	−678	−755	−855
60 Budget authority (appropriation) (permanent, indefinite)	220,243	239,400	390,000
Relations of obligations to outlays:			
71 Obligations incurred, net	220,243	239,400	390,000
90 Outlays	220,243	239,400	390,000

Under certain circumstances, as provided in 26 U.S.C. 6611, interest is paid at 9% per annum on internal revenue collections which must be refunded.

INTERNAL REVENUE COLLECTIONS FOR PUERTO RICO

Program and Financing (in thousands of dollars)

Identification code 15-45-5737-0-2-852	1974 actual	1975 est.	1976 est.
Program by activities:			
10 Internal Revenue collections for Puerto Rico (total costs—obligations) (object class 43.0)	111,387	116,000	118,000
Financing:			
60 Budget authority (appropriation) (permanent, indefinite, special fund)	111,387	116,000	118,000

	Relation of obligations to outlays:			
71	Obligations incurred, net	111,387	116,000	118,000
72	Obligated balance, *start of year*	12,493	22,396	22,396
74	Obligated balance, end of year	−22,396	−22,396	−22,396
90	Outlays	101,484	116,000	118,000

Taxes collected under the Internal Revenue laws of the United States on articles produced in Puerto Rico and either transported to the United States or consumed on the island are paid to Puerto Rico (26 U.S.C. 7652).

Public enterprise funds:

FEDERAL TAX LIEN REVOLVING FUND

[For increased capitalization of the revolving fund for redemption of real property, established by the Federal Tax Lien Act of 1966 (26 U.S.C. 7810(a)), $500,000]. (*Title 26 U.S.C.; Treasury Department Appropriations Act, 1976.*)

Program and Financing (in thousands of dollars)

Identification code 15–45–4413–0–3–803	1974 actual	1975 est.	1976 est.
Program by activities:			
10 Redemption of real property (costs—obligations) (object class 32.0)	342	1,200	1,200
Financing:			
14 Receipts and reimbursements from: Non-Federal sources	−333	−1,341	−1,200
21 Unobligated balance available, start of year	−368	−359	−1,000
24 Unobligated balance available, end of year	359	1,000	1,000
40 Budget authority (appropriation)		500	
Relation of obligations to outlays:			
71 Obligations incurred, net	9	−141	
90 Outlays	9	−141	

This revolving fund was established pursuant to section 112(a) of the Federal Tax Lien Act of 1966 (26 U.S.C. 7810) solely to serve as the source of financing the redemption of real property by the United States. In collecting delinquent taxes, situations arise where it is to the Government's advantage to buy property on which it has a lien when the property is sold at a foreclosure sale brought by the holder of a lien which is superior to the Government's. The advantage arises when the property is worth substantially more than the first lien holder's equity, but is being sold for an amount that barely covers that equity, thereby leaving no proceeds to apply against delinquent taxes. Under these circumstances, if the Government buys the property and subsequently puts it up for sale under more advantageous conditions, it is possible to realize sufficient profit on the transaction to fully or partially collect the amount of taxes due. The revolving fund is reimbursed from the proceeds of the sale in an amount equal to the amount expended from the fund for the redemption. The balance of the proceeds are applied against the amount of the tax, interest, penalties, and additions thereto; and for the costs of sale. The remainder, if any, would revert to the parties legally entitled to it.

Revenue and Expense (in thousands of dollars)

	1974 actual	1975 est.	1976 est.
Sale of real property:			
Revenue	333	1,200	1,200
Expense	−333	−1,200	−1,200
Net income or loss for the year			

Financial Condition (in thousands of dollars)

	1973 actual	1974 actual	1975 est.	1976 est.
Assets:				
Treasury balance	368	359	1,000	1,000
Interest in real property	132	141		
Total assets	500	500	1,000	1,000
Government equity:				
Unobligated balance	368	359	1,000	1,000
Invested capital and earnings	132	141		
Total Government equity	500	500	1,000	1,000

Analysis of Changes in Government Equity (in thousands of dollars)

	1974 actual	1975 est.	1976 est.
Non-interest-bearing capital:			
Start of year	500	500	1,000
Changes		500	
End of year	500	1,000	1,000

INTERNAL REVENUE SERVICE

Federal Funds

General and special funds:

SALARIES AND EXPENSES

For necessary expenses of the Internal Revenue Service, not otherwise provided for, including executive direction, administrative support, and internal audit and security; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$534,687,000] *$41,500,000* (*Title 26 U.S.C.; Treasury Department Appropriation Act, 1974.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0911-0-1-904	1973 actual	1974 est.	1975 est.
Program by activities:			
Direct program:			
1. Executive direction	15,205	15,511	17,333
2. Internal audit and security	19,435	21,101	24,167
Total, direct program	34,640	36,612	41,500
Reimbursable program:			
1. Executive direction	2,002	2,971	2,466
2. Internal audit and security	205	.....	.....
Total, reimbursable program	2,207	2,971	2,466
Total program costs, funded [1]	36,847	39,583	43,966
Change in selected resources (stores and undelivered orders)	−23	.....	.....
10 Total obligations	36,824	39,583	43,966
Financing:			
Receipts and reimbursements from:			
11 Federal funds	−2,109	−2,866	−2,361
14 Non-Federal sources	−98	−105	−105
25 Unobligated balance lapsing	182	.....	.....
[1] Budget authority	34,800	36,612	41,500
Budget authority:			
40 Appropriation	34,500	34,687	41,500
41 Transferred to other accounts	.....	−525	.....
Budget authority—Continued			
42 Transferred from other accounts	300	.....	.....
43 Appropriation (adjusted)	34,800	34,162	41,500
44.10 Proposed supplemental for wage-board pay raises	.....	10	.....
44.20 Proposed supplemental for civilian pay raises	.....	2,440	.....
Relation of obligations to outlays:			
71 Obligations incurred, net	34,617	36,612	41,500
72 Obligated balance, start of year	2,396	2,603	3,035
74 Obligated balance, end of year	−2,603	−3,035	−2,535
77 Adjustments in expired accounts	−47	.....	.....
90 Outlays, excluding pay raise supplemental	34,363	33,835	41,895
91.10 Outlays from wage-board pay raise supplemental	.....	9	1
91.20 Outlays from civilian pay raise supplemental	.....	2,336	104

[1] Includes capital outlay as follows: 1973, $497 thousand; 1974, $529 thousand; 1975, $540 thousand.

This appropriation provides for the overall planning and direction of the Internal Revenue Service, for management of the Service's support programs and for internal audit and internal security. This 1975 appropriation request provides for maintaining the Service's support programs at adequate levels and for strengthening those programs concerned with sound internal procedures and employee integrity.

1. *Executive direction.*—This activity sets policies and goals; provides the research and planning necessary for orderly and effective accomplishment of the Revenue Service's mission; provides leadership and direction in the execution of plans; and provides for the administrative support of all operations.

2. *Internal audit and security.*—This activity establishes and verifies maintenance of quality controls in the Revenue Service. It provides a continuing and independent review of all Revenue Service operations, thereby assuring the Commissioner and operational managers that appropriated funds are spent only for authorized purposes and that tax revenues are properly safeguarded.

Object Classification (in thousands of dollars)

Identification code 15-45-0911-0-1-904	1973 actual	1974 est.	1975 est.
Direct program:			
Personnel compensation:			
11.1 Permanent positions	25,618	27,243	29,648
11.3 Positions other than permanent	812	526	533
11.5 Other personnel compensation	585	641	805
Total personnel compensation	27,015	28,410	30,986
12.1 Personnel benefits: Civilian	2,478	2,475	2,738
21.0 Travel and transportation of persons	2,015	2,379	2,937
22.0 Transportation of things	250	241	282
23.0 Rent, communications, and utilities	1,097	974	1,868
24.0 Printing and reproduction	233	228	341
25.0 Other services	799	1,140	1,415
26.0 Supplies and materials	250	231	288
31.0 Equipment	497	529	640
42.0 Insurance claims and indemnities	6	5	5
Total costs, funded	34,640	36,612	41,500
94.0 Change in selected resources	−23	.....	.....
Total direct program	34,617	36,612	41,500
Reimbursable program:			
Personnel compensation:			
11.1 Permanent positions	1,807	2,526	2,062
11.5 Other personnel compensation	84	52	55
Total personnel compensation	1,891	2,578	2,117

12.1	Personnel benefits: Civilian	133	210	166
21.0	Travel and transportation of persons	85	158	158
22.0	Transportation of things	27	.....	.....
25.0	Other services	69	25	25
26.0	Supplies and materials	1	.....	.....
42.0	Insurance claims and indemnities	1	.....	.....
	Total, reimbursable program	2,207	2,971	2,466
99.0	Total obligations	36,824	39,583	43,966

Personnel Summary

Direct:			
Total number of permanent positions	1,703	1,647	1,792
Full-time equivalent of other positions	100	70	70
Average paid employment	1,728	1,653	1,767
Average GS grade	10.3	10 3	10.3
Average GS salary	$15,866	$17 240	$17,238
Average salary of ungraded positions	$9,390	$10,143	$10,786
Reimbursable:			
Total number of permanent positions	96	81	63
Average paid employment	96	81	63
Average GS grade	11.3	8.5	8.3
Average GS salary	$14,928	$12,501	$11,766
Average FC grade established by Administrator, Agency for International Development (75 Stat. 450)	11.8	11.8	11.8
Average FC salary	$28,664	$28,664	$28,664

Accounts, Collection and Taxpayer Service

For necessary expenses of the Internal Revenue Service for processing tax returns, revenue accounting, providing assistance to taxpayers, securing unfiled tax returns, and collecting unpaid taxes; hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner, including [not to exceed $33,600,000 for temporary employment and] not to exceed [$143,000] *$133,000* for salaries of personnel engaged in preemployment training of data transcriber applicants; [$531,683,000] *$713,400,000*.

[For an additional amount for "Accounts, collection and taxpayer service", $26,000,000, including $4,700,000 for temporary employment in addition to that heretofore authorized.] *(Title 26 U.S.C., Treasury Department Appropriation Act, 1974; Supplemental Appropriations Act, 1974.)*

Program and Financing (in thousands of dollars)

Identification code 15-45-0912-0-1-904	1973 actual	1974 est.	1975 est.
Program by activities:			
Direct program:			
1. Data processing operations	301,611	320,909	389,214
2. Collection and taxpayer service	204,225	255,367	312,358
3. Statistical reporting	9,586	11,717	11,828
4. District manual operations	321	.....	.....
Total direct program	515,743	587,993	713,400
Reimbursable progr			
1. Data processing ations	7,212	3,320	3,333
2. Collection and taxp service	290	.....	.....
3. Statistical reporting	96	469	472
Total reimbursable program	7,598	3,789	3,805
Total program costs, funded[1]	523,341	591,782	717,205
Change in selected resources (stores, undelivered orders, and advances)	−5,145	.....	.....
10 Total obligations	518,196	591,782	717,205
Financing:			
Receipts and reimbursements from:			
11 Federal funds	−7,526	−3,692	−3,708
14 Non-Federal sources	−72	−97	−97
25 Unobligated balance lapsing	256	.....	.....
Budget authority	510,854	587,993	713,400
Budget authority:			
40 Appropriation	517,600	557,683	713,400
41 Transferred to other accounts	−8,431	−6,213	.....
42 Transferred from other accounts	1,685	.....	.....
43 Appropriation (adjusted)	510,854	551,470	713,400
44.10 Proposed supplemental for wage-board pay raises	.....	65	.....
44.20 Proposed supplemental for civilian pay raises	.....	36,458	.....
Relation of obligations to outlays:			
71 Obligations incurred, net	510,398	587,993	713,400
72 Obligated balance, start of year	55,512	51,991	62,208
74 Obligated balance, end of year	−51,991	−62,208	−58,708
77 Adjustments in expired accounts	−742	.....	.....
90 Outlays, excluding pay raise supplemental	513,377	543,821	714,332
91.10 Outlays from wage-board pay raise supplemental	.....	59	6
91.20 Outlays from civilian pay raise supplemental	.....	33,896	2,562

[1] Includes capital outlay as follows: 1973, $11,420 thousand; 1974, $7,574 thousand; 1975, $11,049 thousand.

This appropriation provides for processing tax returns and related documents, and maintaining accurate, current taxpayer accounts by means of an automated system. It also provides for taxpayer assistance and for collecting delinquent taxes and securing unfiled returns. Statistical reporting responsibilities of the Internal Revenue Service come under this appropriation.

1. *Data processing operations.*—This activity provides for all actions associated with the mailing out of tax return forms and instructions, receipt of completed returns and payments, deposit of the payments, and verification through an automated master file system of the accuracy of information provided on the tax returns. It provides for payment of refunds, offset of refunds against delinquent accounts, issuance of notices that payments are overdue, identification of possible nonfilers for investigation, and assistance in the selection of tax returns for audit.

2. *Collection and taxpayer service.*—This activity provides assistance to taxpayers in understanding their tax obligations, is responsible for securing tax returns due but unfiled, and for collecting taxes due but unpaid.

3. *Statistical reporting.*—This activity prepares statistical information on income and on various features of the tax system, performs other statistical research, and forecasts the number of tax returns to be filed by type, size, and geographical area.

The increases requested for 1975 are principally to keep pace with workload resulting from growth in population and the economy; to improve the automated processing system's capability for assuring tax compliance; to provide essential taxpayer service; and to step up the program for securing unfiled returns and unpaid taxes. Important advances are anticipated from an electronic data retrieval system through which taxpayer assistance, as well as tax collection operations, are being improved.

SELECTED WORKLOAD DATA

[In millions]

	1973 actual	1974 estimate	1975 estimate
Tax returns filed	117.4	120.2	121.9
Individual income tax returns:			
(a) Mathematically verified	73.0	75.1	76.6
(b) Refunds scheduled	62.0	63.6	64.7
Taxpayers assisted	32.7	35.9	38.1
Notices issued for overdue accounts	8.6	9.5	9.8
Delinquent accounts closed	2,702	2,702	2,856
Delinquent returns secured	873	1,087	1,144

General and special funds—Continued

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE—Continued

SELECTED REVENUE DATA

[In millions]

	1973 actual	1974 estimate	1975 estimate
Gross revenue	231,726	273,817	.....
Additional assessments on individual income tax returns from verifying taxpayer arithmetic, from verifying actual estimated tax payments against credits claimed, and from additional charges for failure to make adequate payments of estimated tax	754.1	771.3	782.8
Delinquent account collections	2,457	2,801	2,917
Delinquent return assessments	453	511	531

Object Classification (in thousands of dollars)

Identification code 15-45-0912-0-1-904		1973 actual	1974 est.	1975 est.
	Direct program:			
	Personnel compensation:			
11.1	Permanent positions	316,996	352,604	385,836
11.3	Positions other than permanent	56,596	53,980	61,377
11.5	Other personnel compensation	11,815	9,415	9,501
	Total personnel compensation	385,407	415,999	456,714
12.1	Personnel benefits: Civilian	33,222	36,051	39,440
13.0	Benefits for former personnel	2	.....	.....
21.0	Travel and transportation of persons	11,306	14,549	16,897
22.0	Transportation of things	3,719	10,465	13,919
23.0	Rent, communications, and utilities	35,096	46,818	113,154
24.0	Printing and reproduction	9,876	26,562	26,621
25.0	Other services	19,627	23,513	28,571
26.0	Supplies and materials	5,993	6,446	7,015
31.0	Equipment	11,420	7,570	11,049
42.0	Insurance claims and indemnities	25	20	20
	Total costs, funded	515,743	587,993	713,400
94.0	Change in selected resources	−5,145	.....	.....
	Total direct program	510,598	587,993	713,400
	Reimbursable program:			
	Personnel compensation:			
11.1	Permanent positions	3,274	1,676	1,685
11.3	Positions other than permanent	2,695	1,624	1,630
11.5	Other personnel compensation	27	55	55
	Total personnel compensation	5,996	3,355	3,370
12.1	Personnel benefits, Civilian	589	294	295
21.0	Travel and transportation of persons	13	50	50
22.0	Transportation of things	70	.....	.....
23.0	Rent, communications, and utilities	663	.....	.....
24.0	Printing and reproduction	.....	5	5
25.0	Other services	341	70	70
26.0	Supplies and materials	5	15	15
31.0	Equipment	1	.....	.....
	Total, reimbursable program	7,598	3,789	3,805
99.0	Total obligations	518,196	591,782	717,205

Personnel Summary

Direct:			
Total number of permanent positions	31,905	33,307	35,750
Full-time equivalent of other positions	9,392	8,323	9,293
Average paid employment	38,683	39,527	42,907
Average GS grade	6.9	6.9	6.9
Average GS salary	$10,935	$11,503	$11,535
Average salary of ungraded positions	$9,440	$9,085	$9,742
Reimbursable:			
Total number of permanent positions	290	166	166
Full-time equivalent of other positions	425	142	142
Average paid employment	715	305	305
Average GS grade	5.2	5.1	5.1
Average GS salary	$7,951	$8,061	$8,061

ACCOUNTS, COLLECTION AND TAXPAYER SERVICE

(Supplemental now requested)

Program and Financing (in thousands of dollars)

Identification code 15 45 0912-1-1-904		1973 actual	1974 est.	1975 est.
	Program by activities:			
	1. Data processing operations	.....	987	.....
	2. Collection and taxpayer service	.....	6,182	.....
	3. Statistical reporting	.....	31	.....
10	Total obligations	.....	7,200	.....
	Financing:			
40	Budget authority (proposed supplemental appropriation)	.....	7,200	.....
	Relation of obligations to outlays:			
71	Obligations incurred, net	.....	7,200	.....
72	Obligated balance, start of year	.....	.....	.....
74	Obligated balance, end of year	.....	.....	.....
90	Outlays	.....	7,200	.....

A narrative statement, describing the purpose of this request, and proposed appropriation language are included in Part III of this volume.

COMPLIANCE

For necessary expenses of the Internal Revenue Service for determining and establishing tax liabilities, and for investigation and enforcement activities, including purchase (not to exceed [two hundred and twenty-three] *two hundred and three if which seventy-eight* shall be for replacement only, for police-type use), and hire of passenger motor vehicles; and services of expert witnesses at such rates as may be determined by the Commissioner; [$620,130,000] *$804,300,000*. (*Title 26 U.S.C.; Treasury Department Appropriation Act, 1974.*)

Program and Financing (in thousands of dollars)

Identification code 15-45-0913-0-1-904		1973 actual	1974 est.	1975 est.
	Program by activities:			
	Direct program:			
	1. Audit of tax returns	451,267	494,464	605,999
	2. Tax fraud and special investigations	74,664	86,623	103,972
	3. Taxpayer conferences and appeals	31,492	35,055	39,416
	4. Technical rulings and services	16,799	19,388	21,973
	5. Legal services	27,657	28,887	31,940
	Total, direct program	601,879	664,417	803,300
	Reimbursable program:			
	1. Audit of tax returns	10,084	1,382	1,437
	2. Tax fraud and special investigations	124	.....	.....
	3. Taxpayer conferences and appeals	26	.....	.....
	4. Technical rulings and services	1	.....	.....
	Total, reimbursable program	10,235	1,382	1,437
	Total program costs, funded	612,114	665,799	804,737
	Change in selected resources (stores, undelivered orders and advances)	−5,125	.....	.....
10	Total obligations	606,989	665,799	804,737
	Financing:			
	Receipts and reimbursements from:			
11	Federal funds	−10,221	−1,362	−1,417
14	Non-Federal sources	−14	−20	−20
25	Unobligated balance lapsing	358	.....	.....
	Budget authority	597,113	664,417	803,300

	Budget authority:			
40	Appropriation	597,127	620,430	803,300
41	Transferred to other accounts	−2,614	−2,517	.....
42	Transferred from other accounts	2,600	.....	.....
43	Appropriation (adjusted)	597,113	617,913	803,300
44.10	Proposed supplemental for wage-board pay raises	.....	21	.....
44.20	Proposed supplemental for civilian pay raises	.....	46,483	.....
	Relation of obligations to outlays:			
71	Obligations incurred, net	596,754	664,417	803,300
72	Obligated balance, start of year	54,722	53,757	53,064
74	Obligated balance, end of year	−53,757	−53,064	−59,664
77	Adjustments in expired accounts	149	.....	.....
90	Outlays, excluding pay raise supplemental	597,869	620,644	794,662
91.10	Outlays from wage-board pay raise supplemental	.....	20	1
91.20	Outlays from civilian pay raise supplemental	.....	44,446	2,037

[1] Includes capital outlay as follows: 1973, $9,148 thousand; 1974, $8,323 thousand, 1975, $12,126 thousand.

This appropriation provides for detecting and correcting noncompliance with the tax laws, and for meeting the Internal Revenue Service's responsibilities in special law enforcement programs.

Additional funds requested for 1975 are necessary to strengthen the Service's ability to assure equitable application and adequate enforcement of the tax laws and thus maintain the very high rate of voluntary compliance. This requires expansion of the audit and tax fraud investigation programs, plus additional staffing for technical rulings and legal services.

1. *Audit of tax returns.*—This activity provides for a selective examination of tax returns to see if taxpayers have properly complied with the internal revenue laws. It corrects errors and explains corrections to the taxpayers. It also makes determinations as to whether certain organizations or funds are exempt from taxation.

2. *Tax fraud and special investigations.*—This activity provides for enforcement of the criminal statutes relating to violations of tax laws. It investigates cases of suspected intent to defraud; recommends prosecution as warranted; and assists in the preparation and trial of criminal tax cases. It is responsible for directing Service participation in the drive against organized crime, and against narcotics traffickers.

3. *Taxpayer conferences and appeals.*—This activity provides for administrative consideration and settlement of taxpayer appeals of audit findings.

4. *Technical rulings and services.*—This activity develops tax return forms, instructions, and guides; issues rulings and opinions as to application of the tax laws, and meets with taxpayer groups to review and resolve special tax problems.

5. *Legal services.*—This activity comprises the legal counsel and legal assistance needed by the Service to administer and enforce the internal revenue laws.

SELECTED WORKLOAD DATA

[In thousands]

	1973 actual	1974 estimate	1975 estimate
Tax returns audited	2,254	2,473	2,820
Taxpayers in general investigations	6.7	7.4	8.1
Special enforcement program investigations	1.9	1.9	1.9
Appellate case dispositals	33.7	33.9	33.9

SELECTED REVENUE DATA

[In millions]

	1973 actual	1974 estimate	1975 estimate
Audit assessments[1]	4,034	4,117	3,897

[1] A particular effort by the Service to achieve more current status on large cases resulted in unusually high audit assessments in 1973 and we now expect this to continue through 1974. A trend to more normal assessment levels is anticipated in 1975.

Object Classification (in thousands of dollars)

Identification code 15-45-0913-0-1-904	1973 actual	1974 est.	1975 est.
Direct program:			
Personnel compensation:			
11.1 Permanent positions	465,463	520,772	569,882
11.3 Positions other than permanent	6,014	6,412	6,515
11.5 Other personnel compensation	5,886	5,526	6,174
11.8 Special personal services payments	565	627	627
Total personnel compensation	477,928	533,337	583,198
12.1 Personnel benefits: Civilian	43,700	48,138	53,338
21.0 Travel and transportation of persons	21,618	31,566	35,491
22.0 Transportation of things	3,735	4,341	4,555
23.0 Rent, communications, and utilities	21,055	17,947	86,726
24.0 Printing and reproduction	9,652	4,447	6,424
25.0 Other services	8,872	10,970	15,252
26.0 Supplies and materials	6,128	5,308	6,150
31.0 Equipment	9,148	8,323	12,126
42.0 Insurance claims and indemnities	43	40	40
Total costs, funded	601,879	664,417	803,300
94.0 Change in selected resources	−5,125	.....	.....
Total direct obligations	596,754	664,417	803,300
Reimbursable program:			
Personnel compensation:			
11.1 Permanent positions	513	1,100	1,152
11.5 Other personnel compensation	10	.....	.....
Total personnel compensation	523	1,100	1,152
12.1 Personnel benefits: Civilian	32	97	100
21.0 Travel and transportation of persons	.....	60	60
23.0 Rent, communications, and utilities	45	60	60
25.0 Other services	9,633	65	6[2]
31.0 Equipment	2	.....	.....
Total, reimbursable program	10,235	1,382	1,437
99.0 Total obligations	606,989	665,799	804,737

Personnel Summary

	1973 actual	1974 est.	1975 est.
Direct:			
Total number of permanent positions	34,070	35,194	37,945
Full-time equivalent of other positions	1,010	967	967
Average paid employment	32,915	34,717	37,613
Average GS grade	9.4	9.2	9.2
Average GS salary	$14,980	$15,575	$15,506
Average salary of ungraded positions	$9,550	$10,915	$11,489
Reimbursable:			
Total number of permanent positions	39	62	62
Average paid employment	39	30	30
Average GS grade	7.3	7.3	7.3
Average GS salary	$10,154	$10,638	$10,638

REFUNDING INTERNAL REVENUE COLLECTIONS, INTEREST

Program and Financing (in thousands of dollars)

Identification code 15-45-0904-0-1-852	1973 actual	1974 est.	1975 est.
Program by activities:			
10 Payment of interest on refunds (total costs—obligations) (object class 43.0)	175,866	184,000	206,900
Financing:			
17 Recovery of prior year obligations (repayment of interest, Federal Unemployment Tax Act refunds)	−429	−530	−583
60 Budget authority (appropriation) (permanent, indefinite)	175,437	183,470	206,317

General and special funds—Continued

REFUNDING INTERNAL REVENUE COLLECTIONS, INTEREST—Continued

Program and Financing (in thousands of dollars)—Continued

Identification code 15-45-0904-0-1-852	1973 actual	1974 est.	1975 est.
Relations of obligations to outlays:			
71 Obligations incurred, net	175,437	183,470	266,317
90 Outlays	175,437	183,470	266,317

Under certain circumstances, as provided in 26 U.S.C. 6611, interest is paid at 6% per annum on internal revenue collections which must be refunded.

INTERNAL REVENUE COLLECTIONS FOR PUERTO RICO

Program and Financing (in thousands of dollars)

Identification code 15-45-5737-0-2-910	1973 actual	1974 est.	1975 est.
Program by activities:			
10 Internal Revenue Collections for Puerto Rico (total costs—obligations) (object class 41.0)	107,447	116,000	116,000
Financing:			
60 Budget authority (appropriation) (permanent, indefinite, special fund)	107,447	116,000	116,000
Relation of obligations to outlays:			
71 Obligations incurred, net	107,447	116,000	116,000
72 Obligated balance, start of year	14,513	12,493	12,493
74 Obligated balance, end of year	−12,493	−12,493	−12,493
90 Outlays	109,467	116,000	116,000

Taxes collected under the Internal Revenue laws of the United States on articles produced in Puerto Rico and either transported to the United States or consumed on the island are paid to Puerto Rico (26 U.S.C. 7652).

ALLOCATIONS RECEIVED FROM OTHER APPROPRIATION ACCOUNTS

Note.—Obligations incurred in 1974 under allocations from other accounts are included in the schedules of the parent appropriation as follows: Executive Office of the President, Economic Stabilization Activities, "Salaries and expenses."

Public enterprise funds:

FEDERAL TAX LIEN REVOLVING FUND

For increased capitalization of the revolving fund for redemption of real property, established by the Federal Tax Lien Act of 1966 (26 U.S.C. 7810(a)), $500,000.

Program and Financing (in thousands of dollars)

Identification code 15-45-4413-0-3-904	1973 actual	1974 est.	1975 est.
Program by activities:			
10 Redemption of real property (costs—obligations) (object class 32.0)	293	1,200	1,700
Financing:			
14 Receipts and reimbursements from: Non-Federal sources	−309	−1,332	−1,700
21 Unobligated balance available, start of year	−352	−368	−500
24 Unobligated balance available, end of year	368	500	1,000
40 Budget authority (appropriation)			500
Relations of obligations to outlays:			
71 Obligations incurred, net	−16	−132	
90 Outlays	−16	−132	

This revolving fund was established pursuant to section 112(n) of the Federal Tax Lien Act of 1966 solely to serve as the source of financing the redemption of real property by the United States. In collecting delinquent taxes, situations arise where it is to the Government's advantage to buy property on which it has a lien when the property is sold at a foreclosure sale brought by the holder of a lien which is superior to the Government's. The advantage arises when the property is worth substantially more than the first lien holder's equity, thereby leaving no proceeds to apply against delinquent taxes. Under these circumstances if the Government buys the property and subsequently puts it up for sale under more advantageous conditions, it is possible to realize sufficient profit on the transaction to fully or partially collect the amount of taxes due. The revolving fund is reimbursed from the proceeds of the sale in an amount equal to the amount expended from the fund for the redemption. The balance of the proceeds are applied against the amount of the tax, interest, penalties, and additions thereto, and for the costs of sale. The remainder, if any, would revert to the parties legally entitled to it.

The increase requested will enable the Internal Revenue Service to protect adequately the Government's interest in collection cases involving tax liens on property undergoing forced sale.

Revenue and Expense (in thousands of dollars)

	1973 actual	1974 est.	1975 est.
Sale of real property:			
Revenue	309	1,200	1,700
Expense	−309	−1,200	−1,700
Net income or loss for the year			

Financial Condition (in thousands of dollars)

	1972 actual	1973 actual	1974 est.	1975 est.
Assets:				
Treasury balance	351	368	500	1,000
Interest in real property	149	132		
Total assets	500	500	500	1,000
Government equity:				
Invested capital and earnings	149	132		
Unobligated balance	351	368	500	1,000
Total Government equity	500	500	500	1,000

Analysis of Changes in Government Equity (in thousands of dollars)

	1973 actual	1974 est.	1975 est.
Non-interest-bearing capital:			
Start of year	500	500	500
Changes			500
End of year	500	500	1,000

Part 2—Narcotics Traffickers Tax Program Under Commissioner Alexander

A. White House Policy

[From the Washington Star-News, July 25, 1972]

Nixon Sees Drug Fight Gain

(By Garnett D. Horner)

President Nixon told his top drug officials today that the government seems to have advanced from the 10-yard line to the 50-yard line in its three-year drive to clear dangerous drugs off the streets.

The President added: "We have the ball now. Let's go. He asked Myles Ambrose, director of the Office of Drug Abuse Law Enforcement, to double the number of drug violations arrests in the next year. Ambrose replied: "We may very likely do that."

Ambrose and other officials reported to Nixon that arrests for drug violations had increased from 8,465 in fiscal 1969 to 16,144 in fiscal 1972.

The report also showed drug seizures in the United States by the Customs Bureau and the Bureau of Narcotics and Dangerous Drugs increased from 196,364 pounds in fiscal 1969 to 16,144 in fiscal 1972.

During the same period, hard drugs removed from world traffic with the aid of U.S. agencies increased from 22,758 pounds to 26,144 pounds—mostly seized overseas, the report showed.

Nixon earlier had remarked to Ambrose that "you haven't, of course, solved the problem," and asked him to assess the current status of the anti-drug battle.

Ambrose replied that he thinks the intensified campaign against drug abuse is "finally beginning to take hold," with public support a big part of its success.

Ambrose said officials have received about 5,000 calls supplying "effective" information over the heroin "hot line."

Ambrose told newsmen that a prime aim of the program is to reduce the availability of heroin so people not yet addicted will find it more difficult to obtain drugs.

Assistant Secretary of the Treasury Eugene Rossides reported on Internal Revenue Service efforts to drive drug peddlers out of business. He said that $8.5 million—$1 million more than budgeted for the special project—had been collected in tax assessments against drug merchants, and 565 drug traffickers were under tax action during the past fiscal year.

Ambrose said about 12,000 grand jury investigations of the drug traffic now are underway.

[White House press release, Mar. 14, 1973]

The White House

To the Congress of the United States:

This sixth message to the Congress on the State of the Union, concerns our Federal system of criminal justice. It discusses both the progress we have made in improving that system and the additional steps we must take to consolidate our accomplishments and to further our efforts to achieve a safe, just, and law-abiding society.

In the period from 1960 to 1968 serious crime in the United States increased by 122 percent according to the FBI's Uniform Crime Index. The rate of increase accelerated each year until it reached a peak of 17 percent in 1968.

In 1968 one major public opinion poll showed that Americans considered lawlessness to be the top domestic problem facing the Nation. Another poll showed that four out of five Americans believed that "Law and order has broken down in this country." There was a very real fear that crime and violence were becoming a threat to the stability of our society.

The decade of the 1960s was characterized in many quarters by a growing sense of permissiveness in America—as well intentioned as it was poorly reasoned—in which many people were reluctant to take the steps necessary to control crime. It is no coincidence that within a few years time, America experienced a crime wave that threatened to become uncontrollable.

This Administration came to office in 1969 with the conviction that the integrity of our free institutions demanded stronger and firmer crime control. I promised that the wave of crime would not be the wave of the future. All-out attack was mounted against crime in the United States.

The manpower of Federal enforcement and prosecution agencies was increased.

New legislation was proposed and passed by the Congress to put teeth into Federal enforcement efforts against organized crime, drug trafficking, and crime in the District of Columbia.

Federal financial aid to State and local criminal justice systems—a forerunner of revenue sharing—was greatly expanded through Administration budgeting and Congressional appropriations, reaching a total of $1.5 billion in the three fiscal years from 1970 through 1972.

These steps marked a clear departure from the philosophy which had come to dominate Federal crime fighting efforts, and which had brought America to record-breaking levels of lawlessness. Slowly, we began to bring America back. The effort has been long, slow, and difficult. In spite of the difficulties, we have made dramatic progress.

Since last June, the supply of heroin on the East Coast has been substantially reduced. The scarcity of heroin in our big Eastern cities has driven up the price of an average "fix" from $4.31 to $9.88, encouraging more addicts to seek medical treatment. At the same time the heroin content of that fix has dropped from 6.5 to 3.7 percent.

Meanwhile, through my Cabinet Committee on International Narcotics Control, action plans are underway to help 59 foreign countries develop and carry out their own national control programs. These efforts, linked with those of the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs, have produced heartening results.

Our worldwide narcotics seizures almost tripled in 1972 over 1971. Seizures by our anti-narcotics allies abroad are at an all-time high.

In January, 1972, the French seized a half-ton of heroin on a shrimp boat headed for this country. Argentine, Brazilian and Venezuelan agents seized 285 pounds of heroin in three raids in 1972, and with twenty arrests crippled the existing French-Latin American connection. The ringleader was extradited to the U.S. by Paraguay and has just begun to serve a 20-year sentence in Federal prison.

Thailand's Special Narcotics Organization recently seized a total of almost eleven tons of opium along the Burmese border, as well as a half-ton of narphine and heroin.

Recently, Iran scored the largest opium seizure on record—over 12 tons taken from smugglers along the Afghanistan border.

Turkey, as a result of a courageous decision by the government under Prime Minister Erim in 1971, has prohibited all cultivation of opinum within her borders.

These results are all the more gratifying in light of the fact that heroin is wholly a foreign import to the United States. We do not grow opium here; we do not produce heroin here; yet we have the largest addict population in the world. Clearly we will end our problem faster with continued foreign assistance.

Our domestic accomplishments are keeping pace with international efforts and are producing equally encouraging results. Domestic drug seizures, including seizures of marijuana and hashish, almost doubled in 1972 over 1971.

Arrests have risen by more than one-third and convictions have doubled.

In January of 1972, a new agency, the Office of Drug Abuse Law Enforcement (DALE), was created within the Department of Justice. Task forces composed of investigators, attorneys, and special prosecuting attorneys have been assigned to more than forty cities with heroin problems. DALE now arrests pushers at the rate of 550 a month and has obtained 750 convictions.

At my direction, the Internal Revenue Service (IRS) established a special unit to make intensive tax investigations of suspected domestic traffickers. To date, IRS has collected $18 million in currency and property, assessed tax penalties of more than $100 million, and obtained 25 convictions. This effort can be particularly effective in reaching the high level traffickers and financiers who never actually touch the heroin, but who profit from the misery of those who do.

* * * * * * *

RICHARD NIXON.

The White House, March 14, 1973.

[Excerpt from Federal Strategy for Drug Abuse and Drug Traffic Prevention, 1973]

IRS INVESTIGATES NARCOTIC TRAFFICKERS

(By the Strategy Council on Drug Abuse)

* * * * * * *

The Internal Revenue Service (IRS) within the Department of Treasury has initiated a program involving intensive investigation of the incomes and tax returns of those mid-level and top-level narcotic traffickers who have been identified by the other law enforcement agencies. Frequently, such major traffickers operate by providing financial support for narcotic activities and seldom become personally involved in the distribution of the illicit substances. Once these suspects are identified, the IRS can initiate a tax investigation even if the other Federal agencies are unable to obtain enough evidence which may legally be used in a court of law to prosecute the trafficker for his actual narcotics law violations. Since drug traffickers almost never declare their illicit income, such criminal tax evasion cases can be most productive. At the very least, they take "the profit out" of drug trafficking through fines and assessments. Thus far, fines and penalties in excess of $18 million have been collected through this program.

* * * * * * *

TABLE 5.—FEDERAL DRUG TRAFFIC PREVENTION PROGRAMS DIRECT FUNDING BY AGENCY OBLIGATIONS IN MILLIONS: FISCAL YEARS 1969–72 [1]

Agency	Fiscal Year—					
	1969	1970	1971	1972	1973	1974
Justice:						
Law enforcement assistance administration	0	0	2.2	19.6	36.3	44.1
Bureau of Narcotics and Dangerous Drugs	18.5	27.8	41.3	63.3	70.5	74.1
Other	0	0	3.5	0	2.2	6.7
State Department	0	0	0	1.0	1.5	1.5
Agency for International Development	0	0	4.4	20.7	42.7	42.7
Treasury:						
Internal Revenue Service	0	0	0	10.1	18.9	19.7
Bureau of Customs	17.0	24.8	30.2	46.9	54.3	66.2
Department of Transportation	0	0	0	.1	.1	.1
Agriculture	0	0	0	2.1	1.8	1.8
Total	35.5	52.6	81.6	163.8	228.3	256.9

[1] Excludes block grants such as LEAA.

[Excerpt from Federal Strategy for Drug Abuse and Drug Traffic Prevention, 1974]

DRUG LAW ENFORCEMENT

(By the Strategy Council on Drug Abuse)

* * * * * * *

TARGET A: MAJOR DRUG TRAFFICKERS

Persons with professional expertise and financial resources conceive and fund major networks to distribute illegal drugs. Because these major traffickers minimize their direct handling of the drugs, they are difficult to apprehend. In order to immobilize these criminals, several different approaches are currently being utilized.

First, the Drug Enforcement Administration penetrates the organizations through the use of undercover agents, informants, court-authorized wiretaps and other lawful investigative techniques. Great emphasis is placed on the conspiracy laws in order to establish cases against the top figures.

Second, the Treasury Department, through the Internal Revenue Service, is continuing its program involving intensive investigation of the income tax returns of suspected drug traffickers. Since drug traffickers rarely declare their illicit income, tax audits and investigations can be very productive even when other Federal agencies are unable to obtain enough evidence to prosecute the trafficker successfully for drug law violations.

* * * * * * *

The Internal Revenue Service will expand its investigations of tax evasion as part of increased Federal efforts against non-opiate drug distribution.

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DRUG LAW ENFORCEMENT AGENCY BUDGETS

[Excludes drug abuse prevention activities]

Agency	Fiscal year 1973 actual			Fiscal year 1974 estimate			Fiscal year 1975 estimate		
	B/A	OBL	OUTL	B/A	OBL	OUTL	B/A	OBL	OUTL
LEAA[1]	30.7	30.7	28.5	38.8	38.8	31.7	41.2	41.2	50.2
DEA	74.4	71.3	77.3	106.4	106.4	109.4	140.8	140.8	135.9
ODALE	.2	.2	.2	(2)	(2)	(2)	0	0	0
ONNI	2.0	2.0	1.3	(3)	(3)	(3)	0	0	0
Other justice	2.3	2.3	1.4	3.5	3.5	4.8	4.0	4.0	5.2
State	1.0	1.0	.9	1.2	1.2	1.0	1.3	1.3	1.1
AID	17.7	42.7	19.7	42.5	42.5	33.4	42.5	42.5	36.3
IRS	16.9	16.9	16.9	20.7	20.7	20.3	21.4	21.4	20.7
Customs	52.5	52.5	46.4	39.1	39.1	41.9	40.9	40.9	41.9
USDA	1.5	1.5	1.3	1.8	1.8	1.5	1.8	1.8	1.5
DOT	.4	.4	.4	.5	.5	.5	.4	.4	.4
DOD—Civil	.2	.2	.2	.2	.2	.2	.2	.2	.2
Total[4]	200.0	221.7	194.5	254.7	254.7	244.7	294.5	294.5	293.4

[1] Includes LEAA funding for the treatment alternatives to street crime (TASC) program as follows: (Obligations): Fiscal year 1973, $2,900,000; fiscal year 1974, $4,200,000; fiscal year 1975, $7,200,000.
[2] Personnel and programs incorporated in DEA budget; some special projects transferred to LEAA.
[3] Personnel and programs incorporated in DEA budget.
[4] Does not include Department of Defense-Military or the U.S. Postal Service.

[Excerpt from the White Paper on Drug Abuse, September 1975]

(A report to the President from the Domestic Council Drug Abuse Task Force)

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ENFORCEMENT

Drug law enforcement is often assumed to be supply reduction; and vice versa. As discussed previously, that impression is not correct; law enforcement is but one of many activities which limit the supply of illicit drugs. Nonetheless

drug law enforcement has been and probably will continue to be the single most important and most visible part of the oversall supply reduction effort.

Reorganization Plan 2 of 1973 consolidated the principal drug investigative and intelligence resources in the Drug Enforcement Administration (DEA) for the purpose of ensuring optimal utilization and integration of these resources. While the task force did not undertake a comprehensive review of Reorganization Plan 2, all members concur in the basic concept of an integrated drug law enforcement agency charged with lead responsibility.[2] DEA is that lead agency and has made considerable progress in its two-year existence.

The concept of a "lead agency," however, does not denigate in any way the vital roles played by other agencies in the drug law enforcement effort. For example, Justice's Federal Bureau of Investigation (FBI) and Treasury's Internal Revenue Service (IRS) and Alcohol, Tobacco, and Firearms Bureau (ATF) have important supportive roles in investigation. The Central Intelligence Agency (CIA) has a vital supportive role with respect to intelligence regarding international trafficking. Treasury's U.S. Customs Service performs an invaluable interdiction function at our borders and ports of entry. The Immigration and Naturalization Service and Coast Guard provide valuable assistance. U.S. attorneys' offices prosecute Federal cases, and the courts try and sentence traffickers. The Federal Board of Parole determines when imprisoned traffickers are released. And, finally 400,000 State and local police officers, partly financed by Justice's Law Enforcement Assistance Administration (LEAA), are the Nation's defense against local trafficking.

The drug law enforcement program must design a strategy which maximizes the contribution of each of these organizations to the overall objectives of disrupting illicit traffic and reducing the availability of drugs for illicit use. Before discussing the task force's recommendations for accomplishing these objectives, the three ways in which enforcement achieves supply reduction will be reviewed.

First, the arrest, prosecution and incarceration of traffickers and immobilization of trafficking organizations results in the elimination of some illicit supply capabilities. *Second*, the seizure of quantities of drugs and of equipment and materials needed to operate drug networks (such as vehicles, aircraft and other property used in smuggling), both directly and indirectly reduces illicit supplies of drugs and cripples or inconveniences the operations of illicit traffickers. *Third*, enforcement efforts have deterrent effects. Traffickers must operate cautiously: they must carefully screen customers, keep their markets small, and arrange elaborate strategies to hide the drugs. All of this caution reduces both the efficiency of trafficking activity and the total capability of the illicit supply system.

The following sections discuss the task force's findings and recommendations in four key areas which together determine the overall effectiveness of law enforcement efforts. They are:

The development of enhanced capabilities to conduct conspiracy investigations and otherwise target enforcement resources at high-level violators.

The effective immobilization of arrested or indicted traffickers.

Interdiction; its role and interrelationship with investigation.

Strengthening capabilities of State and local enforcement agencies, and improved cooperation between them and Federal investigative agencies.

ENHANCING THE CAPABILITY TO FOCUS ON MAJOR TRAFFICKING ORGANIZATIONS

To achieve maximum impact, supply reduction efforts must focus upon the prosecution and conviction of those high-level traffickers who direct major organizations, because immobilization of these leaders significantly reduces the organization's ability to move quantities of drugs for a considerable period of time.

Experience has shown that conspiracy cases are often the only way to apprehend high-level traffickers, since they purposely isolate themselves from all activities which would bring them into actual contact with drugs.[3] For example,

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[2] Reorganization Plan 2 is perhaps the most misunderstood and misinterpreted issue in drug law enforcement, and is therefore discussed more completely later in this chapter. There is fundamental agreement and acceptance of the central concept; the disagreement which exists revolves around the relatively narrow question of how DEA and Customs interact in performing their respective missions.

[3] In high-level conspiracy cases, Federal efforts have a great advantage over State and local activity, since coordination of a variety of investigative techniques can best be achieved at the Federal level, and high-level cases usually involve interstate activity.

DEA reports that almost half of the top violators it arrests are indicted on conspiracy charges. Use of conspiracy prosecutions is therefore one of the major tactical weapons which should be employed by enforcement personnel, prosecutors, and courts. Expansion of the use of conspiracy strategies will help to emphasize the importance of targeting enforcement resources at the leaders of trafficking organizations. Other strategies may, of course, be equally effective in certain cases. The important thing is to concentrate on top-level violators.

In the course of its work, the task force force prepared very detailed recommendations for improving the Federal Government's ability to conduct conspiracy cases, and submitted them to the appropriate agencies. These detailed recommendations, which are only summarized and highlighted here, were in three broad areas:

Building understanding and commitment to conspiracy strategy.
Inducing cooperation of knowledgeable individuals.
Developing long-term approaches to investigations.

First, it is essential to build understanding of and commitment to the conspiracy strategy among enforcement officials, prosecuting attorneys, judges, the Congress and the interested public.

Despite previous policy directives, it seems clear that current field practices in both investigating and prosecuting agencies often emphasize the quick arrest or conviction at the expense of vigorous pursuit of high-level violators. This orientation has proved resistant to change partly because of external incentives influencing the performance of the organizations, and partly because of internal personnel systems—those which recruit, train, evaluate, and reward individual agents.

Thus, more than policy exhortation is required. Leaders of the agencies involved in suppressing illegal drug traffic must publicly support the long-term conspiracy strategy, seek support for it, and be willing to accept possibly unfair criticism when sheer numbers of arrests decline. Within each organization, leaders must make the necessary shifts of resources and adjustments to the incentive and rating systems which will get agents "off the streets," and curtail the arrest of low-level employees in trafficking organizations. In particular, new measures of effectiveness must be developed which encourage building conspiracy cases rather than rewarding managers and agents on the basis of numbers of arrests.

Commitment to high-level conspiracy cases is equally necessary in the prosecuting function. Conspiracy investigations are difficult for prosecutors—they absorb time and result in relatively high rates of acquittal and reversal. In addition, rapid turnover among prosecuting attorneys works against developing skills in this area. The 19 Controlled Substance Units inaugurated by the Attorney General this year offer a potential solution to these problems, provided that these specialists are not diverted from drug conspiracy prosecutions to other work.[4]

Judicial support for conspiracy prosecutions has been less than enthusiastic. Conspiracy trials are time-consuming and complicated, and courts have expressed some legitimate concerns regarding the misuse of conspiracy laws by law enforcement agencies. On the other hand, the task force believes that the courts will be more responsive to this important law enforcement tool if repeatedly made aware of the fact that high-level drug traffickers seldom become involved with actual drug transactions, making conspiracy investigations the only possible avenue of prosecution.

Finally, support for this conspiracy emphasis by Congressional committees with oversight and budget responsibility must be developed, or law enforcement agencies will continue to feel compelled to generate seizure and arrest statistics, the traditional measures of success.

The *second* area for improvement is by inducing the cooperation of persons with knowledge of drug conspiracies. Due to the nature of illicit drug trafficking, only a few individuals working inside the organization have knowledge of drug distribution networks.

In developing conspiracy cases these are the people who can provide the most valuable leads. Cooperation can be induced by a wide variety of legal devices.

[4] In addition, better coordination in enforcement and prosecution of conspiracy cases is imperative. Exploiting the full potential of a complex conspiracy case requires complete responsiveness of agents and prosecutors to each other's needs. Prosecutors should advise the enforcement agency as to the kinds of evidence needed to support conspiracy and other drug violations. Similarly, enforcement and prosecution should be coordinated in case disposition: e.g., questions of whethed to grant informal immunity, transfer a case to a local jurisdiction, utilize a grand jury, or to enter into plea bargaining are ones in which investigative agencies should have a say.

These include decisions to grant formal or informal immunity,[5] postponing sentencing until defendants have delivered on their promise to cooperate, making cooperation a condition of probation, explicitly recognizing cooperation as a factor in parole decisions, and maintaining adequate protection of cooperating individuals by the U.S. Marshals Service.

The *third* way we can improve our capability to conduct conspiracy investigations is by developing long-term approaches to investigation. Since productive leads and cooperating individuals are scarce commodities, they must be preserved, if possible, by keeping these individuals out of court. This can be done by developing other evidence, or by using the border search authority of the Customs Service to arrest a known drug smuggler. In maintaining long-term sources of information, great care must be taken to avoid putting the cooperating individual in a position in which he is forced to actually participate in an illegal act.

IMMOBILIZING DRUG TRAFFICKERS

Gathering sufficient evidence to prosecute a trafficker does not guarantee his immobilization. He may be operating in a foreign country, out of reach of effective prosecution and sentencing. Even in the United States, indictment and arrest do not guarantee immobilization; these events merely begin a long criminal justice process during most of which the trafficker may be free to continue operating. At the end of this process, incarceration may be relatively short.

This failure to immobilize traffickers against whom a substantial case has been developed is very costly—costly in terms of wasted investigative resources, weakened deterrent, and reduced public trust in the criminal justice system. Consequently, the task force believes that efforts to more effectively immobilize indicated traffickers are vitally important.

The United States has two broad options for denying traffickers safe havens in foreign countries. First, U.S. enforcement officials can cooperate with foreign law enforcement officials in developing cases to be tried in foreign countries.[6] In some countries—for example, France and Mexico—laws permit evidence gathered in the United States for violations committed here to be used in prosecuting a trafficker in the foreign country's courts. Second, we can indicate the foreign trafficker and then seek jurisdiction through extradition or expulsion. Both of these devices should be used to the maximum extent possible and the task force recommends that a permanent DEA-Justice-State committee be established under the CCINC to coordinate the extradition and expulsion program.

For traffickers operating within the United States, simply arresting them has not proven to be an effective means of immobilization. Traffickers usually raise bail quickly and often immediately resume trafficking when released. Thus, attention should be paid to ways to keep traffickers from operating before conviction or while on appeal, and we should of course seek ways to increase the rate of conviction, and the period of incarceration which follows.

The task force's major recommendations regarding sentencing and parole of drug traffickers include:

Requiring minimum mandatory sentences for persons convicted of high-level trafficking in narcotics and "dangerous drugs."[7]

Requiring mandatory consecutive sentencing rather than concurrent sentencing for persons who are arrested and convicted for narcotics trafficking while on bail from another trafficking offense. This kind of selective deterrent aimed at offenses committed while on bail should help reduce the high rate of continued drug trafficking.[8]

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[5] As tools to secure cooperation, grants of immunity can be effective. Yet they should be used sparingly. The Justice Department has recently reviewed the process of granting immunity with an eye toward tightening procedures.

[6] It is worth noting that our success in encouraging other countries to deny safe havens depends significantly on our willingness to deal severely with people we arrest in the United States. Foreign governments have noticed and complained about our lenient treatment of couriers from their countries arrested in the United States. They have also noticed the short prison terms for major domestic violators. Consequently, some doubt our determination to control drug abuse. Thus there is an important interdependence between the program to deny safe havens to overseas traffickers, and the program to effectively control traffickers arrested in the United States.

[7] In this regard, the task force specifically endorses the President's proposal for mandatory minimum sentences for persons trafficking in hard drugs and suggests that consideration be given to expanding the proposal to include major traffickers in barbiturates and amphetamines.

[8] A recent DEA study showed that 45 percent of a group of traffickers on bail were implicated in post-arrest trafficking.

Undertaking major efforts to educate judges regarding the likelihood of repeated trafficking offenses, and encouraging them to carefully weigh the danger to the community a trafficker represents if released.

Submitting written recommendations from prosecutors to the parole board regarding parole decisions on high-level violators. At minimum, prosecutors should submit written requests to keep high-level traffickers incarcerated. This policy should ultimately result in explicit revisions of parole guidelines in order to defer parole for high-level traffickers.

Revoking parole and cancellation of all "good time" already served, in the event that a paroled offender is re-arrested on narcotics trafficking charges.

Indirect pressures can also be used to supplement direct prosecution attacks on drug traffickers. Efforts can be aimed at confiscating contraband drugs, damaging the trafficking network's capacity to finance its operations, and seizing vehicles, passports, and licenses (e.g., pilots') necessary to remain in the drug trade.

Targeting on the seizure of contraband by itself would not be an effective supply reduction strategy. The amounts seized are too small and the drugs themselves too easily replaced. Nonetheless, increased seizures of drugs in quantity could have a substantial impact on trafficking organizations. Toward this end, the development of improved technical equipment to detect drugs, especially easily concealed narcotic drugs, should be given high priority. Further, the detection of drugs will always remain useful for the leads and evidence that detection produces.

By focusing on the trafficker's fiscal resources the government can reduce the flow of drugs in two ways. First, high-level operators, usually well insulated from narcotics charges, can often be convicted for tax evasion. Second, since trafficking organizations require large sums of money to conduct their business, they are vulnerable to any action that reduces their working capital.

The IRS has conducted an extremely successful program that identifies suspected narcotics traffickers susceptible to criminal and civil tax enforcement ations. Recently, the program has been assigned a low priority because of IRS concern about possible abuses. The task force is confident that safeguards against abuse can be developed, and strongly recommends re-emphasizing this program. The IRS should give special attention to enforcement of income tax laws involving suspected or convicted narcotics traffickers.

Drug enforcement agents should be further encouraged to recognize promising leads for tax investigation purposes, and to refer them to the IRS. Even when tax cases cannot be made, information regarding financial transactions may be valuable in proving other violations by drug dealers. For example, the Customs Service enforces a law requiring reports of international transportation of currency; drug dealers have to violate this law regularly.

International agreements to increase investigative access to information in financial institutions should also be pursued.

All of these indirect methods of immobilizing trafficking networks can be very powerful tools in the overall supply reduction strategy. However, the great discretion these tools provide law enforcement officials requires that extreme care be devoted to developing appropriate guidelines and procedures for their use, to ensure that constitutionally guaranteed civil liberties and fundamental rights of privacy are not impinged upon.

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RECOMMENDATION SUMMARY

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SUPPLY REDUCTION: CHAPTER 3

1. The task force recommends that a continuous process of identifying the most vulnerable segments of the illicit distribution system be launched, and that resources be continually reallocated to focus on the most vulnerable portion of the system.

ENFORCEMENT

1. The task force, while endorsing the concept of a lead agency in drug law enforcement recommends that the law enforcement strategy be designed to fully utilize the resource of all organizations involved in law enforcement.

2. The task force recommends that Federal law enforcement efforts focus on major trafficking organizations and particularly on the leaders of those organizations.

3. The task force recommends that greater attention be given to development of conspiracy cases, which often are the only way to apprehend high-level traffickers. Detailed recommendations for accomplishing this are made in three areas: (1) Building understanding and commitment to conspiracy strategy; (2) inducing cooperation of knowledgeable individuals; (3) and developing long-term approaches to investigations.

4. The task force recommends that personnel systems which recruit, train, evaluate, and reward individual agents be adjusted so that they emphasize conspiracy investigations rather than simply the number of arrests.

5. The task force recommends that the Controlled Substances Units inaugurated by the Attorney General be continued and not diverted to other activities.

6. The ask force endorses the President's proposal for mandatory minimum sentences for persons trafficking in hard drugs, and suggests that consideration be given to expanding the proposal to include traffickers of barbiturates and amphetamines.

7. The task force recommends mandatory consecutive sentencing rather than concurrent sentencing for persons who are arrested and convicted for narcotics trafficking while on bail from another trafficking offense.

8. The task force recommends revoking parole in the event that a paroled offender is re-arrested on narcotics trafficking charges.

9. The task force recommends that the Internal Revenue Service reemphasize its program of prosecuting drug traffickers for violation of income tax laws under strict guidelines and procedures.

10. The task force recommends that the President direct the Attorney General and the Secretary of the Treasury to settle jurisdictional disputes between DEA and Cusoms by December 31, 1975, or to report their recommendations for resolution of the matter to the President on that date.

11. The task force recommends continuation and expansion of LEAA and DEA activities aimed at strengthening State and local law enforcement agencies.

[Excerpt from Federal Strategy: Drug Abuse Prevention, November 1976]

[Prepared by the Strategy Council on Drug Abuse]

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STRENGTHENING COORDINATION AND COOPERATION AMONG FEDERAL DRUG AGENCIES

A major theme of the Federal strategy is that only with the full and efficient utilization of all available resources can we hope to contain the drug problem. Thus, major emphasis has been given to increasing the involvement of all agencies and to building mechanisms for coordinating their efforts.

There has been substantial progress in this area over the past 18 months. A major factor in the improved climate of cooperation was the need to work together to meet the President's request for a thorough review and assessment of the effectiveness of the Federal program to control drug abuse (an effort which led to the publication of the *White Paper on Drug Abuse*). During the course of that review, more than 80 individuals from over 20 different government organizations participated in work group activities. In reality, the Drug Abuse Task Force and its numerous working-level subcommittees never stopped working. On December 27, 1975, the President gave the Task Force the additional responsibility of preparing recommendations for dealing with the problem of drugs crossing our southern border, which served to keep the supply reduction groups meeting and working together. The demand reduction work groups were kept operating under the Office of Management and Budget's Office of Federal Drug Management in anticipation of the creation of the Cabinet Committee on Drug Abuse Prevention, recommended by the White Paper.

These temporary but effective coordinative mechanisms became the operating arms of two new Cabinet committees created by the President in April 1976 to ensure the coordination of all government resources which bear on the problem of drug abuse.[8] The President charged the newly formed Cabinet committees, to-

[8] The President announced the establishment of these two new Cabinet committees—one for drug law enforcement and the other for drug abuse prevention, treatment, and rehabilitation—in his Special Message to Congress on Drug Abuse of April 27, 1976.

gether with the existing Cabinet Committee for International Narcotics Control, with integrating the efforts of seven Cabinet departments and seventeen agencies into an effective overall program directed against drug abuse. Specifically, he charged the new Cabinet committees with the following responsibilities:

(1) To develop and implement the Federal strategy with respect to drug law enforcement (or drug treatment, rehabilitation, prevention and research);

(2) To assure proper coordination among Federal drug law enforcement (or treatment and rehabilitation) programs, including the collection, analysis and dissemination of information (or enforcement intelligence data);

(3) To assure that Federal enforcement resources (or prevention, treatment and rehabilitation) are effectively utilized;

(4) a. To assure proper coordination between the investigative and prosecutorial arms of the government.

b. To develop and monitor a plan for improving job opportunities for former addicts;

(5) To provide liaison between the Executive Branch Congress, State and local governments and the public;

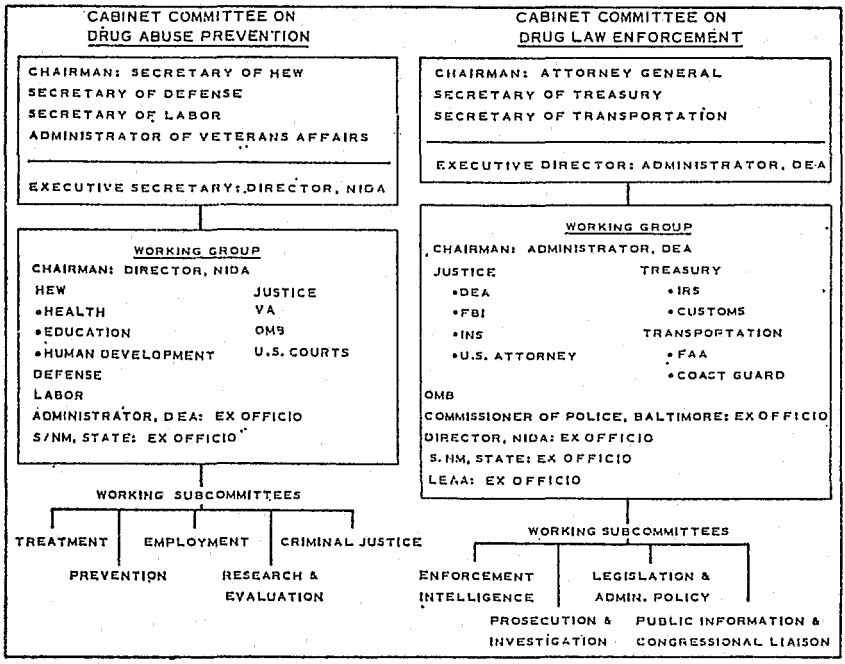
(6) To assure implementation of relevant recommendations contained in the Domestic Council's *White Paper on Drug Abuse;*

(7) To evaluate and make recommendations to improve Federal drug law enforcement (or treatment and rehabilitation) programs; and

(8) To report their progress to the President on October 1, 1976, and periodically thereafter.

In addition to the above ongoing responsibilities, the Chairmen of the Cabinet committees were directed to work closely to develop plans for improving the coordination between law enforcement and drug abuse prevention, treatment and rehabilitation programs.

The new Cabinet committees are now quite active, both at the Cabinet committee level and in their working groups and functional subcommittees (see chart below for the structure of the two committees).



This *Federal Strategy 1976* is evidence of the work of those Cabinet committees since most of it is drawn from their respective October 1 progress reports to the President.

Important progress in improving interagency coordination and cooperation has been made between individual agencies, as well. For example, at the time the White Paper was released, the greatest need for improved interagency cooperation involved the Drug Enforcement Administration and the U.S. Customs Service. Reorganization Plan No. 2 of 1973 drew a distinction between investigative and interdiction functions with respect to narcotics enforcement. The investigative function was given to DEA and the interdiction function left with the Customs Service. Unfortunately, the distinction between interdiction and investigation was not made clear in the Reorganization Plan. This ambiguity led to jurisdictional disputes between the agencies.

The most valuable contribution the White Paper made toward the resolution of these disputes was to focus the debate on a relatively narrow set of issues, and to point out the considerable areas of agreement which existed, but which were often overlooked. Since the White Paper's release, the working relationship between DEA and the Customs Service has improved markedly. Among other things:

Last December, the U.S. Customs Service and DEA signed and implemented a Memorandum of Understanding which outlines operating guidelines for improving coordination between those agencies, thus signalling an end to the rivalry which had hindered Federal drug law enforcement efforts for more than ten years. These guidelines were discussed by top DEA and Customs officials in joint session in February 1976 to ensure clear understanding of them.

To respond to Customs' complaint that DEA was not providing useable tactical intelligence in sufficient quantity, DEA established a capability within its intelligence branch to work specifically on Customs requirements. In addition, Customs has made provisions for assigning three intelligence analysts to DEA headquarters to ensure that DEA personnel are sensitive to Customs' intelligence requirements, and that all relevant information is relayed to them. Customs has also assigned personnel to the interagency El Paso Intelligence Center and to DEA's Detroit office. The resulting flow of information from DEA to Customs has increased sharply since the Memorandum of Understanding was signed, from a few hundred specific items per month to over one thousand per month.

Finally, in June 1976 DEA and Customs agreed on a procedure which permits Customs to debrief persons arrested for drug smuggling at the border if DEA declines to do so.

A similar Memorandum of Understanding between Customs and the Immigration and Naturalization Service (INS) was signed in April 1975 and the U.S. Coast Guard will soon be executing Memoranda of Understanding with Customs and DEA.

The Immigration and Naturalization Service, the U.S. Coast Guard, the Federal Aviation Administration (FAA) and the Bureau of Alcohol, Tobacco and Firearms (ATF), as well as DEA and Customs, are working together at the El Paso Intelligence Center. An Interagency Drug Intelligence Group with representatives of several of these agencies has been meeting since mid-June to monitor the movement of brown heroin. Further, DEA, in coordination with the Cabinet Committee on Drug Law Enforcement, has established two pilot Field Intelligence Exchange Groups in Chicago and Miami. The objective of these groups is to maximize prosecutions against key high-level traffickers and financiers by coordinating the local intelligence resources of Federal agencies and State and city law enforcement organizations.

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Improving the Use and Distribution of Information

The collection and sharing of information regarding all aspects of the drug abuse program are crucial to its success. For example, information on the effects of drug use is central to any public education process. Data on the extent of drug use, the availability of illicit drugs and the resultant social costs are critical in making broad resources allocation decisions and in evaluating the overall effectiveness of our programs. Strategic intelligence on trends in drug abuse, levels of price and availability, sources of drugs, and capabilities of other governments to control drugs are essential for more detailed resource allocation decisions. Data on the effect of different types of treatment on abusers of different drugs, both during and after treatment, are vital to determining what type of treatment works best for whom. In short, information should serve as the foundation for both short- and long-term program management.

Over the past several years, the volume of information available to drug program managers has increased greatly. Progress in analyzing this information and in distributing it in a timely and useful way to potential users—ranging from the public to other enforcement agencies—has not kept pace.

We have made modest progress over the past 18 months, in analyzing available data and in sharing information more widely. For example, the Client Oriented Data Acquisition Process (CODAP) and DAWN provide data on the extent of drug use, the impact of such drug use in terms of deaths and hospital emergency room visits, the characteristics of drug users entering treatment and the impact of treatment on those users. This information is now available on a quarterly basis to program managers, health professionals, regulatory officials and the general public.

Further, the National Institute on Drug Abuse has undertaken to periodically publish a *Heroin Indicators Trend Report* which synthesizes these and other data to determine trends in availability and use.

Intelligence, often thought of as an exotic art somehow unconnected with the rest of the drug program, is merely the use of information from a variety of sources to provide a picture of what is happening, so managers can target resources appropriately. The White Paper found that the overall narcotics intelligence function generally suffered from:

Insufficient funding during the internal resource allocation process. This was particularly true with regard to intelliegnce analysis capability.

Counterproductive competition within and among enforcement agencies. There was evidence that competitive attitudes within and among enforcement agencies impeded the production and flow of operational intelligence.

To respond to the inadequacy of funds, additional resources have been allocated to intelligence activities in both DEA and Customs.[17] A unit will be established for long-range intelligence planning in DEA, and DEA headquarters strategic intelligence capability will be expanded. Further, DEA has implemented several internal management changes in both headquarters and field intelligence operations, as well as stressing the responsibility of agents to collect and report intelligence to meet multiagency needs. For example:

DEA has scheduled six intelligence collection and reporting training schools for Special Agents beginning in November 1976.

All regional intelligence offices, foreign and domestic will have functional reporting responsibilities to the headquarters Office of Intelligence.

Existing agency and management evaluation forms will be revised to include intelligence collection and reporting as an important factor to be considered in the evaluation of all agents for supervisory positions.

The curricula for DEA's supervisors' school and mid-level management school will be revised to place greater emphasis on intelligence collection and reporting.

DEA field managers will be scheduled for intelligence management training and review either in the three-week school or in abbreviated sessions designed to highlight its curriculum.

As these changes are implemented, the intelligence support provided to other agencies should improve, thus increasing interagency cooperation and sharing. In addition, several multi-agency efforts to ensure full participation in information sharing by drug law enforcement agencies have been launched. These initiatives are intended to provide an exchange of information on local, regional, and national levels. They are:

El Paso Intelligence Center (EPIC): This interagency group, located in the southwestern border area, receives and disseminates information on trafficking and illegal alien activity along the southern border. The EPIC staff includes operational personnel from DEA, Customs, INS, Coast Guard, FAA, and ATF.

Interagency Drug Intelligence Group (IDIG): This interagency intelligence group, at DEA headquarters in Washington, combines DEA, Customs and INS personnel efforts in analysis and dissemination of intelligence relating to a priority drug target, heroin from Mexico.

Unified Intelligence Division (UID): A joint city-State-DEA intelligence unit has been in operation for over two years in the New York City metro-

[17] Specifically, a total of 59 new positions for FY 1977 are being allocated within DEA for regional, strategic and operational intelligence. Customs has added 21 intelligence positions.

politan area, with membership from a broad range of Federal, State and local drug law enforcement agencies operating in that area. The UID has a small central staff housed within the DEA regional office and analyzes and disseminates intelligence information for the area.

Field Intelligence Exchange Group (FIEG): The Cabinet Committee on Drug Law Enforcement has proposed that interagency groups be formed in 19 major cities to focus intelligence resources upon selected major trafficker targets. On August 20, 1976 pilot efforts to test this concept were begun in Chicago and Miami. Agencies participating include DEA, Customs, IRS, the U.S. Attorney's Office, INS, Coast Guard, FBI, Secret Service, ATF and representatives of State and local law enforcement.

Despite this progress, much more needs to be done. Plans to further improve the dissemination of information are discussed in the next chapter.

Securing Effective Removal of Traffickers

Earlier, we discussed the progress being made in focusing Federal law enforcement resources on the arrest of major traffickers. Much of the progress we have made in improving our ability to apprehend these traffickers will be lost, however, unless major changes are made in the way our criminal justice system deals with drug traffickers after arrest.

To deal with the failure to immobilize traffickers against whom substantial cases have been developed, President Ford proposed legislation in his April 27, 1976 special message which would:

1. Require minimum mandatory prison sentences for persons convicted of high-level trafficking in heroin and similar narcotic drugs. These minimum sentences—three years for a first offense relating to an opiate and six years for an offense following a previous conviction or for selling an opiate to a person under 21 years of age—are intended to ensure that drug traffickers know that they will go to jail upon conviction.
2. Enable judges to deny bail in the absence of compelling circumstances for certain categories of notorious drug defendants. These defendants include those persons previously convicted of an opiate felony, persons on parole, probation, or other conditional release, non-resident aliens or persons in possession of illegal passports at the time of arrest, and persons convicted of having been fugitives.
3. Raise the value of property used to smuggle drugs which can be seized by administrative as opposed to judicial action from $2,500 to $10,000 and extend this forfeiture provision to include cash or other personal property found in the possession of a narcotics violator.
4. Make meaningful an existing provision which requires that any person planning to transport an amount exceeding $5,000 file a report, and that the report be filed prior to departure.
5. Reduce the opportunities for unloading of contraband by requiring owners or masters of small, privately owned boats to report their arrival to the U.S. Custom Service immediately, instead of within 24 hours.

Enactment of this legislation would represent a major contribution to the Federal anti-narcotics effort. Securing enactment is thus one of the highest priority "open agenda" items discussed in Chapter 4.

The problem of fugitives is significant: currently there are 2,547 Federal fugitives charged with drug-related offenses. Of these, 345 are Class I major traffickers. To help deal with this problem, the FBI will utilize resources available to them to assist DEA in apprehending major drug fugitives. In addition, the Department of State, the Immigration and Naturalization Service, U.S. Customs and the Criminal Division of the Department of Justice are developing plans for coordinating the controlled re-entry of drug law fugitives into the United States. These plans will include a review of existing extradition treaties with an eye toward strengthening them as necessary.

Finally, to attack the financial resources necessary for narcotics traffickers' illegal transactions, in his April 27, 1976 Special Message on Drug Abuse the President directed the Secretary of the Treasury to work with the Commissioner of the Internal Revenue Service, in consultation with the Attorney General and the Administrator of the Drug Enforcement Administration, to develop a tax enforcement program aimed at key traffickers. To begin implementing that directive, the Administrator of DEA and the Commissioner of the Internal Revenue Service have signed a Memorandum of Understanding providing for exchange of information on major drug violators who may be guilty of tax evasion. So far,

the names of 375 Class I drug violators have been sent to IRS field officials so that tax investigations can begin if warranted.[18]

In June 1976, a U.S.-sponsored resolution urging governments to make the financing of narcotics traffickers a punishable offense and to exchange information that would be helpful in identifying persons committing such offenses, was adopted unanimously by the United Nations Economic and Social Council. Action to this end should prove to be a significant step toward improved cooperation in narcotics investigations.

In addition, the recently concluded U.S.-Swiss Mutual Assistance Treaty on Criminal Matters, which becomes effective in January 1977, should expedite the exchange of information concerning persons engaged in criminal activities, including alleged drug traffickers, even while the case is still in the investigatory stage. Exploratory discussions have been held or are underway in a number of countries with a view toward entering into mutual assistance agreements for exchanging information to disrupt the financing of international crimes.

To provide specialized prosecutorial support to the program aimed at incarcerating major drug traffickers, the Attorney General has devoted greater resources to more extensive enforcement of the conspiracy laws of the United States. There are presently special controlled substances prosecution units in operation in the offices of 19 U.S. Attorneys throughout the country. The U.S. Attorneys were alloted additional personnel to staff these units so that prosecutors would be in a position to devote full time to major cases. In addition, DEA has established a headquarters staff to support conspiracy cases and has put greater emphasis on its Central Tactical Units which specialize in the development of major conspiracies. Both the Criminal Division of the Department of Justice and DEA monitor the activities of the prosecution units and conduct seminars to train attorneys and agents. In addition, DEA has a conspiracy investigation course for agents which is now being expanded to train personnel in the domestic regional offices.

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It should be clear from this discussion that we believe a great deal of progress has been made over the past 18 months in revitalizing and refocusing the Federal drug abuse program and putting it on a sound basis, but there is more we must do. This is the subject of the next chapter: "The Open Agenda."

4. THE OPEN AGENDA

As indicated in the previous chapter, we have made progress in the past 18 months, particularly in the fuller utilization of Federal resources. Nonetheless, much remains to be done in all of the areas discussed there.

Specifically, Federal enforcement efforts can still be more narrowly focused on high-level, interstate and international traffickers. The Internal Revenue Service, the Federal Bureau of Investigation and State and local law enforcement organizations can all contribute more to an overall enforcement program. We can do much more to encourage other nations to join us in this truly international struggle. We need to secure passage of new legislation aimed at improving our ability to put major traffickers in prison and at closing loopholes in the law which allow them to continue to prey on our young. And we need to enlist State and local vocational training services; and State, local and private organizations in a broad prevention effort.

This chapter discusses the additional need for priority action in nine areas:

Development of a national prevention strategy.

Expansion of treatment linkages with both Federal and State and local criminal justice systems, other State and local community services, and alcohol treatment.

Broadening of the program against amphetamine and barbiturate use.

Removal of offenders from drug trafficking by improving postarrest prosecution and incarceraiton, and by attacking the financial resources of traffickers.

Improvement in intelligence support.

Action to strengthen State and local law enforcement.

Outlining of an overall framework for evaluating specific international programs.

Review of sanctions imposed for possession offense.

Development and use of new knowledge.

[18] There is a great likelihood that these individuals are routinely committing tax offenses, since they pay no taxes on their illegal income.

Much of this "open agenda" is not entirely new and some of it has been called for explicitly before. These items remain on the open agenda because progress in implementing them has been slow or inadequate, program managers have been unable to mobilize the resources from organization which are outside their control, Congress has failed to act on proposed legislation or simply because they need continuing emphasis. All are important to the success of the Federal strategy. The fact that action on them has been called for before but not achieved should not deter us from renewing our efforts in these critical areas.

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Removal of Offenders From Drug Trafficking

It has become all too clear that gathering sufficient evidence to prosecute a trafficker does not guarantee his or her removal from further trafficking. A trafficker may be operating in a foreign country, out of reach of effective U.S. prosecution, trial and sentencing. If they remain in the United States, indictment and arrest do not guarantee immobilization; they merely begin a long criminal justice process during most of which the trafficker is free to continue operating. At the end of this process incarceration may be relatively short.[7]

This failure to immobilize traffickers against whom a substantial case has been developed is very costly; in terms of wasted investigative resources and lowered morale, in terms of weakening the deterrent value of the law, and in terms of reduced public trust in the criminal justice system. Consequently, efforts to more effectively immobilize indicated traffickers are vitally important.

The open agenda for improving performance in this area is discussed in two parts:

Improving post-arrest handling in the criminal justice system.
Attacking the financial resources of traffickers.

POSTARREST HANDLING BY CRIMINAL JUSTICE SYSTEM

Now that Federal law enforcement agencies are demonstrating the ability to shift their focus to high-level violators, we must make significant changes in the way the criminal justice system handles major traffickers after arrest to capitalize on this progress.

One necessary step is to enact better laws. The President proposed legislation in his April 27 Special Message on Drug Abuse which, among other things, is aimed at improving our ability to put major traffickers in prison.

These proposals are now before the Congress. They should receive bipartisan support and swift passage. Enactment of these proposals will represent a major contribution to the national anti-narcotics effort.

Increased attention to the problem of prosecution of major traffickers is also needed. The establishment of Controlled Substances Units (special drug prosecution units) in the United States Attorneys' offices in 19 cities has helped to focus prosecution resources on cases involving major traffickers. But all too often, limited prosecutorial resources have forced these units to be diverted to lower level drug cases, or even to non-drug cases. We understand that this diversion reflects competing needs for the services of experience prosecutors who normally staff these units, but they nonetheless hurt the drug program.

We believe that there needs to be greater commitment of experienced attorneys to these uits. Specifically, we recommend that all existing Controlled Substances Units be staffed with experienced prosecutors and further that the United States Attorneys' offices which do not have Controlled Substances Units select one or more experienced prosecutors to work with DEA on major cases. Additional DEA conspiracy units should be developed and DEA should ensure close working relationships between designated agents and prosecutors' offices in all major cities. Training DEA agents in conspiracy techniques, already increased substantially, should be further expanded and U.S. Attorneys should receive regular briefings by DEA personnel on the drug traffic in their geographic areas.

Finally, there also is a pressing need to increase the number of United States magistrates and Federal judges. We specifically endorse the recommendations concerning Federal judges and magistrates made by the President in his June 17, 1976 message to the Congress on crime.

[7] Nationally, 55 percent of convicted Federal narcotics offenders received sentences of either less than three years of imprisonment, or probation. (FY 1975 data).

FINANCIAL RESOURCES OF TRAFFICKERS

By focusing on traffickers' fiscal resources the government can reduce the flow of drugs in two ways. First, high-level violators, usually well insulated from narcotics charges, can often be convicted for evading the taxes due on their illicit income. Second, since trafficking organizations require large sums of money to conduct their business, they are vulnerable to actions that reduce their working capital.

Thus, the Internal Revenue Service (IRS) has a major-role that it can and must play in drug enforcement. In accordance with the Presidential directive to develop a tax enforcement program aimed at high-level drug traffickers, DEA and the IRS signed a Memorandum of Understanding on July 27 which provides for the sharing of information concerning suspected tax violations by major narcotics violators. Since signing the memorandum, DEA has provided IRS with an initial listing of 375 names of high level violators and meetings have been conducted in the field between DEA and IRS officials. All of this represents a good start: now the IRS must devote sufficient resources to ensure effective enforcement of the tax laws against high-level drug traffickers. If additional resources are necessary, they should be provided.

In addition to action by the IRS, there are other measures which can be taken to deprive the trafficker of fiscal resources needed in his trade, or to use financial aspects of his operations to build a criminal case. They include the following:

Enact the provisions of the President's proposed drug legislation which would: (1) raise the value of property used to smuggle drugs which can be seized by administrative, as opposed to judicial action (from $2,500 to $10,000), and extend this fortfeiture provision to include cash or other personal property found in the possession of a narcotics violator; and (2) make operative the current provision requiring a report whenever more than $5,000 is being exported.

Pursue negotiations to bring about mutual assistance agreements with other countries for increased investigative access to information which could help disrupt the financing of narcotics trafficking.

Expand the DEA financial intelligence project, which analyzes financial flow to and from a suspected violator to build a prosecutable case.

Expand training in financial intelligence. The sophisticated methods used by high-level traffickers to move money and conceal profits require an equally sophisticated form of investigation. DEA's National Training Institute should work with the IRS to devise training courses for our analysts and agents in financial investigative techniques.

B. Commissioner Alexander's Policy

Statement of Hon. Donald C. Alexander, Commissioner of Internal Revenue, Before the Subcommittee on Commerce, Consumer and Monetary Affairs of the Committee on Government Operations of the U.S. House of Representatives, October 6, 1975

Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity of discussing with you my views regarding the crucially important issue of the Internal Revenue Service's role in law enforcement activities. Although this has been a topic on which I have spoken a number of times, and one in which my views are well known, it is most commendable that the Subcommittee has specifically provided for a hearing on this topic. While the subject has certainly come up in a tangential way in my many appearances on Capitol Hill, primarily through the questioning, it appears to me to be highly appropriate, especially at this time, for the subcommittee to focus on this topic directly.

First, I want to make my position completely clear. I strongly support firm and comprehensive enforcement of the laws against tax evasion. Violations of these laws constitute serious crimes and should be so treated. As I have indicated before, sentences in such cases have not been uniform and have not been of sufficient severity. Also, I believe that our Intelligence Division and our special agents do a difficult job well. Most of them are skillful and dedicated people. A few, however, have let their zeal outrun their judgment and this has caused problems for the Service.

Well before the current widespread congressional interest in investigative agencies and techniques, the Internal Revenue Service has been involved in the difficult process of reassessing its role in the law enforcement community. As I have noted previously, there has been, over the years, a clear tendency to bestow upon the Internal Revenue Service a wide variety of additional responsibilities, largely in nontax areas. I likened it to a Christmas tree—the IRS, like any good organizational heirarchy looks like a Christmas tree, and because of its reputation as a well managed and organized agency, the Federal planners have had a continuing desire, successfully effected in many cases, to hang a number of ornaments on our organizational tree which don't belong there.

Not only does this alteration of the Service's originally contemplated function have a possibly deleterious affect upon sound tax administration, but when one contemplates the vast resources and powers of the Service (in the confidential information supplied to it, and the broad summons and collection authority it has), a significant potential for misuse does exist. As tempting as it may be for others in the Federal governmental community to recruit an agency possessing these powers and these resources, the Internal Revenue Service must always maintain a focused eye upon its central mission—the administration and enforcement of the tax laws. The success of this mission, in our context of a self-assessment system, depends upon the assistance and cooperation of the Nation's citizenry. We cannot be assured of the continuing presence of this essential ingredient unless the public has confidence in tax administration—in its fairness and efficiency and its devotion to its stated and articulated objectives.

I would like to discuss with you this morning some of the things the Internal Revenue Service has done, and is now doing, to ensure that the Service, in the information, it gathers, in the techniques it employs, and in the application of its powers and resources, is involved in matters that relate only to tax administration and enforcement. To some extent the attempt of the Service to limit its activities to those which are related to tax administration and enforcement has prompted a critical response. This criticism, which to a considerable extent fails to fully understand the actions the Service is taking and why it is taking them,

seems to come from two sources. There are a few IRS personnel who would like the Service to participate in a generalized attack on criminal activity even though that criminal activity involves only indirectly or tangentially violations of the tax laws. Perhaps a greater source of criticism of Service policies in this regard is those law enforcement personnel in other agencies who would utilize IRS special agents (probably the best investigators in the Federal establishment), powers and enforcement techniques in their investigations. I welcome the opportunity to describe the Service's actions, and their rationale, in the hope of fostering an increased understanding of what we are doing and how and why we are doing it.

A guiding principle of tax administration should be that the Service's power and its people not be used to further ends other than those of tax administration and tax enforcement. An excellent example of a situation in which the Service's capabilities were possibly misapplied is in the narcotics traffickers program—a "new, all-out offensive" on drug abuse announced by President Nixon in 1971 in which the IRS was instructed to participate. The Service's involvement in this program was unsound from two distinct viewpoints. First, and most importantly, is the fact that the Service was not correctly using its powers of seizure, terminations of taxable years and jeopardly assessments in some narcotics program cases. In some localities when an arrest of a narcotics trafficker occurred, and property or money was found in his possession, the objective of Service personnel in too many cases was to deprive that person of his working capital by constructing an arbitrary tax assessment and seizing that amount of cash which might fairly represent the unpaid tax liability of that person. In some instances the determination of the amount of the deficiency to be asserted would start with the amount of money found on the suspected narcotics trafficker—the notion being, apparently, that such action, depriving the suspect of working capital, would force him out of business. The judiciary became concerned about abuse of these powers. For example, Judge Clark of the Fifth Circuit Court of Appeals observed as follows in the court's decision in *Willits* v. *Richardson:*

"The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected by wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the narcotics project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use."

Even before this strong judicial criticism, the Service had, at my direction, taken steps to ensure that the same standards would be applied in narcotics cases as are applied in tax cases generally. Service personnel have been told that the IRS lacks the authority to terminate a taxable year or make a jeopardy assessment unless such actions are taken in accordance with the law. We must have a sound basis for taking the action in the first place—that is, it must be determined if the taxpayer is liable for income taxes in the current or preceding taxable periods, and that circumstances show that the collection of the taxes is in jeopardy. Our employees have been cautioned to take special care to avoid excessive and unreasonable assessments. The tax laws simply cannot be used as a means of effecting forfeitures. However, this redirection of the participation by the Service in this Federal program was met by considerable resistance, within the Service, and more particularly, by other law enforcement agencies, especially the Department of Justice.

Not only did the Service's participation in the narcotics program seem to misapply its prerogatives but, despite the assignment of a disproportionate amount of IRS Intelligence and Audit personnel to the program, the cost-benefit analysis, insofar as collected revenues is concerned, is dreary indeed. During the four fiscal years of its participation in the program, 1972 through 1975, the Service collected only $38.3 million in revenues as against a cost to it of participating in the program of $67.6 million. While the Service's enforcement program is designed to encourage voluntary compliance through the establishment of a deterrent or corrective effect and does not exist primarily to collect revenues, our limited enforcement budget should be applied in the most effective manner possible. It makes no sense to apply our enforcement program resources in a manner which is seemingly abusive of the Service's powers and at the same time results in a costs to collection ratio which is much poorer than that achieved in the general enforcement program.

The Service's participation in Federal strike forces presents a slightly different, though certainly related, aspect of the utilization of the Service's investigative authority. The unification of investigative and prosecutorial capability, which is the central theme of the strike force approach, is certainly one with which the Internal Revenue Service has no basic quarrel. Soon after becoming Commissioner I became concerned, however, about the extent of the Service's commitment to strike force activities and the effect of that commitment upon participation in strike forces at that time was supposedly executed through the existing lines of authority for all compliance and enforcement activities, at least two organizational aspects caused me concern. A departure from the existing lines of authority concept was the assignment of both an Audit and an Intelligence representative to each strike force reporting to the IRS National Office. Since the chief function of these officials was to act as liaison between the strike force attorneys and IRS district and regional officials, and not to direct, supervise or coordinate strike force investigations or projects (responsibility for these functions being with the districts and regions as in other IRS enforcement programs), I saw no need for a duplication of the liaison commitment. Another matter of concern was the fact that IRS strike force representatives were under National Office supervision.

I was, and still am, of the view that IRS audit and investigative activities should not be centralized, regardless of their nature. Experience has shown us that the difficult job of tax administration and enforcement is best solved through the use of traditional lines of authority established at a local level. While controls and guidelines for all of the Service's activities are, and should be, established in the National Office, I was opposed to the adoption of a variant of our existing organizational structure especially tailored for cases involving a specific class of taxpayers.

There has been considerable discussion, in the press and elsewhere, concerning a divergence of view between the Department of Justice and the Internal Revenue Service regarding the extent of the Service's commitment to the strike force activity. In August of last year, former Attorney General Saxbe wrote me complaining, in strong terms, of the removal, by the Service, of the Audit representative to the strike force and of the imposition, by the Service, of a ceiling on the manyears applied by the Intelligence Division to all special enforcement programs. This action by the Service has been greatly misunderstood. The removal of the Audit representative from the strike force unit does not mean, in any way, that the tax cases identified by the strike force unit will be denied an audit capability. It simply means that the Service concluded that since the thrust of the strike force is the investigation and prosecution of criminal offenses, the special agent, representing the Intelligence Division, is the proper individual to represent the Service as liaison in each of the 17 strike force units throughout the country, and that only one person acting in a liaison capacity was necessary. Placing a limitation on the commitment of investigative time to the strike force activity as a whole was felt necessary to assure a balanced intelligence program pending an overall review of the relationship of the drive on organized crime to our enforcement program generally.

At the present time the Department of Justice and the Internal Revenue Service are engaged in discussions which are designed to produce guidelines relating to the Service's participation in strike force activity. While these discussions could be proceeding at a faster pace, and agreement could be forthcoming more rapidly than it is, the discussions have been marked with some progress. For example, at the meeting held last week it seemed to be the consensus of the representatives of the Department of Justice that most United States attorneys would agree not to accept a plea of guilty to an indictment containing both Title 18 and Title 26 counts unless the defendant agreed to plea guilty to at least one of the tax counts. If this particular point is finally agreed upon, it will avoid the situation, which is very damaging to tax administration, where tax counts in a multiple count indictment are dropped at the time the defendant pleads guilty despite the fact that considerable time and effort was expended in the development and preparation of the tax cases. Clearly no tax administration goal is served when tax cases, so laboriously prepared, are dropped by the wayside at the conclusion of the case.

Our paramount concern is, however, that our participation in such joint investigative efforts not be counter productive to sound tax administration. If the IRS agents participating in a strike force "team" become involved in investigations that they would not ordinarily become involved in, either by working on a

case which does not involve a potential tax violation or, though involving a potential tax crime, is not a case to which our normal case selection criteria would apply, the enforcement resources of the Service are not being properly utilized and tax administration suffers.

The issue involved here is who should direct and control the activities of the IRS agents involved in these joint efforts. On this we may have no difference of opinion with our colleagues in the Department of Justice. While the Executive order providing for strike forces designates the Attorney General as the one who is to "facilitate and coordinate" the law enforcement activities of participating agencies, it by no means provides that he, or his delegate, is to control the activities of cooperating personnel. Deputy Attorney General Tyler's testimony late last month before Congressman's Vanik's Subcommittee on Oversight indicates that we and the Department of Justice are at one on this issue. In his prepared statement Judge Tyler, in describing the strike force, stated that "Each agency participates in the planning and retains absolute control over its operation."

If control by participating agencies is admitted, there would seem to be no quarrel over the fact that that control must include the right of the appropriate supervisors to decide what cases—what kind of work—participating personnel are to extend their efforts on. Certainly, IRS agents should not be assigned to work on so-called title 18 criminal violations, that is, cases which involved criminal violations with no tax significance. Even putting aside the fact that such activity would exceed the agent's authority, and would probably involve a misuse of our budgeted funds, such activity fails to serve the ends of tax administration and enforcement. From this it would seem to plainly follow that sound tax administration is not served by directing IRS agents to develop criminal tax cases which fall short of case selection criteria which are specifically designated to establish the corrective and deterrent effect which is essential to a well functioning voluntary compliance system. Service personnel cannot be directed to work cases simply because organized criminal activity is suspected. Agents participating in strike force activities are perfectly willing to receive, from the strike force attorney, information regarding potential subjects for tax investigation, but the Service must make the decision as to whether each case is one on which to expend its limited enforcement resources.

This approach does not detract from the "team" concept of the strike force. Subject to the rules relating to the disclosure of tax return information, Service personnel are perfectly willing to make available to the strike force attorney evidence relating to the possible commission of nontax offenses which they obtain while working the tax case, and to further develop that evidence if it involves going over the same ground and pursuing the same leads as are involved in the tax case. If for some reason the tax case becomes unsuitable for prosecution, but the nontax title 18 case is to proceed, the IRS agent with knowledge of the nontax case will, of course, be available for testifying, and, on a case-by-case basis, available for trial preparation in connection with the on-going nontax case, as long as substantial time commitment of Service manpower is not involved.

While the Service is making every effort to work out the differences which may exist between it and the Department of Justice on the strike force issue, it must subject its participation in that program to the same kind of scrutiny it applies, on a regular basis, to all of its activities. A recent study by Internal Audit of the Service's participation in the strike force program in the three largest strike force locations is not encouraging. The study reveals that deficiencies of $122.5 million were proposed in 157 strike force cases developed during fiscal years 1972 and 1973 by agents in these three locations. Of this amount, as of July 1975, only $12.1 million had actually been assessed and, as the same date, only $1.3 million in taxes and penalties had been collected. Not only do the amounts actually assessed represent a very small percentage—10 percent—of the deficiencies originally proposed, but it appears as though the amounts actually collected in these cases may represent a disproportionately low percentage of the amounts actually assessed. Of the $12.1 million actually assessed, $6 million have been either abated or disposed of as uncollectible. Thus, even if the remaining $4.8 million of the $12.1 million actually assessed are eventually collected—a remote possibility—the total amount collected would be just about the same as the $6 million which were either abated or found to be uncollectible and a very small percentage of the amounts originally proposed. These figures do not present a promising picture of the most effective use of our resources.

It is well known that the Service acquires a wide variety of information necessary for the fulfillment of its tax administration responsibilities. This necessity creates the distinct possibility that Service personnel may gather information which is unrelated to tax administration. Here, again, the Service must be especially vigilant to avoid becoming enmeshed in activities unrelated to tax administration. If we do not do this, the lessons of "Operation Leprechaun" and the Special Service staff, have not been well learned. The Service has issued revised information gathering guidelines which instruct its personnel that they are authorized to seek and obtain only information necessary for the enforcement and administration of the tax laws. In the event that information unrelated to tax administration is received by Service personnel, it will not be indexed or associated with the name or identifying symbol of a taxpayer, and procedures are being developed for purging and destroying such information within a short time after it is obtained.

In another area, also, the Service has been especially vigilant not to use illegally obtained evidence against the taxpayer. While constitutional restraints would prevent the use of such evidence against the taxpayer in a criminal tax proceeding, the Service has concluded, even though the issue has not been finally resolved by the judiciary, that it would be inappropriate to use such evidence in a civil tax proceeding involving the taxpayer. In yet a further area, the Service has recently implemented guidelines controlling payments for information received from informants. Not only must the information received be strictly tax related, but such amounts may be paid only after obtaining approval of the Assistant Commissioner (Compliance).

Difficult questions with respect to Service policies and the legality of the use of information are also illustrated in the so-called Operation Tradewinds, and the related "Operation Haven." For some time the Service has been concerned about the use of foreign trust accounts, for example in the Bahamas, as part of a tax evasion scheme. During the early 1960's the IRS received information that certain organized crime figures were using foreign trust accounts, or alleged accounts, as part of attempts to evade U.S. taxation. In some instances funds allegedly transferred to Bahamian accounts were not actually transferred, or if transferred, may have represented amounts that were never subjected to U.S. taxation. In order to obtain information concerning the identity of these depositors, and the amounts and times of deposit, the Jacksonville district office of the Internal Revenue Service commenced an information gathering project named "Operation Tradewinds," later named "Operation Haven." The difficulties of gathering information in foreign countries were made acute by the enactment in Bahama, shortly after the project got underway, of the Banks and Trust Companies Act of 1965. This law provided that it would be unlawful for any person to disclose information relating to the affairs of a bank, or of a customer of a bank, which that individual has acquired in the performance of his duties. After this act was passed very little information was received and Service personnel made few trips to the Bahamas in 1966.

As a response to this problem the Service developed during 1966 and 1967, guidelines which authorized the obtaining of information from Bahamian Bank employees through American citizens acting as intermediaries. All contacts by IRS personnel with the informants were, according to the guidelines, to take place only on American soil, with the exception of limited contacts in the Bahamas for the purpose of arranging future contacts in the United States with informants. The guidelines provided that the information was to be received in the United States by an agent other than the agent assigned to go to the Bahamas for liaison purposes. All contacts by Service personnel were to be with an informant and they were instructed not to deal with Bahamian bank officials for purposes of obtaining this type of information. Clearly these guidelines were developed by facilitate the receipt of information from Bahamian sources who might be willing to violate the penal statutes of that country. Equally clearly, they were intended to insulate special agents from the reach of the Bahamian laws. Lawyers in the Chief Counsel's office and in the Department of Justice concluded that conduct pursuant to the guidelines would not result in violations of federal laws by IRS personnel, hence the information so obtained could be used in criminal cases. Whether or not this procedure was then or is now appropriate for a federal agency is a different question. Although jurisdictional problems exist, it is the opinion of Chief Counsel Whitaker that both the intermediary and Service personnel who receive such information in the United States, have violated the abetment and conspiracy provisions of Baha-

mian law. Moreover, investigation has revealed instances where the guidelines were violated as a result of violations, by special agents, of Bahamian laws while in the Bahamas.

It seems clear that under the present case law the constitutional rights of a defendant in a potential criminal tax case would not be violated—the only person who could conceivably complain would seem to be the bank official "invited" to violate Bahamian banking laws. However, substantial policy questions exist regarding whether the Service should nonetheless use such evidence in the prosecution of criminal tax law violations.

Reconsideration of the potential problems and policy aspects involved in this manner of obtaining information for use in tax cases occurred as a result of the occurrence, referred to by Deputy Commissioner Williams in the press conference held at the Service last week, of the incident involving the surreptitious removal by an informant in Miami of information from the briefcase of a foreign national and the photocopying of such information by Service employees, while the individual owning the briefcase was with a woman companion arranged for by the IRS informant. As Deputy Commissioner Williams indicated, there are additional legal and policy aspects to this incident. The facts suggest that the information may have been obtained in violation of Federal, and possibly State, laws with at least an inference that the Service's Intelligence Division was involved in such violations. Perhaps more important, is the policy issue of whether evidence obtained in such a manner should be used in tax enforcement, either criminal or civil.

Even if the Miami incident involved only a violation of Bahamian law, it appears somewhat inconsistent to adopt a policy preventing the use, in a civil case, of evidence obtained in violation of federal law (as I have described, above, we have done) and yet permit the use of evidence obtained in violation of foreign criminal laws. Moreover, if a Federal law violation is involved, it must be determined whether the evidence obtained will still be used even though the rights of someone other than the taxpayer have been infringed.

Although our concern about the use of foreign tax havens as part of tax evasion schemes should not, and will not, falter, we should at least consider an entirely different approach. In our effort to deter the widespread use of Swiss bank accounts as devices to avoid U.S. taxes, the focus has been on legislative solutions and discussions with foreign officials, and not on obtaining evidence under questionable circumstances. In the meantime, however, work on Project Haven cases has not ceased. All cases in the field will be reviewed to determine the effect, if any, upon these cases of evidence obtained from the briefcase. Those cases which will not be affected will proceed routinely. We expect to determine promptly the policy to be followed so that this effective enforcement program will not be materially delayed. We welcome the comments of this committee on these issues.

In conclusion, Mr. Chairman, I wish to reiterate that the central mission of the IRS is the administration and enforcement of the Federal tax laws. The Service must do everything reasonably possible to ensure that all of the myriad functions which it performs are carried out with only this objective in mind. Further, and just as important, in fulfilling its tax administration responsibilities, the Service must do so in a way that is completely fair and fully respective of its legal obligations and the rights of taxpayers.

STATEMENT OF DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE BEFORE THE SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE OF THE COMMITTEE ON FINANCE OF THE U.S. SENATE, DECEMBER 1, 1975

I am pleased to appear before you today to explore with you the subject of the role which the Internal Revenue Service can and should play. The Internal Revenue Service has a large, difficult and important role—the collection of the revenues and the administration and enforcement of the Federal tax laws. If the Internal Revenue Service's ability to carry out its role is impaired, there will be a serious adverse effect on our system of taxation and Government.

The subcommittee today begins considering what this basic role entails, what additional roles the Internal Revenue Service can and should be called upon to play, and what the costs will be. This analysis is necessary because most of the additional jobs that the Internal Revenue Service is called upon to perform from time to time are necessary and in many cases quite important to society and if they could be performed by the IRS without significant social costs, the Service

should undoubtedly do them. Unfortunately, however, in most instances, a social cost must be paid when the energies of the IRS are diverted from its primary role. In many cases these costs may not be apparent at the outset.

The responsibility for the investigation and development of cases involving violations of Federal law are assigned throughout the Federal Establishment. Many agencies and departments, such as the S.E.C., Departments of Labor and Housing and Urban Development, and the Drug Enforcement Administration, have the primary responsibility for administering laws within their jurisdiction and for investigating violations of those provisions. The Internal Revenue Service is similarly situated—it has the obligation to administer a complex system which touches more Americans than any other, and to investigate violations of those provisions. Congress should be aware of the costs likely to be incurred and dangers which may arise if the limited law enforcement capacity of the Service is diverted from a method of operation considered to be in the best interests of sound tax administration.

The issue on which your subcommittee is holding hearings today is one on which I have spoken several times before. It was probably in my speech before the tax section of the American Bar Association in Honolulu, in August 1974, that I first attempted to focus public attention on the fact that the Internal Revenue Service has been performing a number of functions unrelated to tax administration and that such activities had "a measurable effect on both the level of resources devoted to the tax administration effort and the quality of that effort. . . ." In a later address before the tax section of the New York Bar Association I noted that the issue is not whether organized criminal activity must be prevented or deterred. Of course it must, and of course organized crime figures, like others must meet their tax obligations, but the issue is the extent to which the IRS, with its limited resources, can participate in these endeavors without rendering itself incapable of effectively carrying out its almost limitless task of administering the tax system. More recently, before Chairman Rosenthal's Subcommitee on October 6, 1975, I reaffirmed my solid support for a firm and comprehensive program of tax law enforcement, but discussed in some detail with the subcommittee some of the steps which the service has taken to insure that, in the information it gathers, in the techniques it employs, and in the application of its powers and resources, the Service is engaged in matters that relate only to tax administration and enforcement.

I have described before other forums the numerous actions which the Internal Revenue Service has recently taken to restore confidence in the tax administration system and to insure that the job of tax administration and enforcement which is the service's only mission, be carried on in a fair and effective manner. The Internal Revenue Service probably intrudes more deeply and more frequently into the private affairs of more Americans than any other organization, public or private. During the last fiscal period, for example, 84 million individuals filed Federal income tax returns and almost 2 million individuals' income tax returns were audited by the service. Confidence in our self assessment system, which is a prerequisite to its effectiveness, will be severely impaired if the service permits its unique civil enforcement powers and expertly trained personnel to be diverted to non-tax uses. The Internal Revenue Service has, therefore, taken a number of internal actions designed to insure that our agency does not exceed its stated purpose. The service now has, for example, clear guidelines on the gathering of information, designed to insure that it collects "only information necessary for the enforcement of the tax laws". Because of the fact that engaging in the recruiting and use of paid informants is a risky process that may lead to abuses, and because of difficulty of policing it—the confidentiality of informer relationships may be used as a means of blacking review and supervision—it is now required that payment of amounts to informers receive specific national office approval. We are considering a redelegation of this authority to the office of regional commissioner, the next highest level of authority.

There is a great deal of interest now, among law enforcement agencies, in waging war against organized criminal activity and white-collar crime. The IRS supports vigorous enforcement of the law against those suspected of organized criminal activity, official corruption and narcotics trafficking. What it does not support, however, is conduct which involves the law enforcer becoming the law breaker. Robert Ozer, chief of the Detroit strike force, is quoted in the recent issue of Newsweek magazine as speaking enthusiastically of "investigation by terrorism". We question whether this would be an appropriate standard for the service to employ.

The actions which have been taken by the Internal Revenue Service recently are designed to implement what should be a guiding principle of tax administration—the service's power, and its people, should not be used to further an end other than tax administration and tax enforcement. For example, our participation in the narcotics traffickers' program not only misapplied our prerogatives in some cases but produced poor results insofar as collected revenue is concerned. Although the service's power of seizure, terminations of taxable years and jeopardy assessments may have accomplished, in some instances, the objective of depriving the arrested narcotics trafficker of his working capital (by constructing an arbitrary tax assessment and seizing that amount of the cash which represented the unpaid tax liability), such practice would clearly represent an abuse of the service's power. Even before the service's action in these narcotics cases drew judicial criticism, we had taken steps to insure that the same standards would be applied in narcotics cases as are applied to tax cases generally.

There must be a reasonable basis for making an assessment, and the circumstances must show that collection of taxes is in jeopardy, if these weapons which the Congress has granted are to be use. It is simply not appropriate to use the tax laws as a means of effecting forfeitures. Further, while the central objective of our criminal enforcement program should be the establishment of a deterrent or corrective effect, the narcotics traffickers' program produced such a poor cost-to-collection ratio, in comparison with our general program, that that alone dictated a fundamental reexamination of that activity. The objective of depriving suspected narcotics traffickers of their working capital would be far better accomplished by an amendment, suggested by the Internal Revenue Service, to broaden the forfeiture provision dealing with drug abuse, prevention and control to provide for the forfeiture of cash as well. If this were done it would not be necessary to use the tax laws for a purpose for which they were not intended.

The strike force activity, coordinated by the Department of Justice, is another area in which there is considerable potential for the misuse and abuse of the Internal Revenue Service's authority and resources. While the recently released report to the administrative conference of the United States on tax administration would have the service completely remove itself from strike force activity, (finding, as it does, that the cost to effective tax administration is simply too great), the service does not propose to withdraw.

From this unified investigative and prosecutorial effort, in fact, the staff years expended during the first quarter of fiscal 1976 (16.9% of total intelligence division investigative time) show an increase (from 13.2%) from the first quarter of fiscal 1975. Of all the agencies cooperating in the strike force activity the Internal Revenue Service has historically made more personnel available to that activity than any of the other participating agencies, including the FBI. Effective and fair tax enforcement assumes that all taxpayers, including those suspected of organized criminal activity and so called white-collar criminal activity, be appropriate subjects for the investigation of tax law violations. The strike force, under the coordination of the Department of Justice's strike force attorney, and cases developed as a result of direct cooperation with the U.S. attorneys should constitute an effective vehicle for the identification, investigation, and subsequent prosecution, of those involved in criminal activity who are suspected of committing tax law violations.

Despite the fact that the strike force approach may, indeed, be a sound manner in which to develop tax cases involving suspected organized criminal activity, the service has some concerns about its participation in this effort. For purposes of analysis it is possible to classify the potential problem areas in two categories, those dealing with "control"—who should have supervisory control over the IRS agents assigned to the strike force—and those dealing with the parameters of the service's commitment of resources to such activity.

We have been, and currently are carrying on discussions with the Department of Justice concerning the areas in which a difference of view exists between us and the Department. These discussions are not proceeding at as fast a pace as IRS would like and agreement on guidelines controlling each agency's participation may be difficult to achieve. On the question of whether the service is to have the right to control its personnel assigned to strike forces, there appears to be agreement. Deputy Attorney General Tyler testified before Congressman Vanik's Subcommittee on Oversight during September that "each agency participates in the planning and retains absolute control over its own operation." It would seem reasonable to assume that retention by the IRS of control includes the right of ap-

propriate IRS supervisors to decide what tax cases should be selected for investigation. Given our limited resources—only 2,700 special agents—for the investigation of all tax law violations, those committed by the small criminal element and the large non-criminal portion of the taxpayer population, we must select those cases which serve our compliance objectives.

Though our enforcement program produces substantial amounts of revenue, it does not exist for this purpose—its central mission is to bolster and make our voluntary self-assessment system more effective through the establishment of a deterrent and corrective effect. If IRS agents participating in a strike force "team" work on a case which they would not ordinarily select to serve compliance objectives, the limited enforcement resources of the service are not being properly utilized. We think that the Internal Revenue Service, which has the responsibility for administering our nation's vast tax system, should decide which cases best serve compliance objectives.

If the Service is compelled to choose, in the llocation of its resources between a case involving a suspected member of an organized crime group and a respected professional, it may well choose to develop the case involving the latter taxpayer. The recently released report to the administrative conference of the United States on tax administration, found, for example, that since average taxpayers may not associate themselves with the taxpayer involved in an organized crime criminal tax case, and may be misled into believing that tax law prosecutions are more or less reserved for organized crime figures, that "there is grave doubt that the investigation, prosecution, and conviction of organized crime figures promotes the objectives of the general program".

Our point is simply this—sound tax administration and enforcement is not benefited or served by directing IRS agents to spend their time developing criminal tax cases which fall short of the case selection criteria which the Internal Revenue Service has specifically designated as furthering the establishment of the corrective and deterrent effect which is essential to a well functioning, voluntary compliance system. This is not to say, of course, that the service should not investigate and develop criminal tax cases against individuals suspected of organized criminal activity. Of course it should. Agents participating in strike force activities should receive, from the strike force attorney acting in a coordinating capacity, information regarding potential subjects for tax investigation. This information should serve as the basis for the development of cases which are consistent with the service's case selection criteria. Service personnel should not, however, be directed to work cases simply because organized criminal activity or white-collar criminal activity is suspected.

Also, IRS agents assigned to strike force activity should not end up working on so-called title 18 criminal violations, that is, cases which involve non-tax criminal violations. This, however, may well occur if Internal Revenue Service personnel begin working cases which fall below the service's own criteria. In such situations, it is likely that the agent, working a substandard potential criminal tax case, will actually be involved in developing a so-called title 18 criminal violation. Ignoring for the moment the fact that such activity does not further the goals of revenue administration, other problems are created by the involvement of Internal Revenue Service personnel in non-tax investigative work. Such activity, since it exceeds the agents' authority (which is to investigate tax law violations) might well involve a misuse of our appropriated funds. Further, the involvement of Internal Revenue Service personnel in investigative activity unrelated to the development of sound tax cases, might possibly well subject special agents to loss of immunity for the consequences of their actions. Recent cases have held that the notion of absolute immunity for officials of the executive department no longer exists. Instead there is only a qualified immunity—the extent of that immunity being dependent upon the scope of discretion and responsibilities possessed by the individual involved. The Court of Appeals for the Ninth Circuit recently pointed out in *Mark* v. *Groff* that the scope of the immunity possessed by an IRS agent is, by definition, relatively narrow since his range of official discretion and responsibility is also narrow. If the actions of a Service employee were not in the course of his official conduct, and they would seem not to be if the agent was involved in investigating, or developing leads in, a case which had no tax potential, he might not be entitled to immunity. Regardless of what this line of decisions portends insofar as liability for the United States is concerned, it does not seem appropriate for the United States to place its employees in situations in which they might be individually liable.

Questions relating to the Service's allocation of its resources constitute the second group of considerations involved in the Service's participation in strike force and joint investigative activity with United States attorneys. The recently released report to the administrative conference of the United States states the issue succinctly: "First, and quite obviously, to the extent that Service personnel are assigned to work [special enforcement program] cases, they will not be available for [taxpayer in general program], where deterrent objectives of the entire enforcement program are more fully served." While our special enforcement program activity, which includes the strike force as well as cases developed as a result of cooperation with U.S. attorneys, does produce cases which are promotive of the Service's general compliance goals, it would be inimical to sound tax administration for the Service to overemphasize its involvement in cases concerning individuals suspected of organized criminal activity to the detriment of its other responsibilities. As the report to the administrative conference suggests, such an action might adversely affect "the reputation of the Service for fair and impartial administration of the tax laws".

The Service must continue to subject its participation in the strike force effort, and other joint investigations, to the closest scrutiny. While it is certainly appropriate to commit some resources to strike force investigations, and investigations carried on in cooperation with a United States attorney, our participation in such activity should be limited to the extent that it produces tax cases which are promotive of the best interests of our compliance program.

The administrative conference report contains some observations that should concern us. The report notes that frequently "criminal tax cases which are investigated by a strike force group tend to be dropped at the indictment stage in favor of title 18 criminal cases". To the extent this is done, it can be readily seen that the advantages to tax enforcement may be nil, despite the significant amount of time that may have been devoted by Service personnel to the development of the tax case. The notion that the Service benefits by having its tax cases handled in a speedy and aggressive manner by the strike force attorney is also questioned by the administrative conference report. The report notes that "the strike force attorney has no particular interest in obtaining criminal tax convictions in preference to non-tax criminal convictions". In view of the fact that tax cases are often more complex and difficult to prove, the report notes that "this creates the distinct possibility that the cases which he (the strike force attorney) pursues will not be tax cases".

The Internal Revenue Service feels that it must subject its participation in the strike force program to the same kind of scrutiny which it applies, on a regular basis, to all of its activities. This is particularly true in a period of budgetary stringency such as 1976–1977. A recent study by the Internal Audit Division of the Service's participation in the strike force program in the three largest strike force locations presents somewhat the same kind of discouraging picture, from a revenue point of view, as that presented by our participation in the narcotics traffickers' program.

The study reveals that deficiencies of $122.5 million were proposed in 157 strike force cases developed during fiscal years 1972 and 1973 by agents in these three locations. Of this amount, as of July, 1975, only $12.1 million had actually been assessed, and as of the same date, only $1.3 million in taxes and penalties had been collected. It is obvious that the amounts actually assessed represent a very small percentage, only 10% in this instance, of the deficiencies originally proposed. Further, the amounts actually collected in these cases seem to represent a disproportionately low percentage of the amounts actually assessed. Of the $12.1 million actually assessed, $6 million had either been abated or disposed of as uncollectible. Thus even if the remaining $4.8 million of the $12.1 million actually assessed is eventually collected—a possibility which must be considered remote—the total amount collected will be just about the same as the $6 million which was either abated or found to be uncollectible and a very small percentage of the amounts originally proposed. These figures seem to indicate that we may not have been making the most effective use of our investigative resources.

The argument is vigorously made that the Service's participation in tax cases involving those suspected of organized criminal activities is essential to the success of the general commitment which this Nation has against organized crime and white collar criminals. The validity of this proposition is questionable. First, it is misleading to imply, as is often done, that tax law violations constitute the only, or even the main, weapon to be used in the drive against crime, white-collar criminals and political corruption. The recent indictment of Governor Mandel indicates that the Department of Justice can proceed to develop evidence

and obtain indictments in cases of this type which do not involve alleged tax law violations.

The Federal Bureau of Investigation, which possesses broad investigative powers, has underlying jurisdiction over all Federal offenses and is specifically charged, "subject to the general supervision of the attorney general", to "investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest . . ." There are recent indications that the FBI is participating to a considerably greater extent in the type of investigation that most people think fall within its province. For example, the 1975 annual report of the FBI states that during fiscal year 1975 "the FBI recorded a number of significant achievements in the fight against organized crime . . . with investigations resulting in more than 1,400 convictions of hoodlum, gambling and vice figures". The report goes on to state that "approximately 1,900 other organized crime subjects including three national syndicate leaders, were in various stages of prosecution as the fiscal year ended". In the area of white-collar crime, the recent annual report recites the same type of substantial activity. It is noted that "crimes investigated by the FBI which fall into the white-collar category have increased over twenty-five percent since fiscal 1971 and that "during fiscal 1975, 3,427 convictions were recorded in white-collar crime matters investigated by the FBI, nearly fifteen percent more than the previous fiscal year". This increased effort by the FBI in this type of investigation is highly commendable. The FBI report states that it "has set a high priority in this area of its responsibilities and is training special agent accountants in the latest accounting systems being utilized by Government and private business. According to its annual report the FBI now has about 1200 agents (roughly 14% of its total force) committed to white-collar crime investigations. This significant commitment of its resources to that effort should be of great assistance to the successful development of cases of that type.

It is simply not true that only the Internal Revenue Service has the capability to penetrate the quite sophisticated systems and intricate business transactions in which organized crime and white collar criminals are involved. With the special training which FBI agents receive, and the research which the FBI report states is "being conducted into the highly complex and sophisticated techniques used by the white collar criminal", the drive against this kind of activity can be carried on in a manner which is effective and does not divert IRS resources from general tax enforcement.

Criminal tax cases involving those suspected of criminal activity should be developed and brought to trial if they further the service's compliance goals. Sometimes in the past, however, investigators have strained to develop tax cases against organized crime suspects. In the *Accardo* case, the taxpayer was prosecuted for indicating an incorrect source of income and thus falsely claiming relatively small amounts as business automobile expense deductions on his return. As the report to the Administrative Conference points out, "the selection of that type of case for enforcement purposes is likely to subject the Service to criticism and ridicule". Such counterproductive effects should not be allowed to exist in a program which is designed to produce a positive deterrent and corrective effect.

I think that you will see that the subject matter of these hearings is closely tied with the question of tax return privacy on which this subcommittee held hearings in April of his year. The issues involved in making tax return information available for use in connection with the investigation of non-tax criminal offenses, raises, as I think the Administrative Conference report indicates, serious statutory and constitutional questions.

Even if the Supreme Court decides, in the pending *Garner* case which it has under consideration, that no 5th amendment problem is created by using a taxpayer's return (or information from that return) in a non-tax criminal investigation, serious problems for revenue administration would continue. Taxpayers claiming the 5th amendment at the time the return is filed, by omitting pertinent data from the return, will be filing what must be regarded as an incomplete return, thus necessitating audit. When secondary sources are not sufficient, the information needed for revenue administration will be obtainable only from the taxpayer. Obtaining such information from the taxpayer would generally be at the price of a grant of use immunity, with result that the information would not be available to the Deparment of Justice. The announcement that 5th amendment rights must be claimed on the return would be accompanied by the imposition of severe problems for tax administration.

It is imperative, of course, that a discussion of the issues that should not be a part of the proper IRS role not cloud the fact that the Service is proceeding vigorously to discharge its obligation to administer and enforce the tax laws. For example, in the recent past the IRS has conducted (as part of its political campaign contribution compliance project) a national program to identify improper tax reporting arising out of campaign fund raising activities. This program, which has a significant number of both audit and intelligence division personnel assigned to it, has resulted in sending a sizable number of information items to the field for further investigation. Generally speaking, also, our activity in the development of criminal tax cases involving corporations has been active—the number of completed Intelligence Division cases involving corporations (many of them major corporations) increased substantially in fiscal 1975 over the prior fiscal period. The Service has also intensified its attention in areas of those tax shelters which defy economic reality and is currently dealing with problems arising out of the abuse of foreign subsidiaries.

In the performance of its criminal law enforcement responsibility the Service fully understands the need to work closely and effectively with the Justice Department to see to it that the tax laws are effectively and responsibly enforced both against those suspected of other criminal conduct and those whose only crime is tax evasion. This spirit of cooperation must, however, be marked with two extremely important aspects. As is stated in our publicly available policy statement, our investigative activities must be "in all respects . . . within the bounds of the law". Next these investigative responsibilities we assume must give due consideration to the Service's limited resources and the allocation of those resources should be made in the way best suited to the fulfillment of our mission.

EXCERPT FROM NAR EXECUTIVE CONFELENCE, BROOKHAVEN SERVICE CENTER, JUNE 8–10, 1976

NARCOTICS PROGRAM

Memo of understanding between IRS and DEA is in process. Commissioner Alexander met with top Mexican officials in El Savador and recently with Dr. Girtz who is the Mexican equivalent of the head of our FBI and DEA. He has pledged his full cooperation to assist us in the drive to enforce the tax laws with respect to high level narcotic dealers.

This is an IRS program and IRS line officials will decide which referrals have sufficient tax implications to warrant devoting our resources to them. There will be no National Office target selection. Cases will be made on their own merit. The Commissioner said he hoped that we will get quality information from DEA on what they have termed "class I violators." It is estimated that there are about 10,000 so-called "big shots." IRS is expected to work closely with Customs and BATF in this program.

The Service has gone forward with a request for more money to restore the cuts in Intelligence to handle both this program and the Corporate Slush Fund program. The Commissioner is convinced and is trying to convince others that we need the money and the people to do the job.

REMARKS BY DONALD C. ALEXANDER, COMMISSIONER OF INTERNAL REVENUE, PREPARED FOR DELIVERY BEFORE THE ANNUAL CONVENTION OF THE TAX SECTION OF THE AMERICAN BAR ASSOCIATION, HONOLULU, HAWAII, AUGUST 14, 1974

Within bureaucratic circles, the IRS is regarded as one of the Federal Government's best organized and best managed agencies. Now, as some of you outside of the public sector are aware, I have undertaken to make a number of changes in the operations of the Internal Revenue. In spite of that fact, I would concur that I find the Service to be, on the whole, an effectively managed institution staffed predominantly with high caliber professional personnel. I am, of course, very pleased that this is the case and that I am able to stand here before you this afternoon and tell you so.

However, in all candor, I could wish the Service's image wasn't quite as good as it is among the leadership of the Federal establishment. In fact, once I even considered—but rejected—the possibility of leaking some trumped-up stories to the press about how poorly we were doing in some areas, so the other Federal

planners and executives would leave us alone and quit trying to give us additional responsibilities, particularly in the non-tax areas.

My discussion of the Service's management image is by way of setting the stage for my topic this afternoon, "Redefining Tax Administration." One of the results of the reorganization which the Service went through in the early 1950's was that it came out of that exercise with a very modern, orderly organizational hierarchy. A good hierarchial structure, when you see it on a wall chart, looks rather like a pine tree—you know, like a child's image of a Christmas tree. The IRS has presented such an attractive Christmas tree to the various Federal policy makers and planners over the past 15 or so years, that they hung a number of ornaments on us that did not really belong there.

During that period of time, the Service became involved with the enforcement of the expanded Fire Arms Control Act, information gathering for Revenue Sharing, the Economic Stabilization Program, the enforcement of Federal energy conservation activities during the past eight months or so, and presently some are talking about the possibility that the Service would be the organization to administer the income maintenance or so-called "negative income tax" program for reforming the Nation's welfare system.

In this particular case, they have said, "Now, the Internal Revenue is so well organized and so well managed that it would carry off the job most effectively". But surely the Internal Revenue Service does not have a monopoly on effective techniques of organization and management in the Federal Government. Then it was suggested that this program, which is admittedly going to be a very sensitive one regardless of who administers it, would be better placed in the Internal Revenue Service because Congress won't interfere with us as much as they would with other agencies. A response to that is found in a volume of transcripts from the Montoya hearings almost a foot thick. You know, I have spent a lot of my time with the Senator and his committee during the past year. But then they said the Internal Revenue Service would be less emotional about running this very controversial progam. Well, maybe tax men are a little more calculating and rational than social scientists and economic planners. But all they've really said is that it's going to be a hard job to do right; well, so is tax administration!

Now, I don't mean to imply that the IRS will shirk its duties. If something is really part of the tax system, it is indeed our responsibility. But it doesn't become part of the tax system simply because it may be labeled as such. Having said that, I will now say that if a job is assigned to us in the future, we will do our best to do it—just as we have done in the past.

Tax administration is always going to be a hard job. What's more, no matter how well IRS does it, there will always be room for improvements. I would like to discuss with you this afternoon some of the things that we have done, that we are doing, and that we are going to try to do in order to improve Federal Tax Administration.

It is no accident that I have chosen to group these efforts to improve our management of the nation's Revenue laws under the title "Redefining Tax Administration". Over a period of years, the definition of "Tax Administration" has been altered and expanded to the point that some of our important basic goals and responsibilities have either been subsumed or jeopardized. This diffusion of purposes and resources has been brought about, in large part, by three different sets of influences. The first has been through placing additional responsibilities upon the tax administration organization. The second has been through the use of the existing tax procedures and powers for purposes other than those of the tax system itself. The third, of lesser concern to the tax administrator, has been through the revision and expansion of the Internal Revenue Code to include provisions whose principal purpose is other than that of raising revenue or defining what should be taxed. Each of these actions or, rather, groups of actions, has had an influence upon the manner in which the definition of "Tax Administration" has evolved over the years. These same influences have also affected the manner in which the Tax Administration charter has been carried out.

Even prior to my coming with Internal Revenue, I had become concerned with the degree to which I believed that some of these factors were impinging upon the administration of our tax laws. My experience as Commissioner showed me that my concern was well placed, and I began to take steps to ameliorate this situation. I would like to spend the next few minutes discussing some of the results of these efforts.

With respect to removing the inappropriate ornaments from the IRS Christmas tree, I believe we have made very good progress. The Alcohol, Tobacco, and Firearms organization was transferred from the IRS to the direct jurisdiction of Treasury Department in 1972. Still, the Internal Revenue continued to provide its former component with administrative support in a very large way throughout the Fiscal Year 1972. Today, however, the Alcohol, Tobacco, and Firearms Bureau of the Treasury is very largely on its own, and the support resources which the IRS had been expending on the ATF organization are now once again available full time to support the busines of Tax Administration.

Of course, in a more dramatic and massive area of activity, the Service divested itself of its enforcement functions under both the Economic Stabilization and Federal Energy Programs. The death of the Economic Stabilization Program was mandated by Congress, so we can take little credit for that. However, the Service was under some pressure to retain some of its enforcement functions for the Federal Energy Office for an indefinite period of time. I am pleased to say that we successfully managed to stave off that particular initiative.

Although none of the three activities I have just mentioned affected our interpretations of the tax laws or the manner in which we administered them, they did affect the levels of service which we were able to provide, and in some cases, the quality as well. For example, Taxpayer Service Representatives, whose principal function is to respond to public inquiries and offer assistance to those in need of help in meeting their tax obligations, were seriously affected by our involvement in the Economic Stabilization and energy enforcement activities.

In many locales, taxpayers had to compete with citizens seeking information regarding these other, non-tax activities; and I make no bones about it, we do not have these Taxpayer Service Representatives in sufficient number to meet the legitimate demands of the taxpayers, as it is. Moreover, these Representatives were required to learn and maintian up-to-date operating knowledge of not only the Internal Revenue Code, but the Stabilization and Federal Energy regulations as well. Now, with the departure of these two programs, we anticipate a significant increase in both the quality and quantity of the Taxpayer Service we will be able to provide. We will also be able to return slightly more than 1,000 experienced Revenue Agents to the field and the auditing of tax returns. Added to that, of course, our administrative people will now be able to devote their full time to the support of tax administration.

While the kind of influences which I have just cited have a measurable effect on both the level of resources devoted to the tax administration effort and the quality of that effort, they do not significantly affect the integrity of that effort. There are influences, however, as I indicated earlier, which *do* affect that integrity. These influences arise most often when either the framing or the application of tax laws do not have the raising of revenue as their principal objective.

For centuries, governmental power to tax has been used in a multiplicity of ways transcending the simple, straight-forward function of raising revenue. Taxation has been used as an agent of morality—witness the traditional taxation on alcohol, tobacco, and other drugs; gaming and amusement devices, etc. Taxation has also been used as a private tool—a number of years back, there was a special tax on margarine to make butter more competitive against it. This was pushed through the Congress by the dairy interests, and the Internal Revenue Service administered it during the 1920's and 30's.

Today, fortunately, the United States has only a limited number of such taxes. For those few which we administer, I believe it is of utmost importance to the integrity of the Tax Administration that we do so with impartiality, and, in the absence of any Congressional charter to the contrary, that we place no particular emphasis on any one tax or group of taxes over that which we place upon any other.

For the Internal Revenue Service to place a disproportionate emphasis on collecting one particular tax or enforcing the revenue laws for a particular group of people, in effect, puts the Service in a position of setting itself up as a judge between good and bad in our Society. Clearly, under such circumstances, the IRS ceases to view all taxpayers as being equal before the law. Such practices by the Service, however rightly viewed and supported by other forces of the Federal Executive, by Members of Congress, or even by a large portion of the population in general, can only serve to the detriment of the integrity of the Tax Administration System. Selective enforcement of tax laws, designed to come down hard on drug dealers or syndicated crime, for example, may be applauded in many quarters, but it promotes the view that the tax system is a tool to be wielded for policy purposes, and not an impartial component of a democratic

mechanism which applies equally to all of us. I need not tell you here this afternoon that the Service is already having some public image problems in that respect.

One aspect of this program applies to public institutions across the board. We are victims of our own image making, because after all, pubilc policy makers, planners and bureaucrats are also members of the public at large. The images which we create with our press releases and our public statements feed back to us and we believe what we are saying and we build on that. Let me give you an example of what I mean. Back in the 1930's, almost by accident, we stumbled upon the efficacy of the Bureau of Internal Revenue in combating organized crime, which had, up to that point, been practically impervious to the standard methods of law enforcement. So, tax problems got Al Capone and a number of the other more notorious luminaries of the criminal world during the 1930's. Internal Revenue performed impressively, and the public, at the urging of the media, was impressed. In fact, we impressed ourselves as well. Gradually, law enforcement officers and public leaders began to see in Internal Revenue a useful tool that they could apply not only to organized crime, but to other areas of criminal activity which were difficult to detect and to prosecute under traditional law enforcement methods.

During the period of social and political turmoil, which began in the 1960's and developed up through the early 70's, the forces of hard-line law and order promoted the use of the Internal Revenue Service as a generalized tool for criminal law enforcement. IRS participation in the Organized Crime Drive of the Justice Department and in Federally-led strike forces in the major cities around the country were the first manifestations of this movement. Following that, there came the Narcotics Traffickers program. In part as a result of the adoption of this general philosophy, in 1969 Internal Revenue created a staff to collect information on the financial affairs of a variety of right and left wing organizations. Congressional Committees and others were concerned that these organizations were being used to funnel tax-exempt money into various violent activities. Although this Special Service Staff did nothing but collect information and forward it for review by different functions, I ordered it terminated on August 9, 1973, because its existence implied that the Servce was concerned with activities, legal or illegal, that had little direct relationship to the administration of the tax laws. My point in bringing up the Staff and the other special law enforcement applications of the IRS is to indicate the degree to which the orientation of the Internal Revenue Service, and thus, the "definition" of Tax Administration was being altered by its selective use over that period of time.

This reorientation of purpose was manifested by Service operations in a variety of ways, both large and small. An example was the Service's reaction to tax resistance related to the Vietnam War. During the late 1960's, antiwar groups identified nonpayment of the telephone surtax as having great potential to disrupt the tax administration system, and they urged, through their publications and at their gatherings, that people engage in large scale noncompliance with this tax. Now, the amount of this tax is extremely small—it generally comes to only one or two or three dollars per month for most individuals—while the cost to the IRS to bring its active collection process to bear on such delinquencies is obviously many times in excess of those amounts. The antiwar groups were well aware of this disparity and they made their intentions clear in their public statements. They hoped to bring the nation's tax collecting mechanism to a halt by overwhelming its resources with thousands of tiny delinquent accounts.

Obviously, they did not achieve their objective; nor did they even come close. Still, in some of our largest districts, they did manage to generate a substantial number of delinquent accounts to which the Service's reaction was precisely as they had anticipated. Many Revenue Officer manhours were wasted by deciding to emphasize the collection of these delinquencies, giving them a higher priority than the collection of delinquencies arising in the normal course of IRS operations.

I have ordered a stop to such selective priority-setting. Once again, however, it is not my intention here to debate the correctness of the response to a particular situation. My point here is that the definition of Tax Administration was permitted to stray from its proper emphasis. If our Tax Administration is either permitted or encouraged to respond selectively to such socio-political phenomena as are likely to crop up from time to time in our pluralistic nation, or if it permits itself to be used as a selective tool which places criminal enforcement or other criteria before revenue collection and enforcement, we may be jeopardizing our traditional tax administration processes, both from the standpoint of the most

effective use of our resources and from the standpoint of the public's faith in an impartial, non-political tax system.

Now, what have we in the IRS done to "redefine" our working understanding of Tax Administration? In addition to doing away with the Special Service Staff, we have changed the criteria for IRS involvement in antinarcotics and strike force activities. Today, such activities must satisfy the revenue and professional criteria which have long been established within the IRS as guides for channeling our resources. In other words, in the future, special activities will have to compete openly and equally for resources against our regular tax administration activities. At the same time, we are tackling influences which have, over the years, crept into our own standard practices and procedures. I have reference not so much to manifestations of selectivity such as the telephone surtax situation, but rather to the more subtle incursions into our basic enforcement policies and procedures.

Now, I am sure you all know the Service's resources have never been sufficient to permit us to audit anything more than a small percentage of the total number of returns that are filed each year. Over the past 25 years, a number of policies and procedures have been developed to assure that the Service, and ultimately the public, get the maximum utility out of their tax collection dolllar. Many of these developments have been wise and fair; I am thinking particularly of the Discriminant Function, or DIF technique which, on the basis of mathematically determined criteria, identifies returns whose characteristics suggest a high probability that they contain erroneous items. A measure of the effectiveness of this technique is reflected by the fact that, while roughly 41 percent of our audits generated no change in tax liability prior to the use of the DIF technique, only 28 percent of the returns selected for district audit by our computers applying the discriminant function criteria resulted in no-change determinations.

Our Taxpayer Compliance Measurement Program is also quite effective in identifying areas of noncompliance. We are also constantly improving the quality of our audits as well, both through improved methodology, such as package audits, and through the application of modern technology as represented by our expanding program of computer-assisted audits. While we have been developing these and other sound programs for enhancing our effectiveness, however, we have also evolved some policies and practices which, although initially based upon apparent logic, may have generated counter-productive tax administration decision making.

For example, the Service has had a long-standing policy which encouraged field personnel to concentrate enforcement efforts on cases with maximum "publicity potential", and stated, in part, that the purpose of criminal enforcement was to make an example of the offender. The original intent of this policy was clear, and laudable to the extent that it achieved its goal—that is, maximizing the deterrent effect arising from those cases which we successfully completed, by assuring that the public in general was made aware of the Service's enforcement activities. However, this policy, like those resulting in an excessive emphasis upon drug dealers or antiwar protesters, could have the effect of directing a disproportionate share of the Soviet's enforcement efforts and resources toward a relatively small segment of our total population. This might mean that certain other portions of our society would escape their obligations. Both aspects, in my view would seem inappropriate from the standpoint of a fair and impartial administration of the nation's revenue laws.

Along much the same line, our own fascination with the Service's image as a "law enforcement" agency began to affect the manner in which we applied certain of our enforcement policies. For example, a long-standing IRS procedure cautioned against the uncoordinated pursuit of civil enforcement actions where a criminal enforcement action was pending. The original purpose of this policy was to avoid accidentally imperiling the criminal prosecution potential in such circumstances.

In application, however, the policy gradually led to a situation in which our normal audit and collection activities began to adopt a "hands-off" attitude toward all taxpayers against whom a fraud investigation was pending. This attitude applied regardless of the potential merits of the pending fraud investigation or the degree of relationship between the fraud issues and the legitimate civil atcions which the Service might have pending regarding the taxpayer. Now, this was a prime example of public policy being set by bureaucratic momentum; organizational practice translated an otherwise prudent procedure for coordinating certain exceptional situations into a reinterpretation of the basic tax ad-

ministration charter, whereby the IRS responsibility for equitable assessment and collection of revenue appeared to be subordinated to the goal of criminal law enforcement. As a result of this reinterpretation, normal audit assessment activities could have been delayed, and the collection of tax liabilities could have been jeopardized as taxpayer's assets were either depleted, or removed from ready access. There was a clear potential for the criminal fraud investigation process, originally conceived of as a tool to be used in extreme situations, to become the tail that wagged the IRS civil enforcement watchdog.

During the past several months we have reviewed and revised this entire area, and a new policy statement has been issued. Under the revised policy, the instances when criminal enforcement actions may take precedence over civil enforcement actions are precisely defined, and are far more restricted than they were under the previous policy. As a general rule, civil enforcement actions for tax liabilities arising from taxable periods other than that for which the taxpayer is under criminal investigation, or involving different types of tax from that for which the taxpayer is under investigation, regardless of the tax period, will proceed concurrently with a criminal enforcement action, except under circumstances in which a district director authorizes suspension of civil enforcement pertaining to a specific individual case.

Further, in cases where civil enforcement actions against a particular taxpayer have been suspended because of a pending criminal enforcement action involving the identical type of tax or identical tax period for that taxpayer, provisions have been made for dropping such a suspension where the collection of the civil liability would be imperiled by continued delay, and where such peril appears to outweigh the criminal enforcement issues. In short, we are moving to assure that we make these decisions on the basis of informed, subjective judgment and relative merit, and not upon the basis of some absolutist doctrine. We recognize the great importance of criminal enforcement of the tax laws, but we are also aware of our civil responsibilities to administer the laws and collect overdue taxes.

These and other changes in our enforcement programs and policies have been evolving over the past 14 months, so it is a bit early yet to expect to see substantial changes in our performance. However, data regarding our operations during the fiscal year completed just last month do reflect some changes for the better. In fiscal year 1974. we were able to examine 16% more returns than we did in fiscal year 1973, with a more than 15% increase in the amount of additional taxes and penalties recommended. These improvements were achieved in spite of the Service's support of the Economic Stabilization and energy enforcement programs throughout most of fiscal year 1974, and further, in spite of the number of our most experienced audit personnel who were involved in the training of more than 5,400 new revenue agents and tax auditors that we hired during that fiscal year. With the termination of the energy and Stabilization programs, and the deployment of the new hires from last year, we can expect our audit activity to take an even greater surge during the coming year.

As regards our intelligence operations, the overall emphasis of our criminal enforcement activities has been shifted away from special enforcement programs such as Narcotics Traffickers and Strike Forces, and have been aimed more directly toward the taxpaying public in general. This shift in emphasis has enabled us to achieve greater occupational and geographic coverage in our criminal tax sanctions are more equitably applied—reaching the broadest possible spectrum of society within our resource limitations I believe that our revised enforcement philosophy and not only achieves this goal, but more fully meets the intent of Congress in that our resources are being used for the enforcement of tax statutes, rather than as alternative methods for the prosecution of violators of laws normally enforced by other Federal or local agencies.

Lest I give the impression that my concept of redefining tax administration is limited to issues of enforcement, let me assure you that we are extending this doctrine of fairness across the board in *all* aspects of our IRS operations. A few years ago, for example, most rural taxpayers had to either write a letter or drive to town to get tax information from the IRS. Today, however, with the nationwide installation of the new long distance telephone system, every taxpayer in the country can call an IRS office, toll-free. What's more, we are placing these phone numbers on every notice that we send to the taxpayer, so that he can call us for clarification of anything that he doesn't understand or that he doesn't agree with. To meet the needs of those jobs do not afford them time off during the 8 to 5 work-day, except at the cost of lost salary to themselves, we are experi-

menting with evening and weekend hours. We are also reexamining our guidelines and those of GSA regarding the location of our IRS offices, so that we can assure that dealing with the Service represents no greater burden on one group of citizens than it does upon another.

In our processing of receipts and returns, where our operations have already made extensive use of modern data processing technology, we are moving ahead with expanded applications of ADP, in many cases, with the aim of enhancing the equity of tax administration. The most ambitious of these undertakings relates to the processing of information documents. The Service receives hundreds of millions of these documents annually, relating to the payment of royalties, professional fees, dividends and interest, as well as to normal salaries. These are not fully checked at this time, but we examine many tapes reporting compensation, and we sample others.

To correct the situation, we are preparing to implement working on a full document matching program, including the potential use of optical scanning, to permit us to review the information documents from all taxpayers, which will then be crosschecked with their tax returns. We estimate that such a cross-referencing will identify substantial amounts of under-reported income which will, of course, be translated into additional tax dollars from those who underpay, and refunds to those who deserve them but do not apply for them, thus making tax administration mor e equitable.

In another processing improvement, we are working with Treasury and the Federal Reserve to see if we can't speed up the reporting of Federal Tax Deposits to the Service. At present, delays four to six weeks between the payment of tax to a member bank and the receipt of notice of that payment by the IRS result in our generating delinquency notices and otherwise troubling taxpayers who have already fully discharged their payment obligations. Such situations only promote the image of an inefficient tax administration bureaucracy. Also, these delays impair our collection activities; we need early warning when taxes are not paid on time.

Along the same line, we are also working with the Federal Reserve people and with our own revenue processing managers in the development of steps to appreciably accelerate the speed with which our local offices are informed of the FRB's receipt of bad checks for the purchase of FTD s. At present. the lag time between the issuance of such checks and the notification of local IRS offices that such checks have not been honored typically amounts to three months or longer. In cases involving individual taxpayers, such delays pose only a minimum burden upon the Service's revenue processing mechanism. However, large employers normally pay their withholding taxes to us on a weekly or bi-weekly basis in increments amounting to tens of thousands of dollars.

The present lengthy delays in our receipt of notification that such withholding payments have not actually been made means that marginally solvent institutions may amass a very substantial tax liability before the Service becomes aware that the firm may be in finanical difficulty. Under such circumstances there is clearly a potential, which is too often realized, for the accrual of a massive liability which adds to the firm's fiscal woes, jeopardizes the employees' rights, places additional claims upon the firm's limited resources, thereby competing with the institution's other creditors, and curtails the Service's options for collection. Although the Service certainly cannot be held responsible for the circumstances which led, either to the firm's insolvency in the first place, or its incurring an enormous tax liability in the second, we do come in for more than our share of criticism whenever we are forced by such circumstances to take firm action to satisfy the government's just claims.

Of course, the thing that makes such situations doubly frustrating is that, although the delays are not the fault of the IRS, it is the Service which must take the blame for them. As I say, we are working with the Federal Reserve in an attempt to find an acceptable means to short-cut their processing of FTD's and their notification of dishonored checks, and I trust that we will be successful. If we are not, you can expect to hear me saying a lot more about this in the future, because I don't believe that the Service should take a bum rap for a problem that is simply not of its own making nor under its own control.

We are also working in the technical areas to enhance the fairness and openness with which we deal with all taxpayers. For example, I have had a Task Force created to examine the technical skills and knowledges required of our general managers in the field, so that we can assure ourselves that no matter in which district the taxpayer happens to reside, he will be afforded the same technical judgment and have his problems handled in as nearly as possible the same

technical environment throughout the country. We can't construe a provision of the Code one way in Maine and an entirely different way in California. We are pursuing the use of advanced ADP technology in this area as well, with a project to put our technical rulings on a computer and have them available, up-to-date and readily retrievable in all districts of the Internal Revenue Service.

Added to all the foregoing, we have renewed our endeavors to simplify IRS forms, instructions, regulations and correspondence. Even prior to my confirmation as Commissioner of Internal Revenue, I became actively involved in this effort, because this was the area which I, as a tax attorney in the private sector like you, had come into the most common contact with the IRS. During FY 1974 Service personnel reviewed more than 1,600 form letters, notices, and stuffers to improve their quality, and to eliminate duplicative or obsolete communications. As a result of this effort, over 500 such items were cancelled outright or consolidated with other forms. Moreover, I have personally worked on the revision of the most frequently issued Audit and Service Center letters.

In response to concerns voiced during the Montoya hearings, the Service initiated a number of new publications and revised many more to explain tax law and tax administration processes to the public in nontechnical language. I believe that the revision of two particular IRS publications merit special mention in this context. Publication Number 556 has been expanded to provide the taxpayer with a clear statement of his rights and privileges as they relate to the IRS Audit process. This includes a straightforward explanation of the taxpayer's appeal rights which, I may add, are also now being referred to in all of our first contact audit letters. Publication Number 586 now sets forth the rights and responsibilities of taxpayers as regards the IRS Collection process.

The principal thrust of both these publications is to provide the average taxpayer with the kind of knowledge and understanding regarding our Audit and Collection processes which you and I and our clients have possessed for years, but which the man on the street has quite often found to be unnecessarily mysterious. As a further general improvement in these areas, I have had it made a matter of IRS policy for the appropriate, free IRS publications to be referenced in all our pattern letters, tax forms, instructions, and regular correspondence. It just seemed to me that, as long as we had printed up all of this informative material, we had an obligation to afford the taxpayers every opportunity to know of their existence and use them.

While these efforts have been aimed at improving tax administration across the board, it should be obvious that the principal beneficiaries of such clarified IRS communications will be the little man; the average taxpayer and the small businessmen who cannot afford high-powered legal or technical advice, and for whom the jargon of the Revenue bureaucracy is practically a foreign language. These efforts at simplification are integral to the redefinition of tax administration, since the degree to which we can successfully communicate to each citizen his or her own tax responsibility is yet another measure of the equitability of tax administration.

Although much of the technical sophistication of our publications and forms is required by the complexity of the tax law itself, all taxpayers found a number of improvements in their 1973 income tax packages. The instructions in general for both the Forms 1040 and 1040A were shortened and simplified, and we were able to include in the tax packages a directory of the toll-free IRS taxpayer assistance telephone numbers for the entire United States. Also, in filling out their returns, taxpayers were no longer required to list the recipients of contributions for which they had cancelled checks or receipts, now were they required to list the names and dates for claiming medical payments. We hope to do more with these forms for 1974, as I am currently working on these.

We will continue to do what we can in this respect to ease the burden of tax filing. But, any extensive simplification of tax forms or instructions must really be tied to revisions in the tax law. For example, in the 1972 tax packages, the Presidential Election Campaign Fund check-off was placed on a separate form from the 1040. There was a very low rate of participation in the program, and the separate form and the low participation generated considerable criticism of the IRS.

Now, there are a great number of other simplifications and clarifications to the tax forms and instructions which can be acomplished via the avenue of tax legislation. I am sure that you have been following the progress of the tax legislation presently being considered by the House Ways and Means Committee. I am pleased to say that among the items which have been subject to the Committee's

deliberations have been a number of the tax simplification proposals recommended by the Treasury in April of last year, many of which originated within the IRS.

Time limitations prevent me from going into all of the various changes which have tentatively been adopted by the Committee but I would comment that I believe that the simplification of provisions for child care deductions and the extension of simplified tax table computations to cover taxpayers with incomes up to $20,000 both represent moves beneficial to a large number of filers. Although these decisions are only tentative, I have high hopes that the broad support so far evidenced for these and other simplification proposals will eventually carry them into law. Of course, as we are all aware, the 93rd Congress is drawing to a close with elections coming up in November. This may rule out any tax revisions this year. I am hopeful, however, that we can look to the 94th Congress for some significant simplifying improvements, along with other, more substantive tax reform aimed at curbing questionable tax-shelter practices and various other abuses.

I would like to be able to say that the wide-ranging efforts which I have discussed with you today have done the tricks, that the Service now has its feet firmly planted in the proper direction, and that the "Redefinition of Tax Administration" requires but a short passage of time to become a reality. I would like to be able to say this, but it would not be completely true. One thing that I have learned in my relatively short career within the bureaucracy is that change is very difficult to achieve.

Let me hasten to add, before closing, that I do not wish to leave you with the impression that, in purifying the definition of Tax Administration, I am advocating an "isolationist" position for the Internal Revenue Service, or that I am turning a cold shoulder to *all* of the potential changes that the IRS may encounter in the future. On the contrary, there are a number of changes on the horizon that I welcome as real enhancements to sound tax administration in the United States. Three such changes come to mind which I would commend to you today.

The first of these deals with Title II of the Revenue Sharing Act of 1972, which provides for the collection of qualified state and local taxes by the Internal Revenue Service; a concept which has been labeled "piggybacking." Call it what you will, and I think piggybacking is an adequate shorthand for the concept, I believe that this is the way to go in the future. The potential economies-to-scale are patent and substantial. This concept constitutes a rather significant departure from standard practice in the past, and for that reason it has been a little slow in coming since the passage of the act nearly three years ago; but I can assure you that I am pressing vigorously for the completion of the necessary regulations and guidelines so that individual states who are willing to participate in this program will be able to do so at the earliest possible date.

Another, more recent legislative mandate for the Internal Revenue Service is the Pension Reform Act of 1974, and I want to assure all of you that I wholeheartedly endorse this mandate. The IRS has long been involved with the examination of private pension funds, whose assets today amount to approximately two hundred billion dollars. In the course of our long-standing role vis-a-vis these funds, IRS representatives have witnessed some unsatisfactory practices and the mismanagement which, in some cases, have resulted in the bankruptcy of trusts and the loss of employees' retirement savings, yet it has been difficult for us to act effectively. The new legislation will provide additional sanctions that we need. Of course, Internal Revenue's interest in these matters is a good deal more than simple altruism. We are principally concerned that institutional payments to these funds are ultimately used for the purposes for which these institutions receive tax deductions.

In fact, I think I can say that the new Pension Reform legislation, rather than distorting or inappropriately broadening our tax administration role, represents a happy coincidence of interests, whereby the fair and equitable application of the tax law will serve to benefit both the employees covered by such plans and the taxpaying public as a whole. In addition, the Pension Benefit Guaranty Corporation, which is being created by the new legislation, will provide insurance coverage to the roughly two thirds of the private pension plans which are not presently afforded such protection. Of course, the PBGC will also have a strong interest in seeing to it that these pensions are soundly administered, and you can bet that our people will be working very closely with theirs in carrying out our respective responsibilities under the new act.

The third positive change which I see on the horizon for the IRS is an innovation of the Service's own making; this is the first overhaul of our automated

Master File system since it was initially installed in 1960. This new system will make the fullest possible use of the most up-to-date developments of information technology in speeding our processing, keeping tax accounts correct, reducing our errors and detecting those of taxpayers, improving our assistance to the public and, perhaps most important of all, enhancing our ability to assure the taxpayer's right of privacy. Under the new revenue accounts management system, which is presently being designed, a variety of sophisticated mechanisms and procedures will be employed to protect all information regarding the taxpayer and his dealings with the IRS from unauthorized access and disclosure. These defenses will be even more stringent than those built into our present ADP system.

You know, this privacy issue is looming very large in the public forum, and in the legislatures throughout this country, and I rather imagine it is going to be with us as a topic of heated public debate for some time to come. I would just like to say that I am somewhat concerned that the privacy issue may become distorted by some overzealous defenders of individual liberty. We cannot bury the issue of privacy by passing legislation which would restrict institutions, either private or public, from collecting or keeping necessary personal data on individuals or organizations. We are living in an information age. If our institutions are going to meet their responsibilities to the public which they serve, then they are going to need information regarding that public.

If our institutions are going to respond effectively to energy shortages or aberrant economic developments, if we are going to plan for adequate medical and educational facilities, or make determinations regarding optimal capital investments, if we are going to run programs like Medicare and Social Security and if we are going to administer the revenue laws, then we are going to need personal data banks. Therefore, the issue should not be one of whether or not to collect necessary information but rather how to protect that information from disclosure and/or inappropriate use. The Internal Revenue Service, or any other institution, public or private, which collects personal data on individuals stands in a fiduciary relationship to the individual with regard to that data. In view of this, it seems to me that a vital first step is for our legislatures to strengthen and tighten laws making the misappropriation and misuse of personal data as much a criminal act as the misappropriation and misuse of funds held in a fiduciary relationship.

In this respect, the Internal Revenue Service has traditionally been on the right track. As I am sure you are all aware, the Service has long operated under strict antidisclosure provisions built into the Internal Revenue Code. We are not resting on our laurels, however. We have recently completed a thorough review of the antidisclosure provisions as a result of which we have developed proposed revisions to the Code which would reduce the degree of access to tax information that is presently permitted under law and would broaden the application of that law to areas not envisioned during the drafting of the 1954 Code. One aspect of the proposed revisions might place an additional burden upon the Service, since it would require the IRS to provide statistical studies to other Federal agencies, upon their request. But I willingly accept this burden for the Service, in lieu of the alternative, which would be to provide raw tax data to other Federal agencies for their analytical purposes.

While I'm on the subject of privacy, I would like to devote a moment or two to another, somewhat related topic, and that is secrecy. There are those who seem to confuse the concepts of privacy and secrecy, and somehow try to make secrecy the institutional concommitant of privacy. I do not believe that this is accurate or appropriate, particularly as regards public institutions. It seems to me that the workings of a public institution should be as open as possible to the public which that institution serves. That is, after all, what the Freedom of Information Act is all about. Except where the public knowledge of certain agency policies, practices, and procedures would impair the ability of that agency to accomplish its Congressional mandate of law enforcement, such an agency should have nothing to hide from the citizenry.

It was with this philosophy in mind that I announced, just two weeks ago when I appeared before the Senate Subcommittee on Administrative Practice and Procedure, that I had requested our Technical organization to open up the IRS ruling process.

As with some of the other IRS policies which I have discussed with you this afternoon, the traditional Internal Revenue policy of restricting the publication of tax rulings was based upon sound rationale. These rulings are made on the basis of specific details of individual taxpayer circumstances. The statute and

regulations simply do not permit us to disclose this information. Moreover, apart from the specific requirements of the statute, general philosophical questions arise because many of these rulings involve discussions of the taxpayer's private affairs and plans for the future; thus, it could be (and was), reasonably argued that the information contained in these rulings was essentially proprietary, and its revelation could be inimical to the taxpayer's interest. For a number of years, the foregoing reasoning did indeed seem to represent good and sufficient arguments for not publishing the great majority of our rulings.

When our policy in this area began to be seriously questioned, we found that our position on the general philosophical level, as contrasted with statutory construction, was not entirely satisfactory. Principally, we were troubled by our critics' argument that the contents of the private, or letter rulings might constitute a body of secret tax law, representing official positions on the interpretation of the Internal Revenue Code. The legal research and debate which went into producing these interpretations was paid for by the public, yet they were essentially available only to relatively limited number of tax practitioners.

In addition to the substantive questioning of our basic rationale, these and other critics also raised a fundamental issue of principle regarding the letter ruling process, the issue of Internal Revenue's institutional integrity. Now, from the Service's point of view, this was merely an issue of image rather than of fact. These is no question in my mind as to the integrity of the Service in general or its technical rulings process in particular. However, so long as the bulk of our rulings remained closed to public access, the citizenry would have to take our word for our own integrity. Well, if you've read anything about the opinion surveys regarding the public trust of both private and public institutions in the past year or so, you can imagine how effective such a defense of integrity might be.

Public trust is absolutely paramount to maintaining the self-assessed voluntary compliance that makes our system of tax administration possible. If such confidence is not forthcoming, as a matter of course, then we must gain it; we must demonstrate by our actions and our openness that we are entitled to the public's trust. In view of this, I determined that the tax ruling process should be opened up in the future. Now, we are not rushing into this change blindly; nor are we going to jeopardize the taxpayers' reasonable expectations or privacy in pursuit of our institutional self-interest. Our Technical people and our Chief Counsel's office are working to determine the best manner of achieving a maximum degree of public access.

Obviously, we have not worked out the complete details of this change. For example, we have reservations about the extent to which we should release trade secrets submitted with requests for mandatory rulings, those rulings that the taxpayer is required by law to seek, for example under section 367 or to change either the method or period of his accounting. Similary, we will not publish the two thousand or so Technical Advices which we issue each year, inasmuch as they are involved exclusively with the audit process However, we believe that we will be able to provide public access to all letter rulings; we plan to achieve this access by asking all taxpayers to include a waiver of confidentiality in their request for rulings.

As a footnote to this new policy, I would like to make it clear that this change is prospective and not retroactive; thus, it does not affect our position regarding the Tax Analyst and Advocates suit, presently in the Court of Appeals, which aims to force the Service to open all *past* letter rulings to the public. Such a course of action remains unacceptable to us because of the specific requirements of the Code and Regulations.

The decision to open the tax ruling process will be realized in practice sometime during the Fall of this year. At approximately the same time, or perhaps in little earlier, the Service will take yet another step in the direction of increased openness; this will be the completion of the release to the public access of the bank of the Internal Revenue Manual. Currently, we are working on the process of dividing that part of our manual that has not already been released, into two portions; one public, and the other "protection." The protected portion of the manual will be restricted to law enforcement activities only; all other aspects of our policies and procedures will be open to the public scrutiny.

In seeking to "redefine tax administration", I am well aware that I may be promoting a losing cause. I say this because I know that my position rests upon principle, and principles and ideals have been losing more and more battles to

pragmatism and expediency in recent years. Principles aside, for example, the proposal that the IRS administer an income maintenance program is, after all, not without its pragmatic appeal. As one of my colleagues has observed, we don't even have to change our stationery; we'll still be the IRS—The Income Redistribution Service.

Beyond the concrete proposals now under discussion for broadening the IRS role, I can see reasonable men advancing new ideas; for example, charging the IRS with the responsibility for policing almost all activities—not just tax—of multi-nationals. Moreover, I am not full certain that we are out of the controls business for good. Further, if the 94th Congress does undertake a full-scale revision of the 1954 Code, I would not be surprised to see a whole raft of new provisions aimed at promoting protection and restoration of the environment built into the Revenue provisions. This would thrust our enforcement and rulings processes squarely within the jurisdiction of the Environmental Protection Act, and put the Service right in the middle of a highly volatile sector of public concern.

In summary, I feel rather certain that the continued integrity of Tax Administration cannot rest with the actions of one Commissioner, or be reasonably assured through a single, short-term re-organization of the IRS. Rather, it will be, of necessity, an ongoing effort requiring the conscious participation of our political leadership, IRS management, and the tax law profession, of which I am proud to number myself a member.

[From the Washington Post, Sept. 13, 1976]

DRUG DEALERS AND THE LAW

No one can say for sure, but the best estimates are that between $7 billion and $10 billion in illicit narcotics, particularly heroin, is sold each year in the United States. For years, the principal law enforcement effort has been focused on the lower-level sellers and their customers, pathetic junkies, some of whom sell off a portion of their stash so they can afford their next fix. They are the principal targets, for example, of the New York state drug laws that were enacted three years ago with such fanfare and that now appear to be ineffective. The reason these laws aren't working, according to most authorities familiar with the problem, is that they do not reach the people that law enforcement really should be reaching—the people who import, wholesale and distribute heroin in massive quantities for later street distribution.

And the reason these higher-ups of the heroin traffic are so unreachable is that they themselves rarely have personal contact with the drug or its users. They deal through intermediaries, not all of whom necessarily know for sure who is at the top. The frustration this poses for law enforcement is compounded by the fact that many of these high-level operators are also highly mobile, a mobility facilitated by their large accumulations of cash. Most of this cash is never declared as income. Thus, it has seemed logical for a long time that the agency most able to do damage to the high-level heroin trafficker is the Internal Revenue Service. Not only has IRS a natural interest in large sums of unreported income, it also has legal mechanisms at its disposal that make it possible for that money to be seized when such action is appropriate.

Several weeks ago, Sen. Birch Bayh, chairman of the subcommittee to investigate juvenile delinquency, tried to find out just where IRS stood in this fight against the heroin trafficker, and the record shows that Dr. Bayh didn't learn nearly as much as he had hoped he would. It turns out to be a highly complicated problem for IRS, having to do with its own understanding of what the law permits the agency to do, with its own priorities and with its understanding of the wishes of Congress. Even though Mr. Bayh didn't learn all he wanted to, he and the country got a pretty good idea of what some of the problems are. Donald C. Alexander, the IRS commissioner, told Sen. Bayh: "There are many pressures on the Internal Revenue Service to put everything first . . . so when we are told to take the affirmative resources and assign a certain number of them to one particular program, we need to be told also what we should take them away from. Should we stop trying to prosecute major corporate tax evaders? Should we stop trying to put corrupt politicians in jail? Let's tell us now because there are only so many people."

The hearings revealed that special funds had been allocated for a fight against the narcotics traffic. But over time (and in a manner too complicated to recount),

some of these funds were diverted into other IRS investigative activities. Then, to top it off, some of the IRS budget for enforcement was cut within the administration.

The central point that the hearings developed is that, yes, IRS does have a mechanism for getting at the overlords of the drug trade. Yes, it has been tried with some marginal success, and yes, IRS is still working with the Drug Enforcement Administration on some high priority cases. But, can IRS point to any specific areas in which it can predict a real breakthrough? No, not really. To get into this in a big way is going to require a clearer mandate from Congress, especially as to the money to be spent against drugs and drugs alone.

When listened to very carefully, Mr. Alexander sounds as if he's saying his agency can do this job if it receives the money and the mandate from Congress. Mr. Bayh promised to take the issue up in some detail with the Senate Appropriations Committee. It probably will take more than that. This is a case where the members of Congress who come from areas of high heroin impact are going to have to add their voices to those calling for a serious effort. It would help if citizens from these areas—Washington, D.C. is one such area—joined this campaign. Remember that it was income tax evasion that proved to be the downfall of Al Capone; today's mobsters are probably no tougher. What's required is for Congress and IRS to know that the citizens of the country want action before the heroin epidemic gets seriously out of hand. That is not the only effort that needs to be made, but it's one that should be made, and made without a lot of excuses.

[From the Washington Post, Sept. 22, 1976]

ABORTING AN ANTI-DRUG PLAN

(By Jack Anderson)

Publicly, President Ford has called for a crackdown on the kingpins of the narcotics trade. But behind the scenes, he and Internal Revenue Service Commissioner Donald C. Alexander aborted a tough drug enforcement program.

Mr. Ford's failure to back the program comes at the very time when the heroin flow from Mexico, Europe and the Far East is at a peak and the nation appears headed for a new addiction crisis.

Top narcotics dealers rarely handle the drugs. Instead, they rake in lucrative profits from street sales and hide their illegal spoils in foreign banks. Clearly, IRS is an essential agency in making strong cases against the money men.

Thus, last April, the President ordered Treasury Secretary William E. Simon and Alexander to plan an IRS drug crackdown. The "merchants of death, who profit from the misery and suffering of others, deserve the full measure of national revlusion," Ford said in a major speech.

Treasury officials thought Mr. Ford meant business. They asked the White House for $20.6 million for intelligence operations, much of it to be used in the fight against narcotics.

Mr. Ford's budget office turned down the request.

Meanwhile, Simon established a Treasury Anti-Drug Enforcement Committee. The panel, headed by Treasury Under Secretary Jerry Thomas, was supposed to develop a plan to combat the drug peddlers. Other members included David Macdonald, assistant Treasury secretary for enforcement activities; Veron Acree, commissioner of the U.S. Customs Service; and Alexander.

Thomas, according to a confidential memorandum, submitted a dynamic 14-point plan developed by Macdonald that called for a strong IRS role in fighting drug traffickers. Under the proposal, which the committee supported, the IRS would annually investigate at least 600 of the biggest drug dealers in the country.

The Macdonald plan never saw the light of day. Alexander refused to set up an anti-drug program within the IRS and dispatched a weaker proposal to Simon's office. His memorandum called for a simple exchange of information between the IRS and the Drug Enforcement Administration. The document falsely indicated that the Alexander plan had Thomas' approval.

Indeed, Thomas was not even invited to a secret meeting between Alexander and top Treasury aides where the final agreement between IRS and DEA was drawn up.

Shortly afterward, Thomas wrote another confidential memo imploring his committee members to accept at least a portion of the stronger Macdonald

plan. "Without these components," the document states, "it is unlikely that a new program will be . . . successful . . . As a matter of fact, it does not appear that the IRS agreement (with DEA) provides for a separate, identifiable program as contemplated by the President."

Thomas' attempt to save the Macdonald proposal failed, and the woefully inadequate agreement between the IRS and DEA was adopted.

To silence internal opposition to the weak program, the White House quietly moved Macdonald from Treasury to a Navy Department job which has nothing to do with drug enforcement.

Rep. Charles Vanik (D-Ohio) will expose the lackluster efforts of the IRS and the White House to fight drug abuse in testimony before the new Select Committee on Narcotics and Drug Abuse.

Footnote: White House spokesmen have consistently said that the administration is doing all it can to fight narcotics traffic. An IRS spokesman told our associate Marc Smolonsky that the 14-point plan was an old concept violently criticized by the courts, Congress and the public. He said "the present approach is both effective and fair" because it applies tax laws equally regardless of the taxpayer's business.

Unloved Diplomat—Secretary of State Henry A. Kissinger summarily dismissed James Akins from his job as ambassador to Saudi Arabia last year without telling the diplomat the reason why.

"I've pressed for reasons," Akins wrote to Sen. Charles H. Percy (R-Ill.), "and have been told only that Kissinger dislikes me and that certain aspects of my reporting have 'annoyed' him. There has been no suggestion that anything I have written is wrong or that any analysis is faulty—just that my reporting doesn't fit in with what the Secretary wants to hear."

[From the Washington Post, Sept. 22, 1976]

IRS Checks Tax Files of Drug Kings

(By John M. Goshko)

The Internal Revenue Service is checking the tax returns of 375 persons believed to be among the nation's top-ranking traffickers in illicit narcotics, IRS Commissioner Donald C. Alexander said yesterday.

Alexander disclosed this information in an interview where he discussed IRS's new efforts to assist the Drug Enforcement Administration's war against the $10 billion annual traffic in heroin and other illegal drugs.

In response to a directive from President Ford, Alexander and DEA Administrator Peter B. Bensinger signed an agreement on July 27, calling for intensified cooperation between the two agencies.

The pact gives IRS responsibility for pursuing high-level drug dealers who violate federal tax laws by failing to report and pay taxes on profits earned through illegal narcotics dealings.

"DEA has already given us the names and some details as to 375 individuals," Alexander said, "and we're well into the process of pulling the tax returns of these individuals and seeing what they show."

"As a result of what we've found, some already have been put under tax-evasion investigations; and we expect that, as we complete their returns, others will be, too," he added.

Neither Alexander nor DEA officials would reveal the names of those being probed. However, Alexander said, all 375 fall into the category of what DEA calls "Class I violators"—persons suspected of being the leaders or financiers of large-scale narcotics rings with dealings running into millions of dollars.

IRS's enlistment in the drug war is an extension of its long-time involvement in combatting organized crime. Ever since the successful 1930 prosecution of Al Capone on tax charges, the federal tax laws have provided an effective weapon for putting leading rackets figures in prison.

This is done by making a "net worth case"—laboriously piecing together a picture of a target individual's financial status by tracking down his holdings and expenditures and then comparing this net worth with the person's reported income.

"Our job is to enforce the tax laws," Alexander said, "so it's perfectly proper for us to go after persons who make huge illegal profits from drugs and who hide these profits and pay no taxes on them."

But, he cautioned against the idea that a crackdown by IRS on drug dealers can, by itself, significantly halt the drug traffic. Similarly, Alexander said, while IRS can provide important support for the federal drive against narcotics, it should not be regarded as the agency carrying the major burden of this drive.

"For one thing, our involvement can't extend beyond enforcement of the tax laws," he noted, "and that makes us a somewhat limited instrument for combatting the drug problem, which involves questions of both supply and demand.

"If we succeed in taking some narcotics kingpins out of circulation on tax charges, we still wouldn't necessarily be putting an end to the traffic. We'd have dealt something of a blow to supply, but we'd have done nothing to curb demand; and somebody will come along to fill any demand that gives promise of big profits."

In addition, he added, IRS, which last year had its investigative staff cut by 10 per cent, faces a problem on priorities.

"You have to choose between other programs that also are highly important—other aspects of organized crime like gambling, corrupt politicians or major corporate evaders of the tax system. Any big concentration of our investigative personnel against narcotics dealers means there has to be some lessening of these investigations.

"I also think the FBI could do more in this area than it has done," he added. "The FBI is supposed to investigate organized crime, and the narcotics traffic at the top levels is a specialized facet of organized crime activity. Maybe the bureau should put some of those informers that they're taking away from domestic intelligence work into the narcotics field."

[From the Washington Post, Sept. 27, 1976]

IRS Chief Struck Tax Question

(By Jack Anderson and Les Whitten)

Over the strong protests of his own enforcement officials, Internal Revenue Service Commissioner Donald C. Alexander last year struck a key question off the income tax forms. The question, which simply asked the taxpayers whether they maintained a foreign account, was intended to catch tax evaders.

Big-time criminals, from corporate embezzlers to mobsters, use secret foreign bank accounts to escape paying U.S. taxes. The taxes they avoid, of course, must be made up by the honest taxpayers.

The question about foreign bank accounts has been used by the IRS to trap tax cheaters. In the biggest tax haven case in history, for example, Ohio businessman Jack Payner has been indicted for falsely answering "no" to the question.

Yet Alexander began maneuvering to remove the foreign bank account question from the tax form even before he was sworn in as IRS commissioner. It is an interesting coincidence that his former Cincinnati law firm has been linked to a tax haven in the Bahamas.

An IRS informant in the Bahamas swiped a Rolodex off the desk of H. Michael Wolstencroft, director of the Castle Bank and Trust Ltd. Three cards on the Rolodex contained names of lawyers in Alexander's old firm. We were able to reach only one of the attorneys, who said he had no idea how his name got on the Rolodex.

On May 22, 1973, exactly one week before Alexander took the oath of office, he began a behind-the-scenes campaign to eliminate the foreign bank account question from the tax forms. He forwarded a letter, dealing with an unrelated subject, from a South Carolina lawyer to the IRS committee that deals with tax forms. In an accompanying memo, intended for official eyes only, Alexander brought up the foreign bank account question.

He followed the memo with pressure to remove the troublesome question from the tax forms. This was opposed by his enforcement people. John Olszewski, then the IRS intelligence chief, wrote a confidential memo: "The loss of this (question) would seriously restrict our efforts to identify those who would use foreign banking facilities in avoidance and evasion schemes."

A similar memo from Edward Morgan, then the assistant Treasury secretary in charge of enforcement, also advised Alexander that the question "is a factor in the Treasury Department's efforts to combat the use of foreign bank accounts to facilitate illegal activities." Morgan added sternly that "dropping it from the tax returns at this time would be counter-productive."

Yet Alexander ignored the advice of the law enforcement experts and finally succeeded in removing the question in June 1975. The notes of the confidential IRS meeting indicate that he didn't even consult the Treasury and Justice Departments before finally striking the question off the tax forms. Alexander's attitude was betrayed by his remarks to a group of public accountants. "We have knocked out the foreign bank account question at long last," he told them.

Footnote: An IRS spokesman acknowledged there had been disagreement over the question's removal, but insisted Alexander's actions were beyond reproach. Meanwhile, Rep. Charles A. Vanik (D-Ohio) has introduced legislation that would force the IRS to reinstate the foreign bank account question.

SUSPICIOUS THAIS

The Thai government is quietly investigating a questionable deal between a Thai airline and a U.S. aircraft manufacturer.

The Thais want to find out why the airline, Thai International, paid McDonnell Douglas Corp. $2 million more per plane than was charged to other airways. Thai investigators are also suspicious, say our sources, because the government-owned airline made a down payment before the transaction was approved by the Thai cabinet. This violated government regulations.

As part of the investigation, the Thai government has sent a communications secretary, Dr. Gun Nagamati to the United States to do a little probing. He met privately with Securities and Exchange Commission officials and Senate investigators.

A McDonnell spokesman told us it was against company policy to discuss the terms of the Thai transaction. We have obtained a confidential cable, however, in which the corporation's president, Sanford N. McDonnell, denies any impropriety. Corporation officials have also assured the Thais privately that the company did not "bribe or promise to pay money to any airline or government official." A spokesman for the Thai embassy confirmed the details of the investigation.

[From the Baltimore Sun]

PROSECUTORS CALL RECENT CONVICTIONS ONLY THE START OF "WAR" AGAINST DRUGS

(By Robert A. Erlandson)

When a federal judge recently imposed a 30-year sentence on Jerra Lyles, ringleader of a vast heroin operation, it marked the latest in a long series of successful major federal drug prosecutions in Baltimore.

But it also led the prosecutor to tell the judge, "Although we have been fighting the heroin war for seven years, it is safe to say we are losing."

"The trouble is that there's just more war," Andrew Radding, the assistant U.S. attorney who prosecuted the case, said later in an interview. And he added that that war was not confined to heroin, but also included cocaine, various drugs known generally as "pills," and a "significant, read that significant, increase in the use of powerful hallucinogens."

"We're seeing an awful lot of it and a proliferation of illict laboratories for making the hallucinogens. It has been building for two years and it has reached proportions where it is keeping us busy," he said.

The profits of drug trafficking, in its many variations, remains so high despite the risks of arrest and conviction that even long prison sentences appear to have little deterrent effect, but they are the best that prosecutors like Mr. Radding can hope for.

"Heroin is still the number one problem," Mr. Radding said. "As much as we would like to, we have not stopped the flow of heroin into the city. However, if its sale and use is increasing, it's at a much lower rate than before," he said.

"There are tangible symbols of our successes; in 1971, a bag of 10 percent pure heroin sold for $5, now that same bag, at 2 percent pure, is selling for between $15 and $20," Mr. Radding said.

The prosecutor estimated that there were 5,000 heroin addicts in Baltimore, and said that while their numbers were not rising sharply, "Heroin represents the greatest danger, not only for the users but because its effect spreads throughout the community as the No. 1 crime-breeder. It's like a cancer. We may have controlled the spread but we can't completely prevent it from coming into the city."

Mr. Radding roundly disputed, at least for Maryland, recent charges that Drug

Enforcement Administration policies have failed and led to a steadily worsening drug crisis in this country.

Baltimore has a "record that is enormously better than comparable cities such as Boston or Buffalo. Our record of arrests, indictments, convictions and sentences is significantly better," he said.

Within the last three years, federal Drug Enforcement Administration agents in Maryland have broken up a half-dozen big-time heroin and cocaine rings, and succeeded with many smaller prosecutions.

More than 300 indictments have resulted, and the subsequent prosecutions have led to long sentences for such leaders as John "Liddy" Jones, Melvin "Little Melvin" Williams, Bernard "Big Head Brother" Lee and Jerra "Gatorman" Lyles, said Mr. Radding, who is in charge of federal drug prosecutions in Maryland.

But it was these very successes that led him to sound the note of pessimism.

"We have made the dope peddlers reform," Mr. Radding said. "The new organizations are smaller and not so flashy. And, frankly, what makes it harder for us is that the heroin coming in now is from Mexico, and it's harder to stop than it ever was in the French connection. There are too many ways to get it into the country."

The successes of recent years have enabled local agents to establish a strong, working network of informants, and the policy of George Beall and his successor as U.S. attorney, Jervis S. Finney, has been to concentrate on narcotics conspiracies—which are the cases that have led to the convictions of ring leaders.

Mr. Finey said he is seeking assignment of a special Controlled Substances Unit to his office. This would add more special agents as investigators and another assistant U.S. attorney to prosecute drug cases.

"Narcotics prosecutions continue to be top priority in this office. Our theory is to emphasize the heavy, high-level conspiracy cases with the primary drug distributors, rather than the buy-bust street sales," Mr. Finney said.

Baltimore is one of only five cities that concentrates on attacking narcotics conspiracies, Mr. Radding said. The others are New York, Los Angeles, Chicago and Miami. "Prosecutors in other cities want drug sales or seizures, but it's harder to get the top men that way," the prosecutor continued.

He had the highest praise for the newest official weapon in the narcotics war, the formal agreement signed July 27 between the Drug Enforcement Administration and the Internal Revenue Service to assure the cooperation of the two agencies in battling drug dealers.

Drug agents have long tried to use the tax laws as a means of seeking out big-time narcotics peddlers, but Donald C. Alexander, the IRS commissioner, had said the tax service was not a criminal investigating agency.

He had used the same argument regarding the use of IRS investigators to catch white-collar criminals such as corrupt politicians and had been criticized sharply for it by prosecutors who felt that without the special aid provided by tax agents, it would be extremely difficult, if not impossible, to break corrupt schemes.

Under the new agreement, which represents an apparent change in IRS policy, Mr. Alexander announced that the IRS had received the names of two hundred suspected narcotics dealers for special audits as part of a major new federal attack on the illegal drug traffic.

"These are the organizers, the financiers, the guys who never touch the drug," a DEA spokesman said.

In the Baltimore area, Mr. Radding said, the city, Baltimore county and federal agents have continued a joint drug task force established in 1972 to deal primarily with the lower level dealers and street cases, but it is also moving into investigations of sophisticated drug conspiracies.

Mr. Radding said there are "several large organizations still under investigation in Baltimore, and within a year there will be at least two significant heroin conspiracy prosecutions."

The prosecutor said, "The people who are running the smaller networks were low rankers in the convicted networks and now are operating themselves. That means there is more to do, and we need sentences like the 30 years Lyles got to do the job."

One of the counts on which Lyles was convicted was a charge of operating a "continuing criminal enterprise," and it alone carriers a penalty of ten years to life in prison.

Lyles was the first defendant prosecuted in Maryland under that statute, which is part of the 1971 Controlled Substances Act. "We will continue to use that charge, and any time there is a leader we will use that statute. The head of every ring we have prosecuted has gotten the maximum sentence under the laws he was convicted of violating," Mr. Radding said.

During the federal push that broke the "French Connection" in the early 1970's and brought a temporary halt in the production of Turkish opium poppies, heroin traffic dropped significantly.

Cocaine, the "Cadillac of stimulants," a product of South America's coca bushes imported through traditional smuggling routes, has been a growing problem throughout the United States for the last decade, Mr. Radding said.

During the early 1970's its popularity increased dramatically throughout the United States, and became a major focus of enforcement attention. Within the last three years, federal drug agents in Maryland have broken up at least four major cocaine gangs.

At present, Mr. Radding said, "The cocaine problem appears to have been stabilized in the Baltimore area, at least to the point where it is far less visible than it was a few years ago."

The increase in the illicit manufacture, distribution and use of the "mind-blowing" hallucinogens, particularly among white, middle-class youths, is presenting a serious new problem, particularly because the two most popular substances, phencyclidine, known as PCP, killer weed and angel dust, and dimethyltriptamine, called DMT, cause permanent damage to the nervous system.

[From the Baltimore Sun]

TAX-CASE DEPOSITS PUT AT $840,000

(By Robert A. Erlandson)

The Internal Revenue Service has uncovered another bank account showing $170,000 in deposits that bring to about $840,000 the total bank deposits made last year by a Thai national who is charged with falsifying his 1975 tax return, it was testified yesterday.

Andrew Radding, the assistant United States attorney prosecuting the case, told U.S. Magistrate Clarence E. Goetz that the money comes from the sale of heroin and that the defendant, Suwan N. Ratana, 45, is a millionaire drug dealer in suburban Washington.

After the testimony and legal argument, the magistrate said he believed that Mr. Ratana represented an "extremely high flight risk" and he continued the $250,000 bail set on the man after his arrest a week ago.

An IRS special agent, Ronald N. Beran, testified that, only hours before he took the witness stand, he had reviewed the records of the latest account found that is owned by Mr. Ratana, who lives in Silver Spring.

Mr. Ratana and his wife, Rebecca, 43, are charged with reporting on their 1975 tax return income of $13,184—which represented her salary as a nurse—while depositing hundreds of thousands of dollars in various bank accounts. Agent Beran testified that Mrs. Ratana had deposited $5,200 of her pay in a credit union.

In the first four months of 1976, said Mr. Radding, Mr. Ratana deposited more than $1 million in a Swiss bank and $170,000 in a bank in Thailand. The couple faces a tax liability of $778,000 this year alone, he said. This money is in addition to the $840,000 the IRS has impounded in U.S. banks, he said.

Mr. Radding told Magistrate Goetz that "the deposits were the proceeds of income from the sale of heroin." He said Mr. Ratana has been unemployed since 1972, after having worked at the Thai Embassy, a supermarket and a travel agency since coming to the U.S. as a permanent resident in 1959.

Yesterday's hearing was on Mr. Ratana's request for a bail reduction. Mrs. Ratana, the mother of four young children, is free on personal bond.

Mr. Radding told Magistrate Goetz that he expects a grand jury to return indictments Tuesday charging the Ratanas with tax evasion and false statements on their returns in 1974 and 1975, and with conspiracy to defraud the U.S. In addition, he continued, the IRS is investigating the couple's tax returns for 1972 and 1973.

Mr. Radding declined, however, despite questions by Joseph J. Lyman and Kenneth A. Reich, the Ratanas' lawyers, to say when he expected to bring drug charges against Mr. Ratana.

In response to the defense lawyers' contentions that the $250,000 was unreasonably high for a single tax charge, Mr. Radding admitted that only "a minimal part" of the government's case has been disclosed in court so far, but, he said, "This is not a case where the taxpayer has fudged and gets slapped on the wrist."

As two examples of Mr. Ratana's banking methods, Mr. Radding said that February 2, 1976, the man made 17 separate deposits, each between $5,000 and $5,115 in one account in one bank, he said. Reminded that Mr. Ratana is charged with falsifying his 1975 tax return, Mr. Radding recited a record of eight deposits, each of $5,000, made October 2, 1975, in a single account, "all in $5, $10 and $20 bills."

[From the Washington Whispers, Oct. 11, 1976]

SATISFACTION FOR IRS CHIEF ALEXANDER

Donald C. Alexander has gotten the best of Administration critics who were trying a few months ago to ease him out as head of the Internal Revenue Service. These insiders had predicted his exit before the end of summer. But, Mr. Alexander says now, "The end of summer has passed and I am still here."

[From the Washington Post, Oct. 17, 1976]

TAX SHELTERS

Wealthy Americans who have stashed away large amounts of money in tax shelters of questionable legality in the Bahamas may be feeling considerable discomfort in the coming months.

"Project Haven," temporarily suspended by the Internal Revenue Service and then handed over to the Justice Department late last year, is, in the words of one of the principals of the investigation, "very active, very viable and very productive."

The investigation had been halted last year after it was learned that an IRS informant removed a list of names and telephone numbers from the briefcase of a Bahamas bank official and photocopied it while the bank official was in the company of a female companion hired by the informant.

At that time, IRS Commissioner Donald C. Alexander was reported to be under investigation for allegedly stopping the probe to protect high government officials. The Justice Department subsequently cleared Alexander of the charge.

As for that list of names and phone numbers, the government has recently obtained a court ruling saying that, regardless of whether the list was legally obtained, its contents may be used in the investigation.

While declining to discuss the nature of the charges or the targets of the probe, Cono Namorato, chief of the criminal section of the Justice Department's tax division, says the investigation is "broadening" and will produce indictments "further along the way."

EXCERPTS FROM HEARINGS BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE, AUGUST 5, 1976

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Mr. RANGEL. I am talking about the number of people that have been active politically, especially in the Southern States, where any number of journalists have pulled together statistics to show how many people are under investigation.

I am not talking about immunity. I am asking as to whether or not, in the course of some questions that I and other people have raised, you investigated to find out whether certain people are just checked out because of their activities, rather than because of their tax situation.

Commissioner ALEXANDER. Well, this morning, we were talking about checking because of activities, and those people were narcotics traffickers, and tax evaders,

and those people ought to be checked out. Because they are narcotics traffickers, they are tax evaders.

Mr. RANGEL. I want to talk about that, too.

Commissioner ALEXANDER. That is what I was testifying about on the Senate side this morning.

Mr. RANGEL. Did you make an agreement with our Drug Enforcement Administration?

Commissioner ALEXANDER. That is right. We made an agreement with the DEA.

Mr. RANGEL. Is that agreement public?

Commissioner ALEXANDER. Sure it is public. It has been in the Press. I would be glad to furnish it—sent it to you.

Mr. RANGEL. I am only on this because you raised it.

Commissioner ALEXANDER. What? On the DEA?

Mr. RANGEL. I don't know why you would raise the drug offender that, certainly, you and I are in accord with. I was talking about political activities.

Commissioner ALEXANDER. Do you know why I raised that?

Because you raised a very broad question, and because if I answered it, "Yes" or "No", I would have answered something that went far beyond the question you raised.

The question you raised, I think, to answer it narrowly, to put it in context back in 1973—something called Friends and Enemies, right? There was some investigation by the Joint Committee about the use, or mis-use, of the IRS to harass enemies and reward friends. And this was Count One, as I recall, in the House Judiciary Committee's impeachment process.

Mr. RANGEL. I remember it well.

Commissioner ALEXANDER. I do, too. I will never forget it. I hope my successors never forget it. We are not about to let the system be abused by harassing people because of their beliefs; because of their political actions or non-actions; because of their cult; because of other irrelevancies. There is not going to be any of that. I don't believe there has been since I have been Commissioner.

Mr. RANGEL. A list of names were alleged——

Commissioner ALEXANDER. We looked into that.

Mr. RANGEL. I am just saying that you and I are in the business of attempting to restore confidence in the Government.

Commissioner ALEXANDER. It is damn difficult.

Mr. RANGEL. You can help, because when the Press makes these types of statements and actually names individuals that have been selected, and you look at their backgrounds, if your investigation shows that they are just in a broad number of people that are under investigation, these things should be made public.

My question does not deal, now, with the Drug Enforcement Administration. I will try to make it as narrow as possible. But there was some publicity given to people who were active in the Civil Rights struggles, and politics. Edder's name was among those included. You know, I am trying to get as small a list of people that I am talking about as possible.

I asked your Office whether or not it could check this out to determine, not whether this is your policy—I don't have any major problem with the direction which you think our Government should be going, Commissioner—but I am concerned as to whether or not certain regions of our Country—whether we are talking about the FBI, or the IRS—whether there is enough discretion there where the mores of a particular town are not developed by those that have the discretion to make policies, to determine who will be investigated.

Commissioner ALEXANDER. All right. Here we are talking about general policy and specific policy.

I would like Mr. Williams to respond, specifically.

Mr. JONES. Let me also say that the Staff has been working on this issue for some time.—I think with the IRS—and Mr. Von tells me that we will have a rather thick report within the month—they expect it to be the week after Labor Day—on this.

Mr. RANGEL. Well, maybe my question is premature—except in a general way.

Mr. WILLIAMS. It is *not*, really! We had some of the Staff down in our offices last week. And in response to the list of questions—the rather long list of questions—in which specific details in each of the cases were referred to, we did come up with several charts that were incomplete simply because, with the number of cases and the number of tax years involved, we have not been able to tackle them down to the last detail. But the things that we had identified,

we showed our Staff last week. That dealt with the way that the return was selected, broadly. There were cases that were in the newspaper. Of course, many of them, if not most of them, were not audited at all. The ones that were audited were all selected by the computer system, or by a return that was related to a return selected by the computer system, which we believe is evidence that they were selected in an objective manner.

Then your Staff had some further questions.

Mr. RANGEL. I assume that you can have a computer punch out what you want. You are saying that the computer did not identify anything special except as you would with an ordinary taxpayer.

Mr. WILLIAMS. That is correct.

Then your Staff came up with further questions as to whether the score on the return was higher or lower than the average of other returns in that District. That is the data that we are in the process of putting all together.

We showed them quite a bit of data. All that we had, up to date, showed that these were high-score returns, and the higher the score on the return the more likely it is that there is going to be a tax revenue which, again, indicates that it is an objective selection—based on the lack of the taxpayer, rather than some subjective selection based on political activity.

But, as Mr. Jones indicated, we have, in effect, committed ourselves to give a further reply by the end of this month.

Mr. RANGEL. I assume your computer could punch out something to show that the heavy delinquent is being processed with the same type of thoroughness as the fellow in the lower income level?

Mr. WILLIAMS. You can do anything you want with a computer. When I am talking about returns being selected broadly, I am talking about the fact that we start with a program to determine the high possibility of the tax return. We run the return through that system, and these returns pop out.

Mr. RANGEL. Okay. The agreement between the Drug Enforcement Administration and the IRS, I assume, is not included in that, so that we could not determine, at this point in time, how effective it is going to be.

Commissioner ALEXANDER. It is pretty dry, because it was signed up on July 27th; but we are just getting it into effect. DEA sent us about 200 names. We sent those 200 names out in the field. We sent them out today. And they have give us some information with respect to these people. They are Class One violators—by DEA standards. We ought to be interested. Of course, we are interested in making sure that these Class One narcotics violators meet their tax obligation or go to jail if they don't! Of course we are interested!

Mr. RANGEL. I thought that is what you and I were agreeing on; that no matter where the person's source of income was coming from—legal or illegal—that where it became apparent that it was not accounted to the IRS, that an investigation would be made.

Commissioner ALEXANDER. That makes it a lot different.

Mr. RANGEL. Does your agreement, actually, identify him, first, as a narcotics violator?

Commissioner ALEXANDER. As a likely tax violator.

Now that they have been identified as king pin narcotics traffickers, and likely tax violators, we will pull the returns and see if they really are. If they really are, these cases should be worked by established standards, and we work them.

Mr. RANGEL. I thought what you were saying was that the No. 1 job was to collect taxes, and that we should be concerned. Whether the person gets the income legally or illegally, you are going to collect taxes. Now you sound like a crime fighter.

Commissioner ALEXANDER. I am pretty much the same guy I was except that I lost about five inches in height and about fifty pounds.

Mr. RANGEL. This is not the same testimony that I heard before.

Commissioner ALEXANDER. Here is the reason:

Mr. RANGEL. Well, who is next on the list?

[Laughter.]

Commissioner ALEXANDER. I am going to give you an example that I mentioned this morning when I was being pounded for not doing enough—and rather ably pounded, too. Senator Bayh did a beautiful job.

An example is this: We are just sure that, if you had 100 Class One narcotics violators lined up on one side of the room and 100 Franciscan Monks lined up on the other side of the room, there would be more tax evaders that would be over there than would be over there.

Mr. RANGEL. You give them a Monk's exemption!

Commissioner ALEXANDER. I don't tell them that.

Mr. RANGEL. Senator Bayh must have really done a job on you!

Commissioner ALEXANDER. You don't like my analogy very much. I think it makes a lot of sense. You don't treat all people as though they are fungible. Some people are more likely to be tax evaders than others. Those who engage in illegal practices are more likely to be tax evaders.

Mr. RANGEL. They don't have to give you any evidence at all that here is a man that lives in a $250,000 house; he has no obvious source of income? They don't have to give you anything except——

Commissioner ALEXANDER. Oh, they do! They have given us that. We have found $250,000 houses and a fancy swimming pool.

Mr. RANGEL. Things that you would do if a guy was working in the Post Office?

Commissioner ALEXANDER. They are more likely to be found, per 100 folks or 1,000 folks, here than any place else.

Mr. RANGEL. We don't have to talk about No. 1 narcotics violators. We are talking about people who, obviously, have more income and are less likely to report the source of that income.

Commissioner ALEXANDER. They cannot be caught by the entities that have the responsibilities for enforcing the Narcotics law. They cannot reach them.

Mr. RANGEL. You have not joined the DEA.

Commissioner ALEXANDER. We are cooperating with the DEA, we think, in an effective way. We thought you liked this.

Mr. RANGEL. I just don't like the language that you use.

Commissioner ALEXANDER. Neither did Senator Bayh—for obvious reasons. He said I was sterile!

[Laughter.]

I am going to go out and take a test!

Mr. JONES. Be careful, Mr. Commissioner!

Mr. RANGEL. I would like to see how it operates.

Mr. JONES. Not on Capitol Hill!

Mr. RANGEL. I did not know the Agreement was signed.

I am not so much concerned with the language.

I know both you and I are concerned that the role of the Government—the IRS is to be used to collect the taxes—not to jail wrong doers.

Commissioner ALEXANDER. I think we have an obligation to collect taxes. We have an obligation to enforce criminal sanctions. I don't think that there is any inconsistency between the views I have been trying to express this morning and this afternoon with respect to this problem. Those are the views that I was expressing at some hearings earlier. We need to do this job right. Doing it right means doing it lawfully. Doing it lawfully means doing it effectively.

Mr. RANGEL. There are any number of people in my community that, you know, own fleets of cars. I know, and everybody knows, that they do not work, and the fact that they were on the DEA list or something of that nature—I mean, there are people that own fleets of cars in my community, and the poor guy operating a luncheonette, you know, he will get padlocked. It just seems to me that it would be consistent—since tax collecting is your prime responsibility—if anyone turned in some of these people, for you to say, "Well, let's check it out." These guys are not even relying on having a job. A part of their reputation is that they don't have work.

If the DEA had a list of people that they just could not make a case against, but it was clear that they had bank accounts and obvious wealth, I don't see where we have to be a crime fighter to say that that is part of your business to investigate it.

Commissioner ALEXANDER. We agree! That is what we are trying to do here.

Mr. RANGEL. I thought that your preliminary remarks were, you know, that you were really out there—well, that is OK.

Senator Bayh and I probably differ, but we are in accord, so we might as well leave on that note.

Commissioner ALEXANDER. We think it is a sound agreement. We think we are going to have a sound, responsible, and effective program.

Mr. JONES. Thank you.

Mr. Commissioner, I just have a few more questions in the area of hardship cases.

I sent you a letter on July 21. I had some field hearings in Oklahoma and, following that, a number of constituents met with me to explain their own particu-

lar problems. One of them that I sent to you, if I remember the fact situation correctly, is the incredible story of a gentleman who worked out an installment payment; was making the payments to the wrong office. He was later notified that he was making the payments to the wrong office and then, subsequent to that, his check—his employment check—was seized, and then his bank account, and then he wrote a check to the insurance company, and that bounced, and his insurance was cancelled. Then his house was sold—an $18,000 house was sold for $2,900.00.

Mr. RANGEL. The Agent bought it!

Mr. JONES. But these kinds of hardship cases apparently are more common than we would like to think. As I understand it, in the southwest Division, the Internal Audit found that, out of 60 seizures and sales reviewed, 52 had violations of prescribed procedures.

Now, is this a problem in sales?

Is this common, or is it peculiar to the Southwest Division, or what?

Commissioner ALEXANDER. There are three problems, really: (1) Policy, (2) Practices, and (3) The specific case.

First, we are reviewing our policies now, with respect to minimum bids. A minimum bid is involved in the type of situation that you described.

We have reviewed our policies, and we have described the results of part of this review there, requiring a high level of proof before seizure is made of a family residence. I think our instructions are clear on this. I am talking about policy. I am talking about practices out in the field.

We try to do our best to get our policies disseminated to the people that have to practice what they preach; and try to see to it that they do their jobs diligently, and well. We think that, generally, they do. We are not perfect. We make mistakes. We have made some in some of these instances that you brought to our attention—in this particular case.

As is not uncommon, there are some facts that are necessary to complete the picture, and when the picture is completed by those facts, it is not as oblique as it would appear without those facts.

An $18,000 or a $20,000 house, for example, may have an encumberance on it of a considerable size—a size such as to bring a much smaller figure into focus as not far from the value of the equity as contrasted with the gross value of the house, for example.

There may be other problems and reasons why the figures may be closer together than would appear.

There may be failures in communication—and there frequently are—on our side. There are also failures in communication on the side of the taxpayer, which occur not infrequently.

Selective memories—I heard a lot about that this morning. Selective memories. It is not uncommon for people to remember what they want to remember. Childhoods are all happy and perfect, I guess.

There was nothing whatever wrong with the old narcotics program.

The three Supreme Court decisions never occurred.

A selective memory is a good thing to have, but it is much better to remember things as they really were, rather than as we wish they had been.

Mr. JONES. Let's just take what I mentioned on this Internal Audit in the Southwest District. Fifty-two out if 60 cases, the audit showed, had violations of prescribed procedures.

Federal Criminal Investigators Association

P.O. Box 353
Forestville, Connecticut 06010

April 18, 1975

Mr. Donald C. Alexander
Commissioner of Internal Revenue
Room 3000
1111 Constitution Avenue, N.W.
Washington, D.C. 20204

Dear Commissioner Alexander:

I am the Executive Secretary of the Federal Criminal Investigators Association which is composed of both active and retired criminal investigators employed by the United States Government. We have approximately 900 Special Agents of the Intelligence Division, I.R.S., as members, which we believe is approximately 50% of your Intelligence Division working force.

I am writing to ask your assistance in my organization's attempt to determine the validity of certain rumors regarding a number of your decisions which are having a demoralizing effect on the investigative personnel of the I.R.S. and thereby reducing its efficiency. I am not attempting to interfere with the prerogatives of management of the I.R.S. as they have a difficult enough job. However, I am taking the liberty of appealing directly to you because I know that you are just as concerned as we are in seeing that both the needs of your investigators and the Government are served.

Let me give you an example of how an unfounded rumor was handled by the F.C.I.A.

After the passage of H.R. 9281 (2 1/2% retirement bill), we received numerous inquiries indicating that various agencies were reviewing their criminal investigator position to determine if the GS-1811 classification was justified. Part of the rumor was that Special Agents of the Intelligence Division would be reclassified to general investigators and that their positions would be downgraded or abolished. Our inquiries established that there was no validity to this rumor and we passed this information to our membership by publishing our findings in our monthly newsletter.

However, since that time, numerous other rumors have circulated causing grave concern among our members and these rumors were buttressed by certain actions of your office. Will you please take time from your busy schedule to give us your comments on the following areas of concern:

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minates the taxpayer's interest in those funds, the levy is ineffective against an attorney-assignee.[118]

Once the attorney has obtained priority over the tax lien, that priority cannot be dislodged. An attempt by the IRS to attack the priority of a valid assignment on the grounds that it is really a "security interest"[119] and therefore subordinate under the Uniform Commercial Code to subsequently recorded liens if not perfected by filing[120] is unlikely to succeed. The assignment is a security interest only if the attorney considers it collateral, guaranteeing the client's promise to pay, rather than a nonrefundable payment for services. If the assignment is an unperfected security interest, whether that interest is protected from subsequently filed tax liens depends upon the applicable state version of the UCC.[121]

To obtain the funds to which he has priority, the attorney must bring suit. If the property has not been levied upon, the attorney may sue the holder of the funds, usually the arresting agency. The holder may respond by filing a complaint in interpleader, naming the taxpayer, the attorney, and the taxing authorities as defendants. If the property has been levied upon by the IRS, the attorney may sue the United States under Code section 7426 for wrongfully levying against his property to satisfy the tax of another. While the attorney may raise the priority of his claim, the statute appears to preclude any attack on the validity of the assessment itself.[122] Courts should create an appropriate exception un-

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118 If the taxpayer transfers property to another with the intent of defeating collection of a tax, the Government could recoup the property indirectly by asserting liability, or directly by a transferee assessment under Code section 6901 followed by distraint. 9 MERTENS, LAW OF FEDERAL INCOME TAXATION § 49.203 (1971). Such a tactic might succeed if the Government could establish that the transferee knew the taxpayer was remiss in paying his taxes. However, in the scant case authority available, courts have found fraudulent conveyances in only the most aggravated circumstances. *See, e.g.*, United States v. Hickox, 356 F.2d 969 (5th Cir. 1966) (transfer to wife and sister of a 182 acre farm with house for less than $1,100, the transferor remaining in possession); United States v. Prather, 66-2 U.S. Tax Cas. ¶ 9769 (N.D. Ga. 1966) (transfer and sale for no consideration to close relative with transferor remaining in possession).

119 A security interest is defined as "any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability." INT. REV. CODE OF 1954, § 6323(h)(1).

120 UNIFORM COMMERCIAL CODE § 9-301(1)(b). Hereinafter, the Uniform Commercial Code will be referred to in text as the UCC.

121 Status as a security interest depends upon whether the interest "has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation . . . ." *Id.* The official comments to section 9-102 of the UCC indicate that the UCC is the governing local law regarding all transactions intended to have effect as security, other than those specifically excepted. *Id.* § 9-102, Comment 1.

122 Section 7426(c) provides: "For the purposes of an adjudication under this section, the assessment of tax upon which the interest or lien of the United States is based shall be conclusively presumed to be valid." INT. REV. CODE OF 1954, § 7426(c).

der their equity powers as was done in *Enochs* so that an assignee will have a forum in which to attack a fraudulent assessment.[123]

Although the execution of a timely assignment increases the likelihood that the taxpayer's attorney will ultimately receive the funds, assignment is not a panacea. Since recovering the funds may be expensive and time consuming, an attorney would only take such an assignment at a substantially discounted value. Furthermore, the tax lien will attach to any property that the taxpayer might acquire in the future[124] until the underlying assessment has been removed through litigation.

II. The Impact of Summary Assessment upon the Criminal Defendant

The inadequacy of the existing remedies for summary assessment is compounded for the criminal defendant. First, estimates based on illegally seized funds raise significant fourth amendment problems. Some cases draw a tenuous distinction between assessments computed on the basis of illegally seized evidence and the application of property taken in violation of the fourth amendment to satisfy assessments, approving only the latter.[125] The policy of deterring unconstitutional government conduct has led courts to void assessments which are computed in "substantial part" from illegally seized property.[126] An other-

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123 No federal cases explore the possibility of an assignee attacking the validity of a *prior* IRS levy on the grounds that it would be invalid under the line of cases following *Enochs*. California law has no statute explicitly precluding third parties from contesting the validity of a tax assessment. Civil Code section 2931(c) (Cal. Civ. Code § 2931(c) (West 1974)) prevents a taxpayer from contesting the validity of an assessment in suits brought by the attorney general to enforce tax liens, and California Code section 19081 (Cal. Rev. & Tax. Code § 19081 (West 1970)) has been interpreted by California courts as precluding *taxpayers* from challenging the validity of assessments through any procedures other than a suit for refund. Horack v. Franchise Tax Bd., 18 Cal. App. 3d 363, 95 Cal. Rptr. 717 (4th Dist. 1971). It is unclear whether these statutes will be interpreted to bar third party attacks on the validity of California assessments. Equitable considerations should require courts to permit third party assignees to sue for conversion, alleging a bad faith or fraudulent assessment under a doctrine analogous to the principles set out in *Enochs*. The rationale supporting this approach is that, if the assignee cannot attack a fraudulent assessment, he would not have a forum in which to raise the issue since the attorney-assignee cannot control whether the taxpayer pursues the administrative remedies. However, while the attorney-assignee might be able to demonstrate the illegality of the tax, it is doubtful that he could show irreparable harm if forced to wait until the taxpayer had pursued his statutory remedies.

124 *See* Int. Rev. Code of 1954, § 6322.

125 *See, e.g.*, Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969).

126 *Id.* at 586. The court in *Pizzarello* reasoned that "[a]bsent an exclusionary rule, the Government would be free to undertake unreasonable searches and seizures in all civil cases without the possibility of unfavorable consequences."

wise valid assessment may be satisfied with illegally seized property, since the illegal seizure only determines the custody of the assets, and the IRS may levy on property in anyone's hands.[127] Presumably the rules requiring the suppression of "tainted" evidence obtained indirectly from illegal seizures would invalidate assessments computed from other indicia of illegal business activities uncovered as the result of the seizures. However, the courts have been reluctant to extend the logic this far.[128]

Id. Accord, Yannicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1973); Suarez v. Commissioner, 58 T.C. 792 (1972); Lassoff v. Gray, 207 F. Supp. 843, 846-48 (W.D. Ky. 1962). California courts follow this federal distinction. Horack v. Franchise Tax Bd., 18 Cal. App. 3d 363, 368, 95 Cal. Rptr. 717, 720 (4th Dist. 1971).

[127] Simpson v. Thomas, 271 F.2d 450, 452 (4th Cir. 1959).

[128] In Yannicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1973), $58,930 was taken from the defendant at the time of his arrest for gambling violations. The funds were levied upon pursuant to a jeopardy assessment for $58,930. The court noted that the assessment would be void if it were substantially computed from the illegally seized property, but found that the record did not reflect that the property was used to compute the assessment. It is unclear whether any evidence concerning the computation was introduced, but the opinion does not point to any other source from which the IRS derived its information. Apparently the traditional judicial deference to tax determinations will result in courts upholding assessments whenever possible.

Janis v. United States, No. 70-1383, (C.D. Cal., Feb. 27, 1973), *aff'd mem.* No. 73-2226 (9th Cir., July 22, 1974), *cert. granted*, 43 U.S.L.W. 3644, (U.S. June 9, 1975), should definitively resolve the questions related to tax assessments which are computed from unlawfully seized documents and funds. The trial court found that a "federal tax assessment which was based substantially all, if not all, upon illegally obtained evidence" was invalid. The government petitioned for certiorari, contending that the rationale of the exclusionary rule does not require the invalidation of a civil tax assessment when the revenue agencies' computation of the amount of tax due is based upon unlawfully seized evidence.

In a blistering dissenting opinion, Justice Brennan recently chastized the current majority of the Court for what he characterized as the slow strangulation of the exclusionary rule. United States v. Peltier, 43 U.S.L.W. 4918, 4928 (U.S. June 24, 1975). It is still not clear that the current majority is prepared to adopt Chief Justice Burger's position set out in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 411-27 (1971) (Burger, C.J., dissenting), and abolish the exclusionary rule. *Cf.* Voorsanger, United States v. Robinson, Gustafson v. Florida, and United States v. Calandra: *Death Knell of the Exclusionary Rule?*, 1 HASTINGS CONST. L.Q. 179 (1974).

In determining the applicability of the exclusionary rule, a meaningful distinction cannot be drawn between a criminal prosecution and a civil action by the government which imposes a significant penalty upon an individual. *See* Berkowitz v. United States, 340 F.2d 168 (1st Cir. 1965) (forfeiture of funds); United States v. Physic, 175 F.2d 338 (2nd Cir. 1949) (forfeiture); United States v. Stonehill, 274 F. Supp. 420 (S.D. Cal. 1967), *aff'd*, 405 F.2d 738 (9th Cir. 1968) (enforcement of a tax lien); United States v. Blank, 261 F. Supp. 180, 182 (N.D. Ohio 1966) (potential civil tax liability); United States v. $4,171.00 In United States Currency, 200 F. Supp. 28 (N.D. Ill. 1961) (forfeiture). *Cf.* Compton v. United States, 334 F.2d 212, 217-18 (4th Cir. 1964) (tax assessment). However, holding that the exclusionary rule does not apply to any type of civil proceeding would be consistent with the pattern of erosion denounced by Justice Brennan. Nevertheless, the deterrent effect of the rule is recognized as the significant policy consideration. *See* United States v. Calandra, 94 S. Ct. 613, 619-20

A defendant has a right to freedom from prosecutions which violate due process. Due process of law precludes the Government from obtaining convictions by methods which "offend a sense of justice."[129] Bad faith interference with a defendant's sixth amendment right to counsel constitutes a violation of due process. An unjustified seizure of assets through summary assessment so that the defendant is unable to afford to defend himself is obviously an offensive interference with the defendant's right to counsel.

Both the federal[130] and California[131] constitutions guarantee a defendant the right to an attorney. These protections include the right to retain the attorney of his choice, if the defendant has adequate funds.[132] A defendant who becomes impoverished as a result of a summary seizure of assets is denied the attorney of his choice by government conduct.[133] The right to counsel also requires that a defendant be competently represented, and that the attorney's ability to present a defense not be impaired by conflicting loyalties to codefendants.[134] As a result of the summary seizure of his assets, a defendant may no longer be able to afford to retain a separate attorney and therefore may choose to share counsel with a codefendant.[135] Finally, in order to effectively

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(1974); United States v. Peltier, 43 U.S.L.W. 4918 (U.S. June 24, 1975). Authorizing assessments which are computed from unlawfully seized evidence, as in *Janis*, would only encourage law enforcement officers to continue their joint operations with the revenue agencies, which are intended to administratively punish potential criminal defendants. This type of conduct can be deterred by application of the exclusionary rule, and invalidation of such an assessment is clearly supported by the policy considerations which determine when the rule should be applied.

129 Rochin v. California, 342 U.S. 165, 173 (1952). *See also* Lisenba v. California, 314 U.S. 219, 236 (1941).

130 U.S. CONST. amend. VI.

131 CAL. CONST. art. 1, § 8.

132 Crooker v. California, 357 U.S. 433, 439 (1958); Lee v. United States, 235 F.2d 219, 221 (D.C. Cir. 1956).

133 In United States *ex rel.* Ferenc v. Brierley, 320 F. Supp. 406 (1970), approximately $700 was seized pursuant to the defendant's arrest, and his motion in state court for return of the funds to retain an attorney was denied. In granting a writ of habeas corpus, the federal district court held that the right of an accused to retain counsel of his own choosing is a fundamental guarantee of the sixth amendment, and that in this case the defendant would have been able to retain counsel of his own choosing if his money had been returned to him. Rejecting the state's argument that the error was harmless because a competent attorney was appointed, the court noted:

> We are not here considering the question of his competence. We consider and decide, rather, that relator was entitled to counsel of his choice *because he could afford it*, no matter how well qualified court-appointed counsel may have been.

Id. at 409 (emphasis in original).

134 *See, e.g.*, Austin v. Erickson, 477 F.2d 620, 623 (8th Cir. 1973); White v. United States, 396 F.2d 822, 824 (5th Cir. 1968); Morgan v. United States, 396 F.2d 110 (2d Cir. 1968); Sawyer v. Brough, 358 F.2d 70, 73-74 (4th Cir. 1966); Campbell v. United States, 352 F.2d 359, 361 (D.C. Cir. 1965).

135 Waivers of conflict of interest which result from the financial problems

represent a client, the attorney must be in a position to employ investigators[136] and experts.[137] The financial pressures imposed upon a defendant by the summary seizure of his assets may result in an attorney failing to prepare the case thoroughly. At least one court has held that prosecuting a defendant while tying up funds necessary for his defense violates those principles of fairness which are the essence of due process.[138]

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caused by a bad faith summary seizure may well be invalid. Although there is a split of authority as to whether a court is required to determine if joint representation produces a conflict, it appears settled that once a court is alerted to the possibility of a conflict, it must take steps to avoid the conflict or to procure a waiver. United States v. Foster, 469 F.2d 1, 4-5 (1st Cir. 1972); Lollar v. United States, 376 F.2d 243, 246 (D.C. Cir. 1967). The waiver must be free and uncoerced. Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Kaplan v. United States, 375 F.2d 895, 898 (9th Cir. 1967); United States v. Liddy, 348 F. Supp. 198, 200 (D.D.C. 1972). When a defendant accepts joint representation because his funds have been seized pursuant to a levy, the validity of which cannot be challenged prior to the criminal proceeding, the defendant has probably not made a free and uncoerced exercise of choice. The court in People v. Vermouth, 42 Cal. App. 3d 353, 116 Cal. Rptr. 675 (4th Dist. 1974), explicitly rejected "the People's claim [that] the defendants [had] waived their right to be represented by separate independent counsel of their choice" because they had refused the court's offer to appoint separate attorneys to relieve the conflict. *Id.* at 361, 116 Cal. Rptr. at 680.

If a conflict exists and an attorney represents more than one defendant, ethical considerations require that the clients knowingly and intelligently waive the conflict of interest. *See* ABA CODE OF PROFESSIONAL RESPONSIBILITY, Canon 5, EC 5-14 through EC 5-19, DR 5-105; Rules 4-101 and 5-102 of the California State Bar, *set forth following* CAL. BUS. & PROF. CODE § 6076 (West Supp. 1975). *See also* Holland v. Henderson, 460 F.2d 978, 981 (5th Cir. 1972) (the attorney has an obligation to "suggest separate counsel and make a sufficiently full disclosure of the conflict that his clients may knowingly waive their right to counsel").

[136] *See, e.g.*, United State v. Ketchem, 420 F.2d 901, 904 (4th Cir. 1969). *Cf.* United States v. Penick, 496 F.2d 1105, 1109-10 (7th Cir.), *cert. denied*, 95 S. Ct. 177 (1974); United States v. Chavis, 486 F.2d 1290 (D.C. Cir. 1973).

[137] In United States v. Brodson, 136 F. Supp. 158 (E.D. Wis. 1955), *rev'd*, 241 F.2d 107 (7th Cir. 1957), the court dismissed an indictment for tax fraud when a defendant's assets were levied upon pursuant to a jeopardy assessment and he was unable to hire an accountant who might have proven necessary to prepare an effective defense. The Seventh Circuit recognized the possible prejudice but reversed because the lower court should have tried the case and then ascertained if the trial was unfair. United States v. Brodson, 241 F.2d 107, 109-11 (7th Cir. 1957).

[138] United States v. Brodson, 136 F. Supp. 158 (E.D. Wis. 1955). The court found seizure of a defendant's funds by one branch of the government and prosecution by another violative of due process:

> A referee in a boxing match who was not blind would not permit "holding and hitting." Here the Tax Department is holding a defendant's assets. As a practical matter it prevents him from acquiring other assets if he could do so. Probably it will be established that these assets are actually owed to the Government for taxes. Nevertheless, while the Government is holding those assets, to require the defendant to stand trial on a criminal charge such as this where accounting services are so obviously necessary comes very close to the same ethics or standards as "holding and hitting."

Id. at 163. Courts have recognized the due process considerations, but refused to reverse convictions when the defendant failed to raise the issue prior to

Another significant problem arises if the defendant files a refund suit in district court before the criminal trial. The defendant faces serious self-incrimination problems since he bears the burden of establishing in the refund suit how much tax is actually due.[139]

III. Remedies in the Criminal Courts

A major concern of the defendant is recovery of his assets *before* the criminal trial. The remedies discussed above result in the defendant incurring substantial additional legal expenses and are inadequate to ensure timely recovery.[140] The most expeditious remedy, a suit for injunctive relief, presents difficult problems of proof. A suit for refund may be barred by the full payment requirement, is unavailable for at least six months, and forces a defendant to make incriminating admissions. All civil remedies entail additional expense and delay. However, there are four methods by which the court trying the criminal case can provide the defendant with relief so that he is not deprived of assets during prosecution.

A. *Injunctive Relief*

The criminal court could grant the defendant injunctive relief. The defendant would probably have little difficulty in satisfying the first requirement of *Enochs*, the absence of adequate legal remedies to protect him from the irreparable harm of conviction and imprisonment which could result if the defendant

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trial and never made an offer of proof (O'Connor v. United States, 203 F.2d 301 (4th Cir. 1953)), or failed to show that he could have presented a different defense with the services of an accountant. Summers v. United States, 250 F.2d 132 (9th Cir. 1957).

139 In Hamilton v. United States, 309 F. Supp. 468, 474 (S.D.N.Y. 1969), *aff'd*, 429 F.2d 427 (2d Cir. 1970), *cert. denied*, 401 U.S. 913 (1971), to prevent self-incrimination the court granted the defendant a continuance of the refund suit until after criminal prosecution. *Accord*, Iannelli v. Long, 487 F.2d 317, 319-20 (3d Cir.), *cert. denied*, 414 U.S. 913 (1973). This solution to the risk of self-incrimination fails to recognize the defendant's need for the funds *before* the criminal proceedings. *See* notes 141-64 & accompanying text *infra*. Forced selection between the protection against self-incrimination and the right to counsel in the criminal proceedings may be unconstitutional. The Supreme Court in Simmons v. United States, 390 U.S. 377 (1968), held that a defendant may not be forced to waive one constitutional privilege in order to assert another. *Cf.* Garrity v. New Jersey, 385 U.S. 493 (1967) (defendant may not be forced to choose between fifth amendment rights and employment). The choice between self-incrimination and the right to counsel is not presented to a defendant disputing the entire assessment rather than the amount of indebtedness because he or she will not be forced to prove a lesser amount of liability than that asserted by the taxing agency. White v. Cardoza, 368 F. Supp. 1397 (E.D. Mich. 1973).

140 *See* notes 50-124 & accompanying text *supra*.

is deprived of the use of the seized assets in the criminal trial.[141] The second requirement for injunctive relief—impossibility that the Government could ultimately prevail—could be satisfied by establishing either that the assessment was invalid or that the defendant had assigned the assets to an attorney before the taxing agency had perfected its claim.[142] Although there is no precedent for the issuance of an injunction by a criminal court in these circumstances, the practical unavailability of any other forum should result in the criminal court providing a remedy.[143]

A significant problem with granting injunctive relief is that the taxing agency is not a party to the pending case. Since the court would not adjudicate rights to property without the presence of all interested parties, it could either issue a temporary restraining order or subpoena the taxing agency and hold a full evidentiary hearing prior to the trial.

B. *Return of the Assets*

The criminal court can order return of the assets without litigating the validity of the underlying assessment *if* the taxing agency has not yet levied. A tax lien without a levy is merely a cloud on the title to ownership and does not deprive the rightful owner of possession of property subject to the lien.[144] In ordering the return of funds, the court does not have to adjudicate the validity of lien rights, but need only determine the rightful owner and return the funds to him.[145]

Federal statutory authority for return of a defendant's funds can be found in the Federal Rules of Criminal Procedure[146] which authorize courts to return illegally seized property. Whether assets levied upon pursuant to an invalid assessment are "illegally seized" under a statute traditionally applied to seizures in violation of the fourth amendment is open to question. A more likely source of authority is Federal Rules of Criminal Procedure section

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141 *See* notes 85-90 & accompanying text *supra*.

142 The assignment would take precedence if it were made before either service of a notice of levy by the IRS or an order to withhold or a warrant from the Franchise Tax Board. Even if the assignment were made subsequent to a tax lien, the assignee would have priority so long as he or she took the assignment prior to filing of the lien. *See* notes 112-21 & accompanying text *supra*.

143 A taxpayer might advance the following reasons for injunctive relief: that prejudice from the assessments was intimately related to the criminal proceedings, that other forums offered inadequate remedies, and that misconduct of the taxing authorities threatened the integrity of the criminal proceedings.

144 United States v. Hoper, 242 F.2d 468 (7th Cir. 1957). *See* Wyshak, *Effect of a Jeopardy Assessment on the Tax Lien*, 30 TAXES 347, 348 (1952).

145 People v. Vermouth, 42 Cal. App. 3d 353, 116 Cal. Rptr. 675 (4th Dist. 1974).

146 FED. R. CRIM. P. 41(e).

57(b), which permits federal courts to "proceed in any lawful manner not inconsistent with these rules or with any applicable statute." Recent cases have held that California criminal courts have the power to return funds, seized with or without a warrant, under comparable provisions of the California Penal Code.[147]

The supervisory authority of federal courts provides a potential jurisdictional basis for returning funds to which the tax collector asserts a claim. However, this power is invoked with "restraint and caution"[148] and is "subject to equitable principles."[149] Equitable jurisdiction may be satisfied if the defendant can establish that he otherwise qualifies for injunctive relief under the principles of *Enochs*.[150] Similarly, if the government has no valid claim because the defendant assigned his interest in the funds to counsel prior to notice of levy or filing of a tax lien, the funds should be returned to the attorney-assignee. Although a foundational requirement of this type would limit relief to cases in which the Government's claim was completely frivolous, authorizing the return of funds to the defendant or an attorney-assignee in such circumstances would deter bad faith assessments. This reasoning apparently was followed by the criminal

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147 The California Penal Code authorizes a court to return property seized under an invalid warrant, or property not described in a warrant. CAL. PEN. CODE § 1540 (West 1972). The court in Gershenhorn v. Superior Court, 227 Cal. App. 2d 361, 38 Cal. Rptr. 576 (2d Dist. 1964), concluded that return was also proper in the absence of a warrant:

> We deal with property seized by a public officer, acting under the color of his status as a law enforcement officer . . . . We regard property so taken and so held as being as much held on behalf of the court in which the contemplated prosecution will be instituted as is property taken and held under a warrant. . . . [The seizing officer] must respond, as does any custodian, to the orders of the court for which he acted.

Id. at 366. In issuing a writ of mandate ordering the trial court to entertain the defendant's motion for return of funds subject to tax liens, and assigned to an attorney, one California court held that authority to order the return of funds was unquestionable:

> Authority to release . . . [seized funds] is within the express power conferred by Penal Code section 1536, which provides all property taken under a search warrant is subject to the order of the court "in which the offense in respect to which the property . . . taken is triable."

Buker v. Superior Court, 25 Cal. App. 3d 1085, 1089, 102 Cal. Rptr. 494, 496 (4th Dist. 1972).

148 Fifth Ave. Peace Parade Comm. v. Hoover, 327 F. Supp. 238, 242 (S.D. N.Y. 1971).

149 Lord v. Kelley, 223 F. Supp. 684, 689 (D. Mass. 1963).

150 In Hunsucker v. Phinney, 497 F.2d 29 (5th Cir. 1974), *cert. granted*, 95 S. Ct. 1124 (1975), the criminal court held that it had power to grant the defendant's motion for return under equitable principles, but observed that it must first "inquire whether those principles warrant jurisdiction in this case." *Id.* at 34. The court concluded that a refund suit was an adequate remedy and that the defendant would not suffer irreparable harm while awaiting the outcome of the suit.

court in *United States v. Bonaguro*,[151] which granted a defendant's nonstatutory motion for return of his funds after he established that the IRS had made a jeopardy assessment with no inquiry into his true tax liability.

A substantial body of precedent authorizes federal courts to return illegally seized property prior to indictment.[152] These cases find jurisdiction in the inherent authority of the court over its officers.[153] Although several older cases indicate that IRS agents are not included within this doctrine,[154] more recent decisions have expanded the reach of the supervisory power to include revenue agents.[155] A recent California case has found that the criminal court has authority to order the return of funds subject to tax liens under the "inherent power of the court to control and prevent the abuse of its process."[156]

If the taxing agency failed to levy, a court might be reluctant to endanger eventual collections of the tax by returning the funds. Although any interests of the taxing agency would theoretically be protected because a tax lien attaches to after-acquired property, the defendant's future income may be severely curtailed if he is incarcerated. If the defendant assigned the assets to an attorney, however, transferring the funds to the attorney cannot further endanger collection of the tax because the assets are the property of the attorney-assignee.

If the IRS has levied on the funds, a motion for return of the funds would necessitate appearances by all parties. A levy is the seizure of a particular piece of property, and it transfers ownership

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151 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd*, 428 F.2d 204 (2d Cir.), *cert. denied*, 400 U.S. 829 (1970). While the court did not articulate the jurisdictional grounds for returning the defendant's funds, it did note that return was proper because the IRS had established no right to the funds.

152 *See, e.g., In re* Grand Jury Proceedings, 450 F.2d 199 (3d Cir. 1971), *aff'd sub nom.* Gelbard v. United States, 408 U.S. 41 (1972); Smith v. Katzenbach, 351 F.2d 810 (D.C. Cir. 1965).

153 The classic statement of this theory, followed in numerous cases, was set out by Judge Hough in United States v. Maresca, 266 F. 713 (S.D.N.Y. 1920):

> Whenever an officer of the court has in his possession or under his control books or papers, or (by parity of reasoning) any other articles in which the court has official interest, and of which any person (whether party to a pending litigation or not) has been unlawfully deprived, that person may petition the court for restitution. This I take to be an elementary principle, depending upon the inherent disciplinary power of any court of record.

Id. at 717.

154 *See, e.g.*, Eastus v. Bradshaw, 94 F.2d 788, 789 (5th Cir.), *cert. denied*, 304 U.S. 576 (1938).

155 Hunsucker v. Phinney, 497 F.2d 29 (5th Cir. 1974), *cert. granted*, 95 S. Ct. 1124 (1975); Smith v. Katzenbach, 351 F.2d 810 (D.C. Cir. 1965); Lord v. Kelley, 223 F. Supp. 684, 688-89 (D. Mass. 1963).

156 Buker v. Superior Court, 25 Cal. App. 3d 1085, 1089, 102 Cal. Rptr. 494, 496 (4th Dist. 1972).

to the Government.[157] Since a levy does affect ownership rights, the court could order the return of property to the defendant or his assignee only if the Government, a potential claimant, were before the court. However, the court could order the IRS to appear for purposes of adjudicating ownership and thereby avoid lengthy delays which would prejudice the defendant's rights.[158]

The interest of the prosecution in preserving seized funds as evidence in the criminal proceedings is not an insurmountable problem. It can be resolved by stipulations or photographs of the money.[159]

C. *Continuance of the Criminal Case Pending Resolution of Civil Actions*

If the criminal court is unwilling to either enjoin the assessment or return the funds without altering the tax liability, it should be required to continue the criminal trial until the defendant has had an opportunity to recover the funds in a civil action. However, a continuance is the least desirable form of relief because the defendant will deplete his resources obtaining the return of the funds, and will be denied the right to a speedy criminal trial. Although there is no express federal authority for this remedy,[160] a California court has held that a defendant is entitled to a continuance until the conflicting claims to ownership of the seized funds are resolved in a separate civil action.[161]

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157 INT. REV. CODE OF 1954, §§ 6331, 6337(c).

158 The court in Gershenhorn v. Superior Court, 227 Cal. App. 2d 361, 38 Cal. Rptr. 576 (2d Dist. 1964), rejected the state's argument that an action in claim and delivery or conversion was an adequate alternative to an order to return:

> [A]n action for conversion gives only damages, not a return in specie. And the expense and complications of bonds and other procedures involved in claim and delivery seem an unnecessary apparatus to recover property which . . . is already in the hands of the court.

Id. at 366, 38 Cal. Rptr. at 578.

159 The use of stipulations to avoid introducing evidence is firmly established in California law. *See* People v. Perry, 271 Cal. App. 2d 84, 101, 76 Cal. Rptr. 725, 736 (1st Dist. 1969); People v. Gonzales, 262 Cal. App. 2d 286, 290-91, 68 Cal. Rptr. 578, 581 (4th Dist. 1968). The court in Buker v. Superior Ct., 25 Cal. App. 3d 1085, 102 Cal. Rptr. 494 (4th Dist. 1974), noted that the evidentiary value of currency could be preserved through photographs, and suggested that "if the prosecuting attorney sincerely believed the currency, as such, was admissible in evidence he might have demonstrated his good faith in the premises by offering defendants a county warrant in the same amount." *Id.* at 1088, 102 Cal. Rptr. at 495.

160 The court's duty to postpone the criminal case can be inferred from cases requiring a continuance until a defendant has adequate opportunity to obtain an attorney of his choice. *See* United States v. Johnston, 318 F.2d 288 (6th Cir. 1963); Releford v. United States, 288 F.2d 298 (9th Cir. 1961).

161 People v. Vermouth, 42 Cal. App. 3d 353, 116 Cal. Rptr. 675 (4th Dist. 1974). As a strategic consideration, a continuance may force the prosecutor to pressure the taxing agency into returning the funds so that the criminal trial may proceed.

D. *Dismissal of the Criminal Charges or Furnishing of Alternative Funds*

A court refusing to exercise any of the above options[162] should dismiss the criminal charges if the defendant makes an initial showing that the assessment is invalid or if for some other reason the Government is not entitled to the funds. Courts have the authority to dismiss criminal charges because of governmental misconduct.[163] One federal court has dismissed charges without a showing of misconduct when the defendant whose assets had been seized by the taxing authorities established his need for funds to adequately defend his criminal prosecution.[164] An alternative to dismissal is for the governmental entity prosecuting the defendant to provide him with alternative funds for use in the criminal defense.[165] Although this would place a burden on the public treasury, public funds are frequently expended to remedy fortuitous disadvantage, as when an indigent defendant is provided with an attorney and other services needed to secure his sixth amendment rights.[166] The prosecutor's use of public funds to prevent dismissal is even more appropriate when he is simply repairing deprivations produced by governmental misconduct.[167]

CONCLUSION

The summary assessment and seizure of assets of criminal defendants raises significant constitutional problems. If the defendant obtains review of the assessment in a civil proceeding before the criminal case, he may be required to admit incriminating facts. If the defendant cannot obtain re-

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162 *See* notes 92-104 & accompanying text *supra*.

163 United States v. Bryant, 439 F.2d 642 (D.C. Cir.), *aff'd upon remand*, 448 F.2d 1182 (1971) (per curiam); United States v. Apex Distrib. Co., 270 F.2d 747 (9th Cir. 1959); United States v. Acosta, 386 F. Supp. 1072 (S.D. Fla. 1974).

164 United States v. Brodson, 136 F. Supp. 158 (E.D. Wis. 1955), *rev'd*, 241 F.2d 107 (7th Cir. 1957). For cases in which courts have dismissed charges after the Government refused to supply funds necessary for investigation and travel expenses see note 165 *infra*.

165 In Davis v. Coiner, 356 F. Supp. 695 (N.D.W. Va. 1973), petitioner was granted habeas corpus relief because he was denied effective assistance of counsel when the court refused to provide his appointed attorney with the necessary funds to depose alibi witnesses in another state. In United States v. Products Marketing, 281 F. Supp. 348 (D. Del. 1968), charges were dismissed against several indigent defendants because the Government would not provide them with funds to copy voluminous relevant documents and to return to the jurisdiction to consult with their attorney.

166 *See, e.g.*, Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956). *See also* note 136 *supra*.

167 United States v. Brodson, 136 F. Supp. 158 (E.D. Wis. 1955), *rev'd*, 241 F.2d 107 (7th Cir. 1957). *See* note 138 *supra*.

view of the assessment prior to the prosecution, as is usually the case, his assets are unavailable for the criminal defense. The problem is exacerbated by compelling evidence that assessments are often made without any information about the defendant's income. The clear inference is that assessments against criminal defendants are often used to administratively punish suspects and to impede their defense, not to raise revenue.

In light of the inadequacy of existing civil remedies, the defendant should have an opportunity to recover funds necessary to properly defend his case, in the most appropriate forum, the criminal court. Although relief from tax assessments may at first appear to be a solely civil matter, the impact of a summary assessment on a defendant's right to a fair trial and the absence of an adequate civil forum make it incumbent upon criminal courts to provide meaningful relief. If the defendant's assets are seized in bad faith, only the criminal courts are capable of providing a range of effective remedies that will ensure a fair trial and deter future abuse of jeopardy tax procedures.†

† After the press deadline for this issue of the *UCLA Law Review*, the California Supreme Court filed its opinion in Dupuy v. Superior Court, No. L.A. 30381 (Cal. Sup. Ct., filed Aug. 13, 1975), discussed in note 108 *supra*. In *Dupuy*, the Franchise Tax Board issued jeopardy assessments against the taxpayer and then seized his property. The taxpayer sought a preliminary injunction to prevent the sale and to order the return of the property. The trial court concluded that an anti-injunction provision of California law precluded it from exercising jurisdiction. *Id.* at 7, 8 n.7. In an opinion authored by Justice McComb, the Court adopted the exception to the federal anti-injunction statute articulated in Enochs v. Williams Packing & Navigation Co., 370 U.S. 1 (1962). *See* notes 83-104 & accompanying text *supra*. A California trial court now has jurisdiction to enjoin a jeopardy assessment seizure of property if the taxpayer establishes that he or she (1) has no adequate remedy at law and (2) is certain to succeed on the merits. In *Dupuy*, the Supreme Court approved the holding in Shapiro v. Secretary of State, 499 F.2d 527 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3451 (U.S. Feb. 18, 1975), discussed in notes 102-04 & accompanying text *supra*, and concluded that when a taxpayer seeks injunctive relief, the Franchise Tax Board "must show good faith . . . and to do so, it is required to reveal the foundation for its claim[ed assessment] . . . ." Dupuy v. Superior Court, *supra* at 16. Although rejecting the argument that a taxpayer is entitled to an administrative hearing prior to the seizure of property, the Court held that due process requires a post-seizure hearing before any property is sold. The opinion is unclear as to whether a taxpayer is entitled to a prompt and meaningful post-seizure hearing when assets such as currency are seized. *See* note 108 *supra*.

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THE PRIVACY ACT OF 1974: HOW IT AFFECTS TAXPAYERS, PRACTITIONERS AND THE IRS

(By William J. Bowe)

"The privacy Act of 1974, among other things, makes it possible for individual taxpayers to examine and amend information about them which the Service has collected and stored. The author analyzes the impact of the Act on taxpayers and the Service."

Many practitioners were probably asked by their clients about the significance of a half-page announcement in their 1975 tax returns, entitled "Privacy Act Notification." This notification was but one of a host of changes which the Privacy Act of 1974[1] brought to the collection, maintenance, and use of taxpayer information. Briefly, the Act restricts the collection of improper personal information by Federal agencies and for the first time, gives individuals the legal right to compel deletion or amendment of Federal records concerning them, where such records are inaccurate. For background information see the material in the box on page 75.

The Privacy Act was passed by the Congress on December 31, 1974, and became effective on September 27, 1975. Prior to the effective date, the Act provided that every Federal agency, including the IRS, publish in the Federal Register a list of each "system of records" under its control from which information can be retrieved by the name of an individual or by some other identifier assigned to an individual (such as their Social Security number).[2] Thus, on August 26, 1975, the Treasury on behalf of the IRS, published in the Federal Register notice of the existence of over 200 separate IRS systems of records falling within the definition of the Act, In all, 8,000 separate systems of records containing files on millions of individuals were identified by Federal agencies.[3]

According to the IRS, it maintained files on individuals in the following categories: Public Affairs, Accounts, Collection and Taxpayer Service Accounts and Data Processing; Collection; Administration; Fiscal Management; Facilities Management; Personnel; Audit; Appellate; Intelligence; Office of International Relations; Inspection; Planning and Research; Technical; Office of Chief Counsel; as well as a catch-all category entitled "General Items Not Otherwise Numbered."

Typical of the specific systems of records within these categories are: System 22.011, Card Index File of Erroneous Refunds; System 22.055, Tax Practitioner, Extension-of-Time Card File; System 42.012, Tax Shelter Program File; System 46.005, Electronic Surveillance File; System 60.002, Bribery Investigation File.

In a triumph of bureaucratic euphemism, the infamous IRS "enemies list," which helped prompt passage of this kind of legislation, became System 26.023, Defunct Special Service Staff File Being Retained Because of Congressional Directive.

As to each of these systems of records, there was disclosed in accordance with the Act: the name and location of the system; the categories of individuals on whom records are maintained in the system; the categories of records in the system, the routine uses of the records contained in the system, including the categories of users and the purpose of such use; the policies and practices of the IRS regarding storage, retrievability, access, controls, retention and disposal of records; the title and business address of the IRS official responsible for the system, the procedures by which an individual can obtain notice if the system of records contains information pertaining to him; and the procedures by which an individual can obtain access to and contest the content of a record in the system.[4]

The Act also codifies standards concerning the collection, maintenance, and use of taxpayer information. To the extent it did not before, the IRS now is to maintain only such information about an individual as is relevant and necessary to accomplish the purpose for collecting the information established by statute or Executive Order.[5] The IRS also must now maintain all records with

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[1] P.L. 93-579, 12/31/74, 5 U.S.C., Section 552(a)-(q).
[2] 5 U.S.C., Section 552(e)(4).
[3] Speech by David F. Linowes, Chairman, Privacy Protection Study Commission, 11/18/75.
[4] 5 U.S.C., Section 552(e)(4)(A)-(I).
[5] 5 U.S.C., Section 552(e)(1).

such accuracy, relevance, timeliness, and completeness as may be necessary to insure fairness to the individual.[6]

Further, the obligation was imposed upon the IRS to inform every individual whom it asks to supply information of the authority which authorizes the solicitation, the principal purpose for which the information is intended to be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing all or any part of the requested information.[7] Thus, it was that Form 1040 came to have its second page taken up with the "Privacy Act Notification."

Those who read the notice discovered, hardly to their surprise, that the principal purpose for soliciting tax return information is to administer the Internal Revenue laws of the United States. They also learned that the Internal Revenue Code imposes penalties for failure to file a return; failure to supply information required by law or regulations; failure to furnish specific information required on return forms; or for furnishing fraudulent information. Routine uses of tax return information were specified as including disclosures: to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation; to other Federal agencies; to states, the District of Columbia, the Commonwealth of Puerto Rico or possessions of the United States to assist in the administration of their tax laws; to other persons in accordance with and to the extent permitted by law and regulations; and to foreign, governments in accordance with treaties with the United States.

With certain limited exceptions, the Act prohibits the IRS from disclosing information concerning individuals to any outside party without that individual's consent.[8] The major exceptions include: disclosures which are compatible with the purpose for which the information was collected; disclosures for statistical research which do not involve identification of the individual involved; disclosures to the National Archives; disclosures to other agencies or state and local tax authorities for civil or criminal law enforcement activity; and disclosures pursuant to court order.

Also, the IRS is now under an obligation to keep an accurate accounting of the date, nature and purpose of each disclosure of a record made to another agency and, except where civil or criminal prosecutions are involved, the IRS must make this accounting available to the individual upon his request.[9]

Study Commission and return confidentiality. The Act also establishes a Privacy Protection Study Commission with seven members. The Commission is authorized and directed to report to the President and Congress at a later date "whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of State Governments."[10] Thus, the Act at least opened the door for limiting even further presently permissible disclosures.

The Commission published the following recommendations on June 9, 1976, and sent them to Congress.[11]

1. That no disclosure of individually identifiable data by the IRS be permitted without the prior, written consent of the individual to whom it pertains, except when such disclosure has been specifically authorized by Federal statute;

2. That the Congress provide by statute that the IRS Commissioner may disclose to a Federal or state agency that is specifically authorized by statute to obtain individually identifiable information from the Service only such information as that agency needs to accomplish, the purpose for which such disclosure is made and, further, that the Commissioner adopt administrative procedures that permit public scrutiny of the Service's compliance with this statutory requirement;

3. That the Congress specify in each statutory authorization for disclosure the categories of information that may be disclosed and the purpose for which the information may be used; and

4. That a recipient of individually identifiable information from the Service be prohibited from redisclosing such information without the consent of the individual to whom it pertains, unless specific authorization for such redisclosure has been expressly provided by Federal statute.

In its most controversial specific recommendation, the Commission recommended that Congress prohibit the Commissioner of Internal Revenue from

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[6] 5 U.S.C., Section 552(e)(5).
[7] 5 U.S.C., Sections 552(e)(3)(A)–(D).
[8] 5 U.S.C., Section 552(b)(1)–(11).
[9] 5 U.S.C., Section 552(c).
[10] Privacy Act of 1974, Section 5(c)(2)(B)(ii).
[11] Privacy Protection Study Commission, Federal Tax Return Confidentiality, 6/9/76.

disclosing individually identifiable information about a taxpayer to another Federal agency for non-tax law enforcement purposes unless the Commissioner is in receipt of a court order directing it to release the information. In 1975 alone, the Justice Department sought tax return information of 2,374 taxpayers suspected of various criminal offenses. The Commission's recommendation in this area, therefore, would be a sharp break from past procedure.

Tax Reform Bill of 1975. In a related development, certain other aspects of confidentiality of tax information have been dealt with recently in the Tax Reform Bill of 1975 (H.R. 10612), passed by the House and sent to the Senate on December 4, 1975. In its Report on the Bill, which is still pending before Congress, the House Ways and Means Committee suggested that a new Section 6110 be added to the Code. The new Section would codify recent court decisions under the Freedom of Information Act,[11] holding that private rulings issued by the IRS are not exempt from disclosure under Sections 6103 and 7213. The Bill would also provide for disclosure of technical advice memoranda and determination letters.

The Bill contains a number of limitations on these disclosures, however. There is no provision for public inspection of IRS determinations (including written determinations issued at the district director's level, as well as National Office rulings) in cases where it is not contemplated that the determination will be disclosed to the person involved. Further closing agreements between the IRS and a taxpayer, which finally determine the taxpayer's tax liability with respect to a taxable year, would not be made.

Perhaps most importantly, the Bill provides that commercial or financial information or trade secrets may not have to be disclosed, where such disclosure would cause a taxpayer material financial harm. There is also a provision for nondisclosure of information which would constitute an unwarranted invasion of personal privacy, including, but not limited to, a pending divorce, medical treatment, adoption of a child or the amount of an individual's gift.

The Committee on Finance of the U.S. Senate released a number of tentative decisions on the bill on May 26, 1976. The Committee made a number of technical recommendations with respect to the Bill's provisions relating to the disclosure of private letter rulings. In the area of disclosure as to return information, the Committee on Finance tightened the regulations dealing with disclosures to the Congress and the White House, and in essence — with the Privacy Protection Study Commission by agreeing to require that such information be subject to disclosure to Federal agencies for non-tax crimial purposes only upon the issuance of the order by a Federal district court. The order would only be able to be issued upon a showing that there was probable cause to believe that a specific criminal act has been committed, that there was a reasonable belief that the information contained in the return was prohibitive of the commission of a crime and that no other alternative of information was readily available.

New rights for individuals

Under the Privacy Act, individuals now have the right to request access to records pertaining to them. They have the right to review the records and have copies made. They also have the right to request correction of records which they believe are inaccurate, irrelevant, untimely, or incomplete. If such a correction is refused, reasons must be given and the individual has the rght to request an internal review of such refusal.[12]

If an individual taxpayer still is unsatisfied, he has the right to bring a civil action in a federal district court to seek an order directing the IRS to amend the record.[13] Should the taxpayer meet the necessary burden of proof and prevail, he will be entitled to recover the costs of the court action, attorneys' fees, and not less than $1,000 in actual damages.

Detailed rules and regulations governing the procedures by which individual taxpayers may assert their rights under the Privacy Act have also been published.[14]

Generally, where there is a new act affecting a Federal agency, there are new forms. The Privacy Act is no exception to this rule. Individual taxpayers wishing to assert their rights under the Act can do so by filling out new Form 5394. Request for Notification and Access—Systems of Records.

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[12] 5 U.S.C., Sections 552(d)(2)(B)(i), (ii) and (3).
[13] 5 U.S.C., Section 552(g).
[14] 40 Fed. Reg. 45,684–45,692, 10/2/75.

Exemptions to file access. The right of individual taxpayers to have access to and amend portions of systems of records containing information concerning them is limited by the Act's provision for exempt systems of records. Among the exempted systems are those pertaining to the enforcement of criminal laws or record systems otherwise containing investigative material compiled for low enforcement purposes.[15]

Long-term effort

It is still too early to determine the long-term effect of the changes wrought by the Privacy Act of 1974. The IRS and other Federal agencies have been forced to look within their own houses and place on the public record evidence of the files they maintain on individual Americans. Those individuals, in turn, now have the right to examine much of this information and correct it where it proves inaccurate. How many individuals will actually avail themselves of their new rights in the years ahead is hard to tell, although to date there has certainly been no stampede by citizens for access to IRS records that pertain to them.

With the increasing complexity of our society and our Government, citizens concerns over the files the Government maintains on them has grown. The Privacy Act has been burdensome for Federal bureaucracies, including the IRS. They have had to examine their operations and devise new procedures in order to comply with the Privacy Act. However, this burden seems minor when balanced against the fact that individuals now can find out what the Government knows about them and can complain and correct inaccurate information. Further, the Privacy Act means that "enemies lists" are out, and civil and criminal remedies have been established to insure this remains the case.

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[15] 5 U.S.C., Sections 552(j), (k).

Legislative Policy Leading Up to Privacy Act

Increasing computerization of Government records and files during the decade of the 1960's, coupled with the Watergate revelations of abuses by the IRS and other agencies, combined to set the stage for passage of the Privacy Act. Thus, passage of the Act can be attributed in part to computer salesmen, and in part to former President Richard M. Nixon, whose IRS "enemies list" politically catalyzed Congressional liberals, moderates and conservatives to enact privacy legislation.

From the very beginning of our republic, Congress has debated and enacted legislation affecting the disclosure of information collected by Government agencies and departments, including the tax collection authorities.

In 1789, the head of each department of the Federal Government was authorized to prescribe regulations dealing with the "custody, use and preservation of the records, papers and property appertaining to it." [1] There is little evidence over the next 100 years of the extent to which the so-called housekeeping provision of 1789 affected the disclosure or nondisclosure of information falling under the control of Federal tax collection agencies.

In 1870, however, Congress specifically denied tax collectors the right to publish tax returns.[2] Then, under the Income Tax Act of 1894, the Congress went a step further and established penalties for the disclosure of income tax return information. The Tariff Act of 1909 briefly opened corporate tax records to the public, but the next year, the Appropriations Act of 1910 restricted this disclosure policy by requiring that corporate returns not be available for public scrutiny unless the President or the Secretary so provided.

The secrecy of tax records was debated by the Congress regularly from 1913 to 1924, with the secrecy of tax records generally maintained.

A shift in this policy occurred upon passage of the Revenue Act of 1924, which provided for public listing of taxpayers and their incomes. The negative reaction to this reversal in policy was swift, and in 1926, the publication of taxpayers and their incomes was prohibited by Section 257 of the Revenue Act of that year.

President Hoover, in an Executive Order issued in 1931, for the first time authorized disclosure of individual income tax returns to state tax officials. In 1935, the Congress limited such disclosures by making them solely for the purpose of state or local tax purposes. At this time, Congress also repealed its 1934 "pink slip" provision which would have authorized disclosure of individual income tax information at the discretion of tax collectors.

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[1] 5 U.S.C., Section 22 (1789).

[2] For a fuller description of the history of disclosure policies 1870–1935, see "Disclosure History," Midwest Revenews, October/November 1975, pp. 3–4.

Section 55 of the Code, adopted by the Congress in 1939 (carried forward as Section 7213 of the 1954 Code), provided for criminal penalties to be levied against state or Federal officials guilty of unauthorized disclosure of Federal income tax data.

The Administrative Procedure Act of 1946 [3] in its Section 3, reflected an attempt to make Government records more available to the public. The Section reflects the philosophy that Governmental operations and procedures should not be hidden from public view where there is no substantial reason for non-disclosure. Section 3 also contained, however, sufficient loopholes to permit non-disclosure where there was involved "any function of the United States requiring secrecy in the public interest" or where there were records "required for good cause to be held confidential." In 1958, these loopholes resulted in the Congress passing the Moss-Hennings Amendment to the 1789 "housekeeping" provision. The amendment stated: "This section does not authorize withholding information from the public or limiting the availability of records to the public." [4]

Since even this amendment resulted in no fundamental shift in opening general Government records, including tax records, to public view, the Congress after extensive debate passed the Freedom of Information Act of 1966 (5 U.S.C., Section 552).

The Freedom of Information Act of 1966 established that disclosure of information held by the Government would be the general rule not the exception, and that all individuals would have equal right to access to such information. The structure of the Freedom of Information Act made it a "disclosure law" not a "withholding statute." For the first time, the act required agencies of the Federal Government to publish in the Federal Register statements of policy and interpretations, administrative staff manuals and instructions to staff, that affect members of the public, except where such materials were promptly published and offered for sale to the public.

The disclosure policy of the Freedom of Information Act did not reverse the historical policy of maintaining the secrecy of tax records, however. The Act included a section authorizing the non-disclosure of information which would otherwise be a "clearly unwarranted invasion of personal privacy." Further, the act did not reverse the effects of other federal statutes specifically forbidding the disclosure of various categories of governmental information.

If one looks back at the history of our country's policy toward the disclosure or non-disclosure of Governmental information generally, and taxpayer-related information specifically, it can be seen that the clear thrust has been toward non-disclosure. The Freedom of Information Act of 1966 reflected a sharp turn toward disclosing broad categories of information concerning government agencies and departments, and their conduct of the public's business, but taxpayer privacy was not thereby eroded.

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[3] 5 U.S.C., Section 1002 (1946).
[4] P.L. 85-619 (1958). The statute as it presently exists is now codified as 5 U.S.C., Section 301.

INTERNAL REVENUE CODE OF 1954, SECTION 7421(a), THE ANTI-INJUNCTION ACT: JUDICIAL MUZZLE MAKES FOR SERVICE MUSCLE

There is one difference between a tax collector and a taxidermist—the taxidermist leaves the hide.

—Mortimer Caplan, former Commissioner of Internal Revenue

Essential to the effective functioning of any government is the generation and protection of revenue. The disparate components of American society, however, have frequently compelled federal legislators to recognize other, sometimes competing, goals. Through an integrated Internal Revenue Code, Congress has attempted to harmonize these divergent objectives.

In addition to the familiar graduated tax on income, the Code embraces other *revenue generating* measures. Among these is the Wagering Excise Tax,[1] which places a flat ten per cent assessment on wagers. Representative

183. *See* note 159 *supra*.

1. INT. REV. CODE OF 1954, §4401, reads in pertinent part: "(a) *Wagers.*—There shall be imposed on wagers . . . an excise tax equal to 10 per cent of the amount thereof . . . . (c) *Persons liable for tax.*—Each person who is engaged in the business of accepting

of *revenue-protecting* measures are section 7421(a),[2] the "Anti-Injunction" Act, and the Jeopardy Assessment provisions.[3] Section 7421(a) effectively forestalls most pre-assessment and pre-collection litigation by prohibiting suits for the purpose of restraining the assessment or collection of taxes. The Jeopardy Assessment procedures allow immediate demand for payment where assessment or collection is imperiled by delay. But not all provisions of the Code are directed toward the generation or protection of revenue. Exemptions from the tax laws have been used to encourage the development and growth of a diversified social order. Illustrative of such provisions is section 501,[4] which grants preferred tax status to organizations whose purposes and operations satisfy its guidelines for socially desirable activities.

The Code is, of course, not self-executing, and this characteristic has permitted the Internal Revenue Service to employ Code provisions to effectuate its own objectives, thereby causing an imbalance in the political structure. For example, in the Wagering Tax and Jeopardy Assessment areas, Service zeal in constraining "undesirable" conduct such as gambling and drug-related activities has occasionally led to arbitrary assessments and other forms of harassment. Such acts, which often permit the Service to impose "administrative" sanctions where criminal prosecution is not sustainable, are unrelated to the congressional policies of revenue generation or protection.

Similar problems have occurred in the section 501(c)(3) area. Increased social awareness, with its resultant challenges to traditional concepts of charitable organizations, has proven the wisdom of adopting flexible definitional criteria for exempt organizations. But the effect of this approach has been to repose in the Service the authority to define the parameters of permissible activities, and this power has not been ignored. It has been used to impose the Service's interpretation of proper social policy and, more alarmingly, to achieve politically motivated objectives such as nullification of opposing views.

Within the familiar system of corrective justice, such abuses would not go unchecked. The aggrieved party could seek redress of preliminary administrative decisions in the courts. But through adept use of the protective shield of section 7421(a) in these areas, the Service has largely precluded judicial review. The result is that distorted administrative interpretations of congressional policy attain a privileged status similar to *res judicata*.

This note analyzes the applications of section 7421(a) in the three previously mentioned areas and attempts to delineate the power available to the

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wagers . . . [or] who conducts any wagering pool or lottery shall be liable for and shall pay the tax under this subchapter. . . ."

2. INT. REV. CODE OF 1954, §7421(a) provides in part: "Except as provided in section 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . ."

3. INT. REV. CODE OF 1954, §§6861-64. These sections provide for immediate assessment if collection will be jeopardized by delay, as well as procedural provisions for implementation.

4. INT. REV. CODE OF 1954, §§501(a), (c)(3).

Service under present judicial interpretations of the statute's scope. An evaluation of the present state of the law is undertaken, and corrective measures are suggested.

HISTORY AND BACKGROUND OF SECTION 7421(a) OF THE INTERNAL REVENUE CODE OF 1954

Traditionally, courts of equity were unwilling to enjoin the assessment or collection of taxes merely upon a showing that the tax was illegal[5] or the assessment irregular.[6] They required the taxpayer to further establish that special circumstances made his legal remedy inadequate before an injunction would be issued.[7] Such judicial restraint was deemed necessary because a delay in the collection of revenue could prove detrimental to governmental operations.[8]

It was against this setting that the precursor of section 7421(a)[9] was enacted. Although its background is "shrouded in darkness,"[10] its sweeping prohibition of all suits "for the purpose of restraining the assessment or collection of any tax"[11] appeared to preclude judicial review of the revenue collection process. Judicial interpretation of this statute, however, belies

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5. *See, e.g.*, Hannewinkle v. Georgetown, 82 U.S. (15 Wall.) 547 (1873). *See generally* Note, *Enjoining the Assessment and Collection of Federal Taxes Despite Statutory Prohibition*, 49 HARV. L. REV. 109 n.6 (1935).

6. *See, e.g.*, Dows v. City of Chicago, 78 U.S. (11 Wall.) 108 (1870); Note, *supra* note 5, at 109 n.7.

7. A clear showing of equitable jurisdiction was necessary. As stated in Magee v. Denton, 16 F. Cas. 382 (No. 8943), 2 A.F.T.R. 2065, 2066 (C.C.N.D.N.Y. 1863): "If this [assessment] has not been made in such form and mode as to give the legal right to levy and collect the tax therefor, that objection must be urged in a court of law and not in a court of equity." Special circumstances sufficient to invoke equity jurisdiction were found where irreparable harm or a multiplicity of lawsuits would result if the requested relief were denied. Dows v. City of Chicago, 78 U.S. (11 Wall.) 108, 110 (1870).

8. Dows v. City of Chicago, 78 U.S. (11 Wall.) 108, 110 (1870).

9. INT. REV. CODE OF 1954, §7421(a) was first enacted as Revenue Act of 1867 ch. 169, §10, 14 Stat. 475, *as amended*, REV. STAT. §3224 (1875). Int. Rev. Code of 1939, §3653 and the current provision are similar to the earlier codification except for the redetermination exceptions by right to petition the Tax Court. Section 7421(a) provides: "Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom the tax was assessed." The word "any" before "tax" was added to the revised statutes version, REV. STAT. §3224 (1875). The phrase beginning "by any person" was added by §110(c) of the Federal Tax Lien Act of 1966, Act of 1966, Pub. L. No. 89-719, 80 Stat. 1126, 1144. For a discussion of the purpose of this addition, see Bob Jones Univ. v. Simon, 94 S. Ct. 2038, 2043, 1974-1 U.S.T.C. ¶9438, at 84,067 n.6 (1974). For a thorough discussion of the history and purpose of this Act, see Gorovitz, *Federal Tax Injunctions and the* Standard Nut *Cases*, 10 TAXES 446 (1932); Note, *supra* note 5. For consistency, the provision is cited as §7421(a) (or as the Anti-Injunction Act) throughout the text. *See generally* 9 J. MERTENS, THE LAW OF FEDERAL INCOME TAXATION §§49.210-216 (1971). As explained in Note, *supra* note 5, at 109 n.9, there is almost no published legislative history on the Act.

10. Note, *supra* note 5, at 109 n.9.

11. INT. REV. CODE OF 1954, §7421(a).

its uncompromising language.[12] The history of its application is replete with factual circumvention, the boundaries of which have changed over time.[13]

For about sixty years the tendency of the courts was to deny injunctive relief.[14] The one case[15] on which the Supreme Court seemingly relied[16] to establish a permissive standard was speedily and severely restricted.[17] But in 1932 the Court's decision in *Miller v. Standard Nut Margarine Co.*[18] opened the door for lower courts to broaden the exceptions to the operational bar of section 7421(a). Despite precedent holding that an identical product was not taxable[19] under the Oleomargarine Tax Act,[20] the Service threatened to

12. *See* Pullan v. Kinsinger, 20 F. Cas. 44, 48 (No. 11,463) (C.C.S.D. Ohio 1870), where the court states: "[T]he statute [now §7421(a)] prohibiting an injunction in this case was wholly unnecessary, enacted only as a politic and kindly publication of an old and familiar rule. . . ."

13. *See, e.g.*, Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 1962-2 U.S.T.C. ¶9545 (1962); Miller v. Standard Nut Margarine Co., 284 U.S. 498, 3 U.S.T.C. ¶878 (1932). These cases are discussed in the text accompanying notes 18-34 *infra*.

14. Bailey v. George, 259 U.S. 16 (1922); Dodge v. Osborn, 240 U.S. 118, 1 U.S.T.C. ¶6 (1916); State R.R. Tax Cases, 92 U.S. 575, 2 A.F.T.R. 2367 (1876) (analogous treatment of a state tax). The assessment should, however, be made "under color . . . of office." *See* Synder v. Marks, 109 U.S. 189, 193, 3 A.F.T.R. 2460, 2463 (1883). Nor was allegation of an unjust assessment sufficient to avoid the bar imposed by §3224 [now §7421(a)]. *Id.* at 194, 3 A.F.T.R. at 2464. The Supreme Court, in Cheatham v. United States, 92 U.S. 85, 88, 2 A.F.T.R. 2365, 2366 (1876), discussed the necessity for "stringent measures for the collection of taxes . . . . These measures are not judicial; nor does the government resort, except in extraordinary cases, to the courts for that purpose . . . . The United States . . . [has] enacted a system of corrective justice, as well as a system of taxation, in both its customs and internal-revenue branches. That system is intended to be complete." Notable exceptions were suits between private parties, Pollock v. Farmer's Loan & Trust Co., 157 U.S. 429 (1895), and situations where the exaction was held to be a penalty rather than a true tax. *See, e.g.*, Regal Drug Corp. v. Wardell, 260 U.S. 386, 1922 CCH ¶2074 (1922); Lipke v. Lederer, 259 U.S. 557, 1 U.S.T.C. ¶67 (1922); Hill v. Wallace, 259 U.S. 44, 1 U.S.T.C. ¶65 (1922).

15. Hill v. Wallace, 259 U.S. 44, 1 U.S.T.C. ¶65 (1922).

16. Dodge v. Brady, 240 U.S. 122, 126, 1 U.S.T.C. ¶7, at 1014 (1916) (dictum).

17. Graham v. Dupont, 262 U.S. 234, 1 U.S.T.C. ¶78 (1923). The Court distinguished the penalty cases cited in note 14 *supra* on the basis that they were not situations of enjoining taxes, but rather illegal penalties in the nature of punishment for a criminal offense. *Id.* at 257, 1 U.S.T.C. ¶78, at 1203. In discussing *Hill v. Wallace*, the Court stated: "Under these [blocking the entire future grain business of the country] extraordinary and most exceptional circumstances, it was held that section 3224 [now §7421(a)] was not applicable to prevent an injunction against collection of such a prohibitive tax imposed for the purpose of regulating the future grain business with all the unnecessary and disastrous consequences its enforcement would entail if the act was unconstitutional. *Hill v. Wallace* should, in fact, be classed with *Lipke v. Lederer* . . . as a penalty in the form of a tax." *Id.* at 257-58, 1 U.S.T.C. at 1203-04.

18. 284 U.S. 498, 3 U.S.T.C. ¶878 (1932).

19. Taxpayer's product had been held not to constitute oleomargarine, and not taxable as such. Higgins Mfg. Co. v. Page, 297 F. 644 (D.R.I. 1924). A letter from the Collector of Internal Revenue in answer to inquiry made by the company as to taxability of its product affirmed its nontaxable status. Additionally, a favorable Treasury decision had been rendered earlier. T.D. 3590, 1924-1 CUM. BULL. 507 (1924).

20. Oleomargarine Act of 1886, Act of Aug. 2, 1886, ch. 840, 24 Stat. 209, *as amended*, Act of May 9, 1902, ch. 786, 32 Stat. 193. The Court specifically distinguished the penalty situations of Lipke v. Lederer, 259 U.S. 557, 1 U.S.T.C. ¶67 (1922) and Regal Drug Corp.

make an assessment against respondent. When the company sued for injunctive relief, the Service asserted section 7421(a) as a defense, arguing that the provision barred an injunction even if the tax had been erroneously assessed.[21] Focusing on the arbitrariness of the Service's determination of the product's taxability,[22] the Supreme Court upheld an order granting the injunction.

The nebulous criteria[23] developed by the Court, however, offered little guidance to lower courts, and when forced to delimit the scope of the *Nut Margarine* exception they split drastically.[24] Although the Supreme Court appeared to revive the pre-section 7421(a) requirements in a subsequent case,[25] it was not until thirty years after *Nut Margarine* that the controversy was settled and the current interpretation announced. In *Enochs v. Williams Packing & Navigation Co.*,[26] the taxpayer sued to enjoin the Service from

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v. Wardell, 260 U.S. 386, CCH 1922 STAND. FED. TAX. REP. ¶2079 (1922). It is important to note at the outset that this was not treated as a collection of a penalty, for such an approach brings the case initially within the boundaries of §7421(a).

21. 284 U.S. at 506, 3 U.S.T.C. at 3140.

22. 284 U.S. at 506, 3 U.S.T.C. at 3140. The Court observed that an act in 1930 enlarged the definition to cover products such as Standard Nut Margarine's. However, under no interpretation could the original act, which was applicable to the taxpayer's product, include this product containing no animal fat.

23. The Court appeared to be confused as to the precedential value of Hill v. Wallace, 259 U.S. 44, 1 U.S.T.C. ¶65 (1922), when it cited that case in support of its contention that "extraordinary and exceptional circumstances render its [§7421(a)] provisions inapplicable." 284 U.S. at 510, 3 U.S.T.C. at 3141. See discussion of Graham v. Dupont, 262 U.S. 234, 1 U.S.T.C. ¶78 (1922), note 17 *supra*.

24. Commentators disagree on the exact nature of the divisions. *See generally* Note, *supra* note 5, at 113; Comment, *Federal Taxation: Section 7421(a) of Internal Revenue Code Literally Construed To Ban All Suits To Enjoin Assessment or Collection of Taxes*, 1963 DUKE L.J. 175, 178 [hereinafter cited as *Section 7421(a) Literally Construed*]; Comment, *Taxation—Federal Income Tax-Enjoining Collection*, 61 MICH. L. REV. 405, 408 (1962) [hereinafter cited as *Enjoining Collection*]. But at least two theories, representing endpoints of a continuum, are discernible. At one extreme are the courts that interpreted the opinion as reviving the pre-§7421(a) requirements for injunctive relief. *See, e.g.*, Lassoff v. Gray, 266 F.2d 745, 1959-1 U.S.T.C. ¶15,235 (6th Cir. 1959); Gold Medal Foods, Inc. v. Landy, 11 F. Supp. 65 (D. Minn. 1935). They premised their conclusion on the Supreme Court's assertion that the provision was merely declaratory of the common law rule. 284 U.S. at 509, 3 U.S.T.C. at 3141. In other jurisdictions this drastic departure from developing law was rejected. Pointing to the Supreme Court's statement that the "special and extraordinary circumstances" of *Nut Margarine* made "the reasons underlying §3224 [now §7421(a)] apply, if at all, with little force." *Id.* at 510, 3 U.S.T.C. at 3141, these courts concluded that the decision merely added one more exception to the Anti-Injunction Act's application. *See* Homan Mfg. Co. v. Long, 242 F.2d 645 (7th Cir. 1957). Such confusion is understandable because the *Nut Margarine* Court was rather adept at obfuscating its position. Only with the aid of hindsight in the analysis of more recent cases do the *Nut Margarine* facts appear to fully satisfy the modern requirement for an exception to §7421(a) discussed in text accompanying notes 39-40 *infra*. A short dissent in *Nut Margarine* asserted that the statute was an absolute bar. 284 U.S. at 511, 3 U.S.T.C. at 3141-42.

25. Allen v. Regents of Univ. Sys., 304 U.S. 439, 1938-2 U.S.T.C. ¶9321 (1939). The language of the opinion, however, suggests that the Court treated the imposition of the tax in this case as a penalty.

26. 370 U.S. 1, 1962-2 U.S.T.C. ¶9545 (1962).

assessing social security and unemployment taxes.[27] In rejecting the taxpayer's contention that the action was governed by *Nut Margarine*, the Court undertook an analysis of the scope of section 7421(a).[28] Pointing to the Tax Injunction Act of 1937,[29] which permitted federal injunctions of state tax assessments solely upon a showing of an inadequate legal remedy, the Court concluded that in order to avoid the more sweeping language of section 7421(a), a taxpayer would have to show more than merely an inadequate remedy at law.[30] Additionally, he must establish that on the facts of his case it is impossible for the Service to succeed in its claim:

> [I]f it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the *Nut Margarine* case, the attempted collection may be enjoined if equity jurisdiction otherwise exists.[31]

Williams Packing thus established that a judicial exception to section 7421(a) would be made only where two elements existed: (1) Under the most liberal view of the law and the facts the government could not ultimately prevail,[32] and (2) equity jurisdiction otherwise exists.[33] Because these criteria

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27. The corporate taxpayer provided fishing boats to captains who employed their own crews. The Service contended that the members of such crews were employees of Williams Packing Co. The district court held for the taxpayer and granted an injunction, finding, *inter alia*, the lack of the requisite common law element of control, essential for an employment relationship. 176 F. Supp. 168 (S.D. Miss. 1959), *aff'd*, 291 F.2d 402, 1962-1 U.S.T.C. ¶9263 (5th Cir. 1961).

28. The Court pointed out that lower court decisions misinterpreting the thrust of *Nut Margarine* had turned on the absence of an adequate legal remedy. 370 U.S. at 6, 1962-2 U.S.T.C. at 85,289.

29. Act of Aug. 21, 1937, ch. 726, 50 Stat. 738, *as amended*, 28 U.S.C. §1341 (1970). This Act forbids federal courts from entertaining suits to enjoin collection of state taxes "where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State . . . ."

30. 370 U.S. at 6, 1962-2 U.S.T.C. at 85,289. The company had alleged that payment of the assessment would force it into bankruptcy, and thereby cause irreparable injury. The Court said that while such showing was not sufficient in itself to avoid the §7421(a) prohibition, proof of inadequate legal remedy was essential. A careful reading of the opinion suggests that the Court is equating irreparable harm with inadequacy of legal remedy. *But see* Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 1974-2 U.S.T.C. ¶9439 (1974) (Blackmun, J., dissenting) (analysis of the elements of irreparable harm and inadequate legal remedy as separate factors); Comment, "Americans United" Inc. v. Walters *and* Bob Jones University v. Connally: *Revocation of Tax Exempt Status and §7421(a) of the IRC*, 46 TEMP. L.Q. 596, 600 (1973) (commentator derives a 3-pronged test from *Williams Packing*, with each of these factors as a separate prong).

31. 370 U.S. at 7, 1962-2 U.S.T.C. at 85,289.

32. The Court said: "We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of the suit. Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained." *Id.* The dissent by Judge Rives in the Fifth Circuit's opinion contains an analysis that appears to be of firmer logical foundation that the majority opinion. 291 F.2d 402, 1962-1 U.S.T.C. ¶9263, at 83,633. He points out that *Nut Margarine* was the only case not involving a penalty where the Supreme Court

were presaged in the *Nut Margarine* factual situation, *Williams Packing* appeared to limit the *Nut Margarine* exception to the facts of that case.[34] By requiring the taxpayer to prove certainty of success on the merits in order to satisfy the first prong of the test, the opinion seems to prescribe that section 7421(a) can never be avoided when a factual dispute exists.

In evaluating the import of *Williams Packing*, it is critical to realize that the factual dispute involved a taxpayer directly litigating his own tax liability. Therefore, the Court was not compelled to address the question of whether the suit was one "for the purpose of restraining the assessment or collection of any tax." Consequently, the case did not define the applicable scope of section 7421(a); it merely created a judicial exception for an action within the ambit of the Act.

Judicial Application of Section 7421(a) Subsequent to *Williams Packing*

A taxpayer may circumvent the prohibition of section 7421(a) by satisfying either the statutory or judicially created exceptions. Successful use of the latter method requires, *inter alia*, that the taxpayer satisfy the rather stringent first prong of the *Williams Packing* test. In determining the range of parameters that permits a taxpayer to neutralize the government's use of section 7421(a), it is necessary to examine the functional utility of both the statutory exceptions and the *Williams Packing* exception.

Cases involving a wagering excise tax imposition or use of the jeopardy assessment procedure represent two areas of extensive section 7421(a) litigation in the years since *Williams Packing*. Moreover, they demonstrate typical instances in which the Service might be motivated by interests collateral to purely revenue protection or generation. In both areas the arbitrary assessments and other questionable tactics indicate the abuse potential of the section 7421(a) injunctive bar.

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permitted an injunction. See discussion in 9 J. Mertens, *supra* note 9, §49.212. Furthermore, "the rational of *Miller v. Standard Nut Margarine Company*, *supra*, cannot be extended to bring within some supposedly implied exception cases like the present one without emasculating the prohibition contained in the statute." 291 F.2d at 409, 1962-1 U.S.T.C. at 83,634. Realizing that *Nut Margarine* was not a case of an illegal exaction in the guise of a tax, Judge Rives recognized the central question of law-question of fact dichotomy that must be explored in determining jurisdiction. "[T]he question is closely and hotly litigated purely as a question of fact . . . ." *Id.* at 410, 1962-1 U.S.T.C. at 83,635.

33. 370 U.S. at 7, 1962-2 U.S.T.C. at 85,289. To establish equitable jurisdiction, the taxpayer would have to prove that he would suffer irreparable harm for which there is no adequate remedy at law.

34. As discussed in the text accompanying notes 201-204 *infra*, *Williams Packing* can be read to endorse a purpose-oriented approach to the application of §7421(a). But more recent Supreme Court opinions have rejected this view and applied the *Williams Packing* test so as to effectively preclude judicial relief. That such a possibility existed in situations where Tax Court relief was not available did not go unnoticed by commentators. *See, e.g.*, *Section 7421(a) Literally Construed*, *supra* note 24, at 181; *Enjoining Collection*, *supra* note 24, at 409.

Interaction of the Jeopardy Assessment Procedures and the Section 7421(a) Prohibition

To allow a taxpayer sufficient opportunity to petition the Tax Court for a redetermination of a deficiency, section 6212(a) of the Code authorizes a notice of deficiency to be sent to the taxpayer.[35] Section 6213(a) provides that no assessment of a deficiency,[36] nor any levy or court proceeding for its collection, may be made until ninety days[37] after mailing of such notice. If a petition is filed with the Tax Court, there is a further prohibition until a final decision.[38]

Section 6213(a) also affords the taxpayer injunctive relief during the time these prohibitions are in force, thereby constituting a statutory exception to section 7421(a).[39] There are exceptions to these general rules,[40] however, including provisions covering situations where assessment or collection of a deficiency may be jeopardized by delay.[41] In such a case section 6861(a) provides for immediate jeopardy assessment of the deficiency, together with interest and additional amounts provided for by law, and demand for payment thereof.[42] Since this procedure gives the District Director rather broad discretionary powers in making the assessment,[43] the taxpayer's right of petition to the Tax Court is protected by section 6861(b). Generally, this provision requires the mailing of a deficiency notice to the taxpayer within

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35. INT. REV. CODE OF 1954, §6212(a). The notice of deficiency is of critical importance to the taxpayer because it is a jurisdictional prerequisite to litigation in the Tax Court. *See* Mason v. Commissioner, 210 F.2d 388, 1954-1 U.S.T.C. ¶9326 (5th Cir. 1954); INT. REV. CODE OF 1954, §6213(a).

36. "An assessment is an administrative determination that a certain amount is currently due and owing as a tax. It makes the taxpayer a debtor in much the same way as would a judgment." Rambo v. United States, 492 F.2d 1060, 1061, n.1, 1974-1 U.S.T.C. ¶9242, at 83,453 n.1 (6th Cir. 1974). As to a deficiency, see discussion *id.* at 1064. 1974-1 U.S.T.C. at 83,455; INT. REV. CODE OF 1954, §§6211, 6861; TREAS. REG. §301.6211-1(a).

37. The statutory period is extended to 180 days if the notice is addressed to a person outside the United States. INT. REV. CODE OF 1954, §6213(a).

38. *Id.*

39. *Id.*

40. For a discussion of other restrictions, see 9 J. MERTENS, *supra* note 9, §§49.130-.143, .158-.169.

41. INT. REV. CODE OF 1954, §§6861-64. Thus, §6213(a) contains an override, providing for a §6861 assessment.

42. The injunctive bar of §7421(a) is applicable to these jeopardy assessments. *See* Milliken v. Gill, 211 F.2d 869, 1954-1 U.S.T.C. ¶9343 (4th Cir. 1954); 9 J. MERTENS, *supra* note 9, §49.216 n.56. The absence of prior notice in this procedure has been held to be constitutional. Harvey v. Early, 66 F. Supp. 761, 1946-2 U.S.T.C. ¶9344 (W.D. Va. 1946), *aff'd*, 160 F.2d 836, 1947-1 U.S.T.C. ¶9229 (4th Cir. 1947). The underlying reason for the jeopardy assessment procedures was discussed in a case decided by the Seventh Circuit. "[I]t is clear that jeopardy assessments are of their nature and purpose arbitrary . . . . There is little doubt but what a jeopardy assessment is a statutory label for the sovereign's stranglehold on a taxpayer's assets." Homan Mfg. Co. v. Long, 242 F.2d 645, 650-51, 1957-1 U.S.T.C. ¶9372, at 56,599 (7th Cir. 1957).

43. *See* 9 J. MERTENS, *supra* note 9, §49.145 (1971).

sixty days after the jeopardy assessment, if such assessment is made before the issuance of a section 6212(a) notice of deficiency.[44]

In lieu of a jeopardy assessment, a taxpayer's taxable year may be terminated and demand made for immediate payment under section 6851(a). This provision may be invoked upon a finding that a taxpayer is about to leave the United States or "do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax . . . ."[45] There is presently a split of authority[46] as to which statutory provision, section 6201[47] (the general assessment provision) or section 6861,[48] provides assessment authority for this termination procedure. The significance of this difference is that only section 6861 requires the sending of a notice of deficiency. Therefore, because receipt of the notice is a jurisdictional prerequisite to litigation in the Tax Court,[49] a taxpayer is effectively precluded from that forum if assessment authority is found under section 6201.[50]

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44. INT. REV. CODE OF 1954, §6212(a).

45. INT. REV. CODE OF 1954, §6851(a).

46. The earlier view was that §6851(a) itself contained assessment authority. *See* Williamson v. United States, 31 A.F.T.R.2d ¶73-456 (7th Cir. 1971); Puritan Church-Church of America, 10 CCH Tax Ct. Mem. ¶18,332 (1951), *aff'd per curiam on other grounds*, 209 F.2d 306, 1953-2 U.S.T.C. ¶9601 (D.C. Cir. 1953), *cert. denied*, 347 U.S. 975 (1953); Ludwig-Littauer & Co., 37 B.T.A. 840 (1938). This theory, which rests on the premise that §6851 presupposes a more exigent situation of jeopardy than does §6861, was first rejected in Schreck v. United States, 301 F. Supp. 1265, 1969-2 U.S.T.C. ¶9541 (D. Md. 1969). While courts since *Schreck* have been unanimous in their rejection of the earlier view, their rationales have differed. See notes 47, 48 *infra* and cases cited therein.

47. INT. REV. CODE OF 1954, §6201. The Service has argued that termination of the taxable year under §6851 does not invoke the §6861 60-day notice rule. The basis for the argument is that there is no deficiency within the meaning of §6211. For cases accepting this rationale, see Laing v. United States, 496 F.2d 853, 1974-1 U.S.T.C. 9423 (2d Cir. 1974), *cert. granted*, 9 CCH 1974 STAND. FED. TAX REP. 70,728; Irving v. Gray, 479 F.2d 20, 1973-2 U.S.T.C. ¶9581 (2d Cir. 1973); Williamson v. United States, 31 A.F.T.R. 2d 73-8456 (7th Cir. 1971).

48. For a good discussion of the history and development of the split in authorities, see Clark v. Campbell, 501 F.2d 108, 1974-2 U.S.T.C. ¶9687 (5th Cir. 1974). Using the language in the §6211 Regulations, the court concluded that a §6851 liability is a deficiency; §6851 assessment authority flows from §6861; and the procedural safeguards of §6861, especially the right to petition the Tax Court, are applicable to a §6851 quick termination. 501 F.2d at 116, 1974-2 U.S.T.C. at 85,231. The court's reasoning followed that of the 6th Circuit in Rambo v. United States, 492 F.2d 1060, 1974-1 U.S.T.C. ¶9242 (6th Cir. 1974). Certiorari has been applied for in a later 6th Circuit decision in *accord* with *Rambo*. Hall v. United States, 493 F.2d 1211, 1974-1 U.S.T.C. ¶9296 (6th Cir. 1974), *cert. granted*, 9 CCH STAND. FED. TAX REP. 70,773. District courts in accord include Lisner v. McCanless, 356 F. Supp. 398, 1973-1 U.S.T.C. ¶73-2038 (D. Ariz. 1973), *appeal docketed*, Nos. 73-2037, 73-2038, 9th Cir., June 8, 1973; Schreck v. United States, 301 F. Supp. 1265, 1969-2 U.S.T.C. ¶9541 (D. Md. 1969), *reaff'd on reconsideration*, 375 F. Supp. 742, 1974-1 U.S.T.C. ¶9295 (D. Md. 1973), *appeal docketed*, No. 74-1566, 4th Cir., May 16, 1974.

49. See note 35 *supra*.

50. Under §6201 a taxpayer's only remedy is to pay the entire tax, file a claim for refund, and, if the claim is denied, bring suit in a federal district court for refund. *See, e.g.*, INT. REV. CODE OF 1954, §§6511, 6532, 7422. In Hall v. United States, 493 F.2d 1211, 1974-1 U.S.T.C. ¶9296 (6th Cir. 1974), *cert. granted*, 9 CCH 1974 STAND. FED. TAX REP. 70,773,

Those courts holding that a notice of deficiency is required for a section 6851(a) taxable year termination could find that failure to issue a notice pursuant to section 6861(b) results in two forms of relief to the taxpayer. First, injunctive relief may be provided within the section 6213(a) exception to section 7421(a), as though the usual section 6212(a) notice had not been issued.[51] Second, although no court has specifically so held, such a failure seems to satisfy the first prong of the *Williams Packing* test[52] for injunctive relief. In addition to satisfaction of the statutory exception by failure of the Service to send a notice of deficiency, constitutional violations[53] and arbitrary assessments[54] have been found sufficient to trigger *Williams Packing* injunctive relief despite the prohibition of section 7421(a). The subsequent analysis focuses upon the various factual situations involving a jeopardy assessment wherein a taxpayer is able to satisfy the *William Packing* two-pronged test or the statutory exception to section 7421(a).

Representative of the split of the courts over assessment authority for a short year termination are the cases of *Irving v. Gray*[55] and *Rambo v. United States*.[56] The *Irving* case involved the "Hughes hoax," wherein McGraw-Hill, Inc. made payments to Clifford Irving in connection with his writing a book about the wealthy recluse, Howard Hughes.[57] Fearing that delay might imperil revenue, the Service terminated Irving's taxable year and levied on his securities accounts. The taxpayer claimed that he was entitled to injunctive relief because the Service had failed to comply with the deficiency notice requirements of section 6861(b). The Second Circuit disagreed, however, finding that short year assessment authority flowed from section 6201(a), not section 6861(b).[58] The court reached this conclusion by reasoning that a section 6851 assessment is not a deficiency as defined in section 6211,[59] and

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the 6th Circuit, following its precedent in *Rambo*, noted that no deficiency notice was given under §6861(b) after a §6861(a) taxable year termination. The court pointed out that "[i]t is very important to a taxpayer, particularly to one who does not have $52,000, that she have a right to litigate the validity of the tax before her property is levied upon and sold to pay the tax." Furthermore, "[the] I.R.S. has prevented plaintiff from availing herself of the remedy in the Tax Court." *Id.* at 1212, 1974-1 U.S.T.C. at 83,625.

51. *See* Lisner v. McCanless, 356 F. Supp. 398, 1973-1 U.S.T.C. ¶9299 (D. Ariz. 1973), *appeal docketed*, Nos. 73-2037, 73-2038, 9th Cir., June 8, 1973.

52. Failure of the Government to comply with the 60-day notice of deficiency requirement would mean that the Government could not possibly prevail in further litigation.

53. See text accompanying notes 95-97 *infra*.

54. See text accompanying notes 84-94 *infra*.

55. 479 F.2d 20, 1973-2 U.S.T.C. ¶9581 (2d Cir. 1973).

56. 492 F.2d 1060, 1974-1 U.S.T.C. ¶9242 (6th Cir. 1974).

57. This was "a scheme by Clifford Irving and Richard Suskind to write and sell an 'authorized' version of the life of billionaire recluse Howard Hughes, when in fact there was no authorization therefor by Hughes." 479 F.2d 20, 21, 1973-2 U.S.T.C. ¶9581, at 81,857 (2d Cir. 1973).

58. In so doing, it declined to follow Schreck v. United States, 301 F. Supp. 1265, 1969-2 U.S.T.C. ¶9541 (D. Md. 1969), *reaff'd on reconsideration*, 375 F. Supp. 742, 1974-1 U.S.T.C. ¶9285 (D. Md. 1973), *appeal docketed*, No. 74-1566, 4th Cir., May 16, 1974.

59. INT. REV. CODE OF 1954, §6211. The court followed, for example, Williamson v. United States, 31 A.F.T.R.2d ¶73-456 (7th Cir. 1971). *See also* Da Boul v. Commissioner, 429 F.2d 38, 1970-2 U.S.T.C. ¶9502 (9th Cir. 1970).

therefore the section 6861(b) deficiency notice requirement did not control. As a result, the taxpayers were barred from seeking Tax Court relief.[60]

In contrast to *Irving*, the Sixth Circuit in *Rambo* affirmed a summary judgment subsequent to an injunction,[61] ordering the Service to return attached property and to refrain from collecting any tax assessed for the terminated period. In a pattern of events that is becoming increasingly prevalent in drug-related cases,[62] taxable year termination and an assessment for income taxes were made following a traffic arrest and a subsequent search of the taxpayer's car and person.[63] The *Rambo* court concluded that statutory authority for the short year assessment was conferred by section 6861(b), and thus the sixty-day deficiency notice was mandatory.[64] The court reached its decision by reasoning that the tax imposed constituted a deficiency within the meaning of section 6211, and, therefore, the notice requirement of section 6861 was applicable.[65] The holding was buttressed by an examination of the statute's legislative history, which the court viewed as "a movement away from the harsh, and often unjust, effects of a code which required the taxpayer to pay his tax before he could have a judicial hearing on the amount properly due."[66] This supported the taxpayer's assertion that the procedural requirements of sections 6861 and 6863 were meant to apply to all jeopardy taxpayers, whether assessed at the end of the taxable year or upon taxable year termination pursuant to section 6851.[67]

Moreover, the court noted, the sequential arrangement of sections 6851 and 6861 permitted the reasonable inference that Congress intended for the latter section to provide assessment authority for the former.[68]

A comparison of the reasoning employed in the two opinions demonstrates the inadequacies of the *Irving* rationale. In arriving at its conclusion that a deficiency sufficient to trigger a notice requirement could not exist if *the taxpayer* had not filed a return prior to the assessment, the *Irving* court re-

60. See note 35 *supra*.

61. 353 F. Supp. 1021, 1972-1 U.S.T.C. ¶9244 (W.D. Ky. 1973).

62. *See, e.g.*, Clark v. Campbell, 501 F.2d 108, 1974-2 U.S.T.C. ¶9687 (5th Cir. 1974); Willits v. Richardson, 362 F. Supp. 456, 1973-2 U.S.T.C. ¶9602 (S.D. Fla. 1973), *rev'd*, 497 F.2d 240, 1974-2 U.S.T.C. ¶9583 (5th Cir. 1974).

63. The search revealed a supply of drugs and $2,200 in cash. There was no prosecution on any charge related to this arrest; probation arising from previous charges was, however, revoked 492 F.2d at 1061, 1974-1 U.S.T.C. at 83,453.

64. 492 F.2d at 1065, 1974-1 U.S.T.C. at 83,455. The Service took the position that termination under §6851(a) is not a deficiency within the meaning of §6211. That is, a §6851(a) termination results in a "provisional statement of the amount which must be presently paid as a protection against the impossibility of collection." Ludwig-Littauer & Co., 37 B.T.A. 840, 842 (1938). *See also* Williamson v. United States, 31 A.F.T.R.2d ¶73-456 (7th Cir. 1971).

65. "Clearly, the I.R.S. has imposed a tax and just as clearly the taxpayer has denied that he owes that amount by refusing either to pay the imposed tax or to file a return." 492 F.2d at 1064, 1974-1 U.S.T.C. at 83,455.

66. *Id.*

67. *Id.* For cases agreeing that §6861 provides the assessment authority for a §6851 quick termination, see cases cited note 48 *supra*.

68. 492 F.2d at 1064, 1974-1 U.S.T.C. ¶9242, at 83,455. Sections 6851 and 6861 both appear in ch. 70, subsch. A of the Code under the heading "Jeopardy."

fused to look beyond the statute itself and the "plain meaning" of its language.[69] The *Rambo* court, on the other hand, found that the opposite conclusion was compelled by congressional intent as gleaned from the legislative history and the practical realities of the situation.[70] Similarly, the *Irving* court failed to recognize the total effect of a failure to issue a deficiency notice. It limited its inquiry to the absence of the Tax Court forum, which it found inconsequential because of the available procedure of filing a full year return and suing for overpayment in a federal district court.[71] The *Rambo* court, however, held that the taxpayer should not be relegated to a refund suit,[72] which would deny him the other procedural safeguards provided in the jeopardy assessment sections.[73] Moreover, the court noted that permitting the Government to seize and sell property without judicial consideration of the validity of the tax constituted a potential due process violation.[74]

Although the *Rambo* court recognized the *Williams Packing* decision, it declined to decide the case within this judicially-created exception.[75] Rather, the injunction was sustained because of the Service's failure to send the section 6861 notice.[76] It seems quite clear, however, that the Government could not prevail because of its failure to send the required notice, and the second prong of *Williams Packing*—equity jurisdiction—also existed.[77] While the *Irving* court considered the availability of injunctive relief under *Williams Packing*,[78] it negated the second prong by finding that the taxpayers had an

69. 479 F.2d at 24, 1973-2 U.S.T.C. at 81,859.

70. 492 F.2d at 1064, 1974-1 U.S.T.C. at 83,455.

71. 479 F.2d at 24, 1973-2 U.S.T.C. at 81,859.

72. The only remedy would thus be for the taxpayer to pay the tax, file a return at the end of his regular taxable year and sue in district court for a refund. *See* INT. REV. CODE OF 1954, §§6511, 6532, 7422, and Flora v. United States, 362 U.S. 145, 1960-1 U.S.T.C. ¶9347 (1960).

73. Not only is the notice a jurisdictional prerequisite to Tax Court litigation, but "while awaiting the decision of the Tax Court, the jeopardy taxpayer may stall collection proceedings if he is able to post an adequate bond, *see* 6863(a). If he cannot, the seized property cannot be sold absent certain limited exigent circumstances; see 6863(b)(3)(A). The I.R.S. may abate the jeopardy assessment if it finds that jeopardy does not exist. Sec. 6861(g)." 492 F.2d at 1062, 1974-1 U.S.T.C. at 83,454.

74. *Id.* at 1064-65, 1974-1 U.S.T.C. at 83,455-56.

75. *Id.* at 1062 n.2, 1974-1 U.S.T.C. at 83,453 n.2.

76. See text accompanying notes 61-68 *supra*.

77. The Service had levied on Rambo's bank account and several of his automobiles. Furthermore, there was no adequate legal remedy, since the taxpayer had no notice of deficiency, barring Tax Court relief. The sufficiency of the lack of notice as a satisfaction of the first prong has not been clearly articulated in other lower court opinions following the *Rambo* logic as to requirement for the notice. Rather, the courts place their reliance on the statutory exceptions to §7421(a). *See* Shaw v. McKeever, 1974-1 U.S.T.C. ¶9348 (D. Ariz. 1974), *notice of appeal filed*, 9 CCH, 1974 STAND. FED. TAX REP. 70,741. In view of the hazards involved in meeting the first prong of *Williams Packing* such reliance seems well founded. In fact, where a taxpayer failed to demonstrate that the Government could not ultimately prevail as to the validity of its assessment upon trial, a court granted §6213(a) relief upon failure of the Service to issue the 60-day notice of deficiency. *Id.*

78. Because the court found no requirement for a notice of deficiency, §6213(a) injunctive relief was not available.

adequate legal remedy.[79] The court then apparently nullified the first prong by stating that no deficiency had been shown.[80] This type of reasoning is disturbing because it tends to expand the power matrix available to the Service. Thus, the section 6213(a) exception to section 7421(a) is not available to a taxpayer whenever a court follows the Service's contention that no notice of deficiency is required. The limited procedural safeguards[81] noted in *Rambo,* as well as the Tax Court forum,[82] are also negatived. The Service can, therefore, terminate a taxable year[83] and seize assets while precluding a petition to the Tax Court.

A related problem emanates from the Service's power to use the jeopardy procedures for other than revenue-related motives. The potential for abuse and the necessity for adequate judicial response are well demonstrated in *Willits v. Richardson.*[84] In that case a search of the taxpayer's purse at the police station following a traffic arrest revealed "a few pills" and 4,400 dollars in cash.[85] A subsequent call to an agent connected with the Narcotics Project[86] of the IRS resulted in termination of the plaintiff's taxable year and assessment of taxes on alleged income from drug sales.[87] An immediate demand for payment and levy upon the taxpayer's personal property were made. The taxpayer then sued for injunctive relief, whereupon the Service interposed section 7421(a) as a defense. The district court concluded that no notice of deficiency was required under a section 6851 termination, following *Irving,* and furthermore that neither prong of the *Williams Packing* test was satisfied.[88]

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79. See note 72 *supra.*

80. 479 F.2d at 25, 1973-2 U.S.T.C. at 81,860. The court also commented on the taxpayer's lack of "clean hands" and quoted the lower court: "[I]t is bearable inequity that those whose 'bold plans' are frustrated may suffer potentially costly inconveniences." *Id.* While the conduct by the taxpayers in *Irving* may have been socially undesirable, the Service had, perhaps, firm evidence on which to base its assessment. *Id.* at 22, 1973-2 U.S.T.C. at 81,857. This has not always been the case; see text accompanying notes 84-94 *infra.* Furthermore, the lack of rapid access to the Tax Court by a jeopardy taxpayer appears to be an additional penalty not meant to be imposed by Congress in enacting §6851. The harsh result of tax prepayment before litigation can easily financially ruin a taxpayer.

81. See note 73 *supra.*

82. See note 35 *supra.*

83. INT. REV. CODE OF 1954, §6851(a).

84. 362 F. Supp. 456, 1973-2 U.S.T.C. ¶9602 (S.D. Fla. 1973).

85. "[T]he police report indicated that only a few pills contained in two vials had been found in Mrs. Willits purse . . . ." *Id.* 1973-2 U.S.T.C. at 81,945. Several diamond rings worn by plaintiff were surrendered to police at their request. *Id.* 1973-2 U.S.T.C. at 81,944.

86. In Clark v. Campbell, 501 F.2d 114-15, 1974-2 U.S.T.C. ¶9687, at 85,229 (5th Cir. 1974), the court said: "Until quite recently there has been a paucity of litigation on the issue before this Court despite the lengthy codal coexistence of §§6851 and 6861. The emergence of the issue seems primarily attributable to the Service's recent pattern of its willingness to utilize §6851 in conjunction with requests from BNDD in narcotics enforcement activities."

87. 362 F. Supp. at 459, 1973-2 U.S.T.C. at 81,945; 1973 taxable income was computed to be $60,000 on sales of cocaine, although the method used was not stated in the opinion.

88. Relying on the evidence obtained by the possibly illegal police search, the district court determined that the plaintiff had failed to satisfy the first prong—that the Govern-

In reversing the decision of the district court,[89] the Fifth Circuit found "no basis in fact nor foundation for any reasonable assumption" that Mrs. Willits was connected with any narcotics sales.[90] Thus, the court concluded that "the evidence adduced established such a gossamer basis for the drastic actions of the Internal Revenue Service that they cannot be sustained."[91] Therefore, the first prong of the *Williams Packing* test was satisfied.[92] The court also held that seizure of Mrs. Willits' means of supporting her children and herself constituted irreparable harm for which a refund suit could not provide an adequate legal remedy because of the tremendous time delays involved.[93] Recognizing the dire consequences that unrestrained Service power could portend, the court observed:

> The I.R.S. has been given broad power to take possession of the the property of citizens by summary means that ignore many basic tenets of due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use.[94]

A final ambiguity arising in this area is the viability of certain constitutional arguments. Although the taxpayer in *Willits* alleged that an illegal search and seizure had been made, the Fifth Circuit declined to consider this issue.[95] Such a consideration was not necessary in light of the finding of an arbitrary assessment. Had the court used such an approach, however, it could have buttressed its finding that the Government could not prevail, because there is case authority indicating that illegal evidence cannot be used

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ment could not possibly prevail. In so doing, the court ignored its own statement that it was *not necessary* to determine the legality of the search. As to the second prong, the court concluded that an adequate legal remedy was available through a refund suit *after* filing a return for the full taxable year. Alternatively, if the Service disagreed with the full year return, it could issue a §6212(a) notice of deficiency, allowing Tax Court jurisdiction. 362 F. Supp. at 461, 1973-2 U.S.T.C. at 81,947.

89. 497 F.2d 240, 1974-2 U.S.T.C. ¶9583 (5th Cir. 1974).

90. *Id.* at 245, 1974-2 U.S.T.C. at 84,835.

91. *Id. See also* Woods v. McKeever, 1973-2 U.S.T.C. ¶9727 (D. Ariz. 1973) (arbitrary assessment satisfied first prong of *Williams Packing*).

92. *Id.* at 245-46, 1974-2 U.S.T.C. at 84,836. The court followed the test announced in Lucia v. United States, 474 F.2d 565, 573, 1973-1 U.S.T.C. ¶16,075, at 81,368-69 (5th Cir. 1973), that: "[A] taxpayer under a jeopardy assessment is entitled to an injunction against collection of the tax if the Internal Revenue Service's assessment is entirely excessive, arbitrary, capricious, and without factual foundation, and equity jurisdiction otherwise exists."

93. Willits v. Richardson, 497 F.2d 240, 246, 1974-2 U.S.T.C. ¶9583, at 84,836 (5th Cir. 1974).

94. *Id. Accord,* Woods v. McKeever, 1973-2 U.S.T.C. ¶9527 (D. Ariz. 1973), *appeal docketed,* No. 74-1133, 9th Cir., Jan. 25, 1974.

95. *Id.*

to support a jeopardy assessment. In fact, where a taxpayer, arrested on a traffic violation, had his car searched and was interrogated without benefit of *Miranda* warnings, the blatant constitutional violations were held to satisfy the first prong of *Williams Packing*.[96] Because all of the plaintiff's assets were frozen, irreparable harm without an adequate legal remedy was present to satisfy the second prong and permit injunctive relief. Unfortunately, the weight of case authority suggests that constitutional objections are overwhelmingly ignored by acquiescence to the jurisdictional precedent of section 7421(a).[97]

It seems desirable that the Service not be permitted to continue making thinly supported assessments in "criminal" cases where there is no evidence to sustain a prosecution. Such a bifurcated system of justice, with an administrative agency essentially imposing sanctions for the appearance of a deviation from an undefined norm, has inherent dangers that this pluralistic society cannot tolerate. Historically, individual rights have been asserted and protected against the state in this country. Erosion of these rights through abrogation of well developed constitutional theories presages a trend that should alarm even the ardent apologist for administrative shortcut tactics in pursuance of "control" of drug-related and other activities at variance with agency norms. Tolerance of the developing pattern may result in domination of the acquiescent citizen.

Gambling Tax Cases

Is It a Tax? Initial attacks on the Wagering Tax[98] centered on the legality of the tax itself. Challengers either claimed that it was an attempt to regulate behavior rather than an exercise of the taxing power or that it was outside the congressional power to tax. As the effect of the law was to increase revenue, however, it was held to be an exercise of the taxing power, which could not be rendered invalid merely because it had a deterrent effect on the activity taxed.[99] Therefore, attempts to avoid the strictures of section

96. Anderson v. Richardson, 354 F. Supp. 363 (S.D. Fla. 1973). Despite an assurance by the Service that his returns were in order, the taxpayer learned on the next day that the IRS had attached his assets in a safety deposit box, joint checking and savings accounts, and had also placed a lien on his home. At a hearing for emergency injunctive relief, the IRS spokesman admitted that he saw no way in which the Service could succeed on the jeopardy assessment. *Id.* at 365.

97. *E.g.*, LaLonde v. United States, 350 F. Supp. 976, 1972-2 U.S.T.C. ¶9756 (D. Minn. 1972), *aff'd*, 478 F.2d 700 (8th Cir. 1973), plaintiff argued that a jeopardy assessment was made for the purpose of obtaining records to uncover sources of printed materials that he retailed and this violated his first amendment rights. Strict application of the first prong of the *Williams Packing* test resulted in acquiescence to §7421(a) and rejection of the constitutional argument.

98. INT. REV. CODE OF 1954, §4401. The language of the provision is set out in note 1 *supra*.

99. In United States v. Kahriger, 345 U.S. 22, 1953-1 U.S.T.C. ¶9245 (1953), appellee argued that the Wagering Tax was an attempt on the part of Congress to regulate intrastate crime by imposing a penalty on the activity under the pretext of taxation. Additionally, because the tax had the effect of deterring gambling, it was alleged to be an infringement

7421(a) on the basis that the "tax" caused an unconstitutional deprivation of property without due process of law were dismissed out of hand. Courts merely noted "it is settled law that the wagering tax itself . . . [is] constitutional."[100]

Is the Government "Attempting To Assess or Collect" Taxes? In 1968 the Supreme Court held that criminal sanctions could not be imposed on a person who failed to comply with the registration[101] and occupational[102] provisions of the Wagering Tax. The Court reasoned that such actions would violate the fifth amendment privilege against self-incrimination.[103] It later applied this same rationale to prohibit criminal prosecution for failure to pay the Wagering Tax.[104] Finally, in *United States v. United States Coin & Currency*,[105] the Supreme Court held the fifth amendment privilege applicable in proceedings for forfeiture of "property intended for use in violating the provisions of the internal revenue laws."[106] In that case the Court found a "forfeiture" resulting from a statutory offense to be indistinguishable from a "criminal fine."[107]

Although none of these cases concerned the tax per se, persons facing Wagering Tax assessments have attempted to avoid the application of section 7421(a) by asserting the same rationale. The central theme in each case has been that the government's motivation is punishment, not revenue, and

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on the states' police power and thus violative of the tenth amendment. Noting the extensiveness of the taxing power and focusing on the revenue-generating effect of the Wagering Tax, the Supreme Court upheld the tax.

100. Trent v. United States, 442 F.2d 405, 406, 1971-1 U.S.T.C. ¶5,995, at 87,091 (6th Cir. 1971). It has also been argued that Congress' failure to provide for Tax Court review of Wagering Tax assessments results in a deprivation of property in violation of the fifth amendment. The rationale is that the prerequisite to refund litigation, full payment of the assessment, is an intolerable burden. Courts, however, seizing upon the dicta in Flora v. United States, 362 U.S. 145, 175 n.38, that "excise tax assessments may be divisible into a tax on each transaction or event, so that the full-payment rule would probably require no more than payment of a small amount," have uniformly rejected the contention. They hold that making partial payment a prerequisite to contesting the assessment does not violate due process. *E.g.*, Cole v. Cardoza, 441 F.2d 1337, 1342, 1971-1 U.S.T.C. ¶15,986, at 87,071 (6th Cir. 1971); Bowers v. United States, 423 F.2d 1207, 1208, 1970-2 U.S.T.C. ¶9560, at 84,364 (5th Cir. 1970); Vuin v. Burton, 327 F.2d 967, 970, 1964-1 U.S.T.C. ¶15,553, at 92,525 (6th Cir. 1964).

101. INT. REV. CODE OF 1954, §4412(a) provides that "[e]ach person required to pay a special tax under the subchapter shall register with the official in charge of the internal revenue district . . . ."

102. INT. REV. CODE OF 1954, §4411 provides: "There shall be imposed a special tax of $50 per year to be paid by each person who is liable for tax under section 4401 or who is engaged in receiving wagers for or on behalf of any person so liable."

103. Marchetti v. United States, 390 U.S. 39, 1968-1 U.S.T.C. ¶15,800 (1968).

104. Grosso v. United States, 390 U.S. 62, 1968-1 U.S.T.C. ¶15,801 (1968).

105. 401 U.S. 715, 1971-1 U.S.T.C. ¶5,979 (1971).

106. INT. REV. CODE OF 1954, §7302.

107. The Court said: "From the relevant constitutional standpoint there is no difference between a man who 'forfeits' $8,674 because he has used the money in illegal gambling activities and a man who pays a 'criminal fine' of $8,674 as a result of the same course of conduct." 401 U.S. at 718, 1971-1 U.S.T.C. at 87,050.

thus a suit seeking to enjoin the governmental action is not intended to restrain the "assessment or correction of a tax." For example, in *White v. United States*,[108] the Service used plaintiff's personal records as a basis for computing the Wagering Tax assessment. Because this action made the plaintiff a witness against himself, he attempted to invoke the fifth amendment privilege against self-incrimination in his suit for injunctive relief. He argued that because a Wagering Tax assessment has the same consequences as a forfeiture, the *Coin Currency* rationale extended to him the fifth amendment protection. This argument was rejected on two grounds. First, the court found an "essential difference" between the two proceedings: forfeiture involves property that a person could have retained had he complied with the law; a tax assessment, on the other hand, applies to money that would have gone to the Government had the law been obeyed.[109] Moreover, the logical extension of the plaintiff's argument would be to preclude the possibility of imposing a tax on income derived from illegal activities, a result expressly disavowed in *Coin Currency*.[110] Thus, because the government's action was cast as a revenue measure, not a penalty, section 7421(a) barred the injunction.

Another perspective was taken in *Ianelli v. Long*.[111] The district court noted that a forced sale in satisfaction of a Wagering Tax assessment might cause plaintiff's property to be sold at much less than market value. Therefore, it held that "a tax sale of all property . . . without the opportunity to contest it in a court of law is for all intents and purposes a forfeiture, not a tax."[112] Accordingly, section 7421(a) did not prevent the court from issuing an injunction, effective until the plaintiff could appropriately contest the assessment without danger of self-incrimination.[113] The Third Circuit reversed the focus, however, and with it the decision.[114] While agreeing that "the section [7421(a)] presupposes a bona fide attempt of the government to collect revenue," the court held that these levies satisfied the requirement

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108. 363 F. Supp. 31, 1973-2 U.S.T.C. ¶16,117 (N.D. Ill. 1973).

109. This distinction was articulated in United States v. Donlon, 355 F. Supp. 220, 223, 1973-1 U.S.T.C. ¶16,090, at 81,400 (D. Del. 1973), a case that the *White* court cited in support of its "essential difference" remark. 363 F. Supp. at 35, 1973-2 U.S.T.C. at 82,776.

110. Urban v. United States, 445 F.2d 641, 643 (5th Cir. 1971), also cited in White v. United States, 363 F. Supp. at 35, 1973-2 U.S.T.C. at 82,776, stated this reason.

111. 333 F. Supp. 407, 1971-2 U.S.T.C. ¶16,021 (W.D. Pa. 1971).

112. *Id.* at 412, 1971-2 U.S.T.C. at 88,096.

113. The court attempted to buttress its circumvention of §7421(a) by stating that because it was issuing only a temporary injunction and was ordering a receiver to handle the property in the interim, its decision was "not really to prohibit but only to defer collection of the taxes. . . ." *Id.* at 413, 1971-2 U.S.T.C. at 88,096. But §7421(a) does not distinguish between temporary and permanent injunctions, and its central purpose is to avoid *delay* in the collection of government revenue. Thus, this statement does no more than show that the court was responding to the equities of the situation rather than the language of the Act.

114. Iannelli v. Long, 487 F.2d 317, 1973-2 U.S.T.C. ¶16,098 (3d Cir. 1973), *rev'g* 333 F. Supp. 407, 1971-2 U.S.T.C. ¶16,021 (W.D. Pa. 1971).

because they constituted a "potentially productive attempt to collect revenue." Any other governmental objectives were immaterial.[115]

The message of *White* and *Ianelli* is clear. So long as the court can discern a nexus between the government's action and procurement of its legal entitlements, section 7421(a) will bar a taxpayer's suit for injunctive relief.

Still another facet of the problem is exemplified by two cases in which the plaintiffs attacked the magnitude and method of the assessment. Where the Service projected the amount of wagers handled in a ten-month period from evidence of plaintiff's actual wagering in the preceding five-year period, the Seventh Circuit rejected plaintiff's contention that the assessment was so arbitrary that it became necessary to question the bona-fides of the government's revenue-raising objective.[116] On the other hand, when confronted with an assessment of $2,653,640 that was derived by projecting one day's betting slips over an arbitrarily determined period of four years and nine months, the Fifth Circuit remanded for findings of fact as to "whether the computative basis is so insufficient as to make the assessment an exaction in 'the guise of a tax' rather than a legitimate tax on wagers."[117] With reference to section 7421(a), the court stated: "A finding that the assessment is arbitrary, capricious, and without foundation in fact would free the Court of the constraint of the anti-injunction statute."[118]

As these latter two cases show, the section 7421(a) bar is formidable but not absolute. Upon a clear showing that the Service is abusing its statutory authority to assess or collect taxes, courts will find the actions outside the protective shield of section 7421(a).

Can the Tax Be Collected? The third category of Wagering Tax injunction suits comprises cases where the plaintiff, although conceding that the tax itself is legal and that the government's objective is to obtain revenue, contends that, on the facts presented, no tax can legally be assessed against him. This is the *Nut Margarine-Williams Packing* situation, and the plaintiff

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115. *Id.* at 318, 1973-2 U.S.T.C. at 82,728.

116. Collins v. Daly, 437 F.2d 736, 738, 1971-1 U.S.T.C. ¶16,976, at 87,041 (7th Cir. 1971). Other cases that have acknowledged the validity of this argument, although finding that the particular facts did not meet its requirements, are: Ianneli v. Long, 487 F.2d 317, 1973-2 U.S.T.C. ¶16,098 (3d Cir. 1973); Cole v. Cardoza, 441 F.2d 1337, 1971-1 U.S.T.C. ¶15,986 (6th Cir. 1971); Hamilton v. United States, 309 F. Supp. 468, 1969-2 U.S.T.C. ¶15,924 (S.D.N.Y. 1969).

117. Lucia v. United States, 474 F.2d 565, 575, 1973-1 U.S.T.C. ¶16,075 at 81,371 (5th Cir. 1973). Similarly, in Pizzarello v. United States, 408 F.2d 579, 1969-1 U.S.T.C. ¶15,886 (2d Cir. 1969), the court held that projecting wagers over an arbitrarily determined five-year period on the basis of three days' receipts was so "totally excessive . . . because based on entirely inadequate information, [that] collection should be enjoined if equity jurisdiction otherwise exists." *Id.* at 584, 1969-1 U.S.T.C. at 85,027.

118. 474 F.2d at 577, 1973-1 U.S.T.C. at 81,372. Of course, the ordinary requirements of equity jurisdiction, irreparable harm and an inadequate remedy at law, would also have to be established before an injunction would be issued. The court remanded for findings of fact on this question. *Id.*

stands or falls on his ability to meet the two-pronged *Williams Packing* test.[119]

An interesting, but unsuccessful, constitutional argument was raised in *Lucia v. United States*.[120] Under a provision declaring the ordinary three-year statute of limitations[121] inapplicable where no return is filed,[122] the Government assessed a Wagering Tax almost six years after the last transaction. Lucia sued for injunctive relief, claiming that he could not constitutionally be denied the benefit of the statute of limitations, and thus under no circumstances could the Government ultimately prevail. He argued that filing a return would have violated his fifth amendment privilege against self-incrimination. Therefore, a denial of the benefit of the statute of limitations constituted a penalty for the assertion of a constitutional right. The Fifth Circuit disagreed, however,[123] holding that "there is no substantive or fundamental right to the shelter of a period of limitations."[124] Therefore, because the plaintiff had not been denied anything to which he was otherwise entitled, the inapplicability of the limitation period did not constitute a penalty.

A more persuasive constitutional argument was raised in *Pizzarello v. United States*.[125] In a suit to enjoin a levy for unpaid wagering taxes, plaintiff claimed that under no circumstances could the Government prevail because the assessment was based on evidence seized in violation of his fourth amendment rights. After concluding that there was no Supreme Court precedent on point, the Second Circuit applied the exclusionary rule and held the assessment invalid.[126]

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119. In order to qualify for an injunction under *Williams Packing*, the taxpayer must show: (1) that under no circumstances can the Government prevail, and (2) that equity jurisdiction otherwise exists. For further amplification, see text accompanying notes 26-34 *supra*.

120. 474 F.2d 565, 1973-1 U.S.T.C. ¶16,075 (5th Cir. 1973).

121. INT. REV. CODE OF 1954, §6501(a) provides in pertinent part: "Limitations on assessment and collection (a) General rule.—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed . . . and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period."

122. INT. REV. CODE OF 1954, §6501(c) provides in pertinent part: "(c) Exceptions.—(3) No Return.—In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time."

123. Lucia v. United States, 474 F.2d 565, 569-70, 1973-1 U.S.T.C. ¶16,075, at 81,366 (5th Cir. 1973).

124. *Id.* at 572, 1973-1 U.S.T.C. at 81,368.

125. 408 F.2d 579, 1969-1 U.S.T.C. ¶15,886 (2d Cir. 1969).

126. *Id.* at 586, 1969-1 U.S.T.C. at 85,028-29. Of course, this satisfied only the first prong of the *Williams Packing* test. He still had to satisfy the second prong of the test, by showing that he was entitled to equitable relief because he would suffer irreparable harm for which there was no adequate remedy at law, before an injunction would issue. The court remanded for findings of fact on this question. *Id.* at 587, 1969-1 U.S.T.C. at 85,030. Compare this result with the approach taken in the Jeopardy Assessment area (see note 97 *supra* and accompanying text) where the court refused to permit the taxpayer to invoke the fourth amendment as a basis for satisfying the first prong of the *Williams Packing* test.

Another successful attack on an attempted government collection was made in *Cole v. Cardoza*.[127] The Government had obtained a lien on the plaintiff's residence to satisfy overdue gambling taxes. Finding that under applicable law a federal tax lien solely against a husband could not attach to property owned by him as a tenant by the entirety, the court declared the lien void.[128]

Summary. As these cases show, attempts to characterize the Gambling Tax as a penalty have been unsuccessful, and section 7421(a) presents a formidable barrier to relief from its assessments. If a nexus between legal revenue and the government's action can be discerned, the Act will be applied.[129] On the other hand, if the assessment is so outrageous as to bear no resemblance to a "tax," the Service has not been permitted to hide its extra-legal actions behind the shield of section 7421(a).[130] Finally, even in cases seemingly within the scope of the Act, courts have granted relief where the facts satisfy the *Williams Packing* requirements. While constitutional claims alone are insufficient to invoke this exception,[131] they can be used to satisfy the first prong.

Perhaps the most important message conveyed by these cases is the courts' reluctance to apply section 7421(a) mechanically. Rather, they have examined each factual situation to assure that the purpose of the Act would be served, before applying its strictures. The desirability of this purpose-oriented approach is obvious, the application of section 7421(a) makes the Service's determination of the rights of the parties binding. Where such a situation reflects the will of the people, as interpreted by Congress, it must be obeyed. But courts must carefully examine each factual circumstance in order to ensure that they do not abdicate to the Service their role as final arbiter of the rights of men in contexts beyond those contemplated by Congress. The potential for abuse inherent in such situations is too great to be tolerated.[132]

127. 441 F.2d 1337, 1971-1 U.S.T.C. ¶15,986 (6th Cir. 1971).

128. The Government had conceded that it had "no valid claim" against Cole's home. *Id.* at 1343, 1971-1 U.S.T.C. at 87,071. Thus, appellant satisfied the first prong of the *Williams Packing* test—assured success on the merits. As the court found that the tax lien would cast "doubt [on] the title of the property and cause reasonably prudent purchasers to refuse to accept it until they were certain the title was clear," the court held that appellant was entitled to have the lien removed. *Id.* at 1344, 1971-1 U.S.T.C. at 87,072.

129. This interpretation of §7421(a)'s scope parallels the conclusion recently reached by the Supreme Court. See discussion of *Bob Jones* and *"Americans United"* accompanying notes 201-210 *infra.*

130. But compare with this conclusion the Supreme Court's rejection of Bob Jones University's argument that its suit was not for the purpose of restraining the assessment or collection of a tax, because the Service's objective in removing the school's tax-exempt status was unrelated to revenue. See discussion accompanying notes 204-205 *infra.*

131. Similarly, in *"Americans United"* the Supreme Court held that the institution's claim that the invocation of §7421(a) deprived it of due process of law was insufficient to avoid application of the act. See discussion accompanying notes 235-247 *infra.*

132. But compare the Supreme Court's decision in *"Americans United,"* where the Court held §7421 barred the action despite strong evidence that a suit for injunctive relief provided the only access to meaningful judicial review. See discussion accompanying notes 227-237 *infra.*

INTERACTION OF SECTION 501(c)(3) AND THE SECTION 7421(a) PROHIBITION

Background

In addition to its function as a revenue-generating device, the Internal Revenue Code is a vehicle for implementing congressional policies. One such policy is a tax subsidy for organizations carrying out functions that otherwise would be funded through federal programs.[133] Thus, Congress has provided in section 501(a) that income of certain organizations shall be exempt from specified federal taxation if the organization is one that is described in sections 401(d), 501(c), or 501(d).[134]

Included in the list of organizations exempt under section 501(c)(3) are corporations, and any community chest, fund, or foundation;[135] thus, individuals, partnerships, and formless aggregations of persons cannot qualify. Assuming compliance with this structural requirement, an organization seeking tax-exempt status faces a series of hurdles that must be negotiated from two perspectives: its organization and its operations.[136] The "organizational" requirement examines the dominant purpose for which the organization was created, focusing on substance, not form.[137] The operational test essentially requires that the organization's actual activities comport with its stated purposes while not contravening any of the statutory prohibitions.[138] Although the statute specifies that the organization must be "organized and operated *exclusively*" for certain enumerated purposes, courts have con-

133. *See* Garrett, *Federal Tax Limitations on Political Activities of Public Interest and Educational Organizations*, 59 GEO. L.J. 561 (1971). Sections 501(c)(3) and 170 of the Code have been characterized as reflecting a "Congressional disposition favoring various types of charitable organizations deemed beneficial to society . . . [by making them] objects of federal support through tax policy." Note, *The Loss of Privileged Tax Status in Suits To Restrain Assessments*, 30 WASH. & LEE L. REV. 573, 575 (1973).

134. INT. REV. CODE OF 1954, §501(a) provides tax exemptions to the organizations described in 501(c)(3): "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

135. See note 134 *supra*.

136. TREAS. REG. §1.501(c)(3)-1(a)(1).

137. In Samuel Friedland Foundation v. United States, 144 F. Supp. 74, 84, 1956-2 U.S.T.C. ¶9896, at 56,385 (D.N.J. 1956), the court said that an organization must be "created to perform" or "established to promote" a proper purpose. Merely having powers that are limited to proper purposes is not sufficient. Thus, the charter and bylaws are not conclusive, but may be supplemented or rebutted by extrinsic evidence of purpose. Faulkner v. Commissioner, 112 F.2d 987, 1940-2 U.S.T.C. ¶9544 (1st Cir. 1940); Journal of Accountancy, Inc., 16 B.T.A. 1260 (1929). The Service has proclaimed that the organization's purpose must be proper, and its power substantially limited to such purpose, in order to satisfy the organizational test. *See* TREAS. REG. §§1.501(c)(3)-1(b)(1)(i)(a), (b).

138. *See* TREAS. REG. §§1.501(c)(3)-1(c). The text of the statute is set out in note 134 *supra*.

sistently and liberally[139] construed the term "exclusively" to mean "principally" or "primarily."[140]

Unfortunately, the other requirements of the provision have not received such uniform construction. For example, the requirement that "no substantial part of the activities . . . is carrying on propaganda, or otherwise attempting, to influence legislation," has resulted in a confusing array of interpretations. "Legislation" is defined in the Regulations to include action by any legislative body or by the public in a referendum.[141] There is, however, a wide divergence of opinion over exactly what constitutes "attempting to influence" legislation. The Service has broadly interpreted the provision to include any activity tending to influence the outcome of legislation—even if only by influencing public opinion on an issue.[142] It has also ruled that any organization that actively advocates a primary objective obtainable only by legislation or the defeat of proposed legislation cannot qualify for section 501(c)(3) status.[143] The legislative history of the provisions,[144] although inconclusive, suggests that Congress intended to preclude only politically self-serving donations,[145] and that the broadly stated prohibition was a drafting

139. Helvering v. Bliss, 293 U.S. 144, 1935-1 U.S.T.C.¶9001 (1934). The rule of construction that provisions granting exemptions to charities are to be construed liberally is derived from the idea that such provisions are "begotten from motives of public policy." *Id.* at 151, 1935-1 U.S.T.C. at 9403. The Service expressly adopted this rule in G.C.M. 21,610, 1939-2 CUM. BULL. 103. While this ruling was declared obsolete by Rev. Rul. 67-46, 1967-1 CUM. BULL. 377, there was no indication of a modification of the Service's view on this matter. *See* 6 J. MERTENS, *supra* note 9, §34.03.

140. Courts, in a rare display of uniformity in this area, have held that this requirement is satisfied if the activities that comprise a *substantial* portion of the organization's total operations pertain to a proper purpose. *E.g.*, Dulles v. Johnson, 273 F.2d 362, 1960-1 U.S.T.C. ¶11,916 (2d Cir. 1959); Seasongood v. Commissioner, 227 F.2d 907, 1956-1 U.S.T.C. ¶9135 (6th Cir. 1955); William L. Powell Foundation v. Commissioner, 222 F.2d 68, 1955-1 U.S.T.C. ¶9398 (7th Cir. 1955).

141. *See* TREAS. REG. §§1.501(c)(3)-1(c)(3)(ii)(b).

142. TREAS. REG. §§1.501(c)(3)-1(c)(3)(ii)(a), (b). This approach assumes that political activity is inconsistent with charitable purposes. Therefore, if any nexus can be shown, the activity is improper and the organization is denied §501(c)(3) status. But such groups, termed "Action Organizations" by the Service, may be eligible for a tax exemption under §501(c)(4) of the Code.

143. TREAS. REG. §§1.501(c)(3)-1(c)(3)(iv). Consistent with its premise that legislative activity is inconsistent with charitable purposes, the Service does not distinguish between political activity in furtherance of what might be considered a proper purpose, and political activity motivated by other concerns. The Regulations do require, however, that the organization do more than merely engage in nonpartisan analysis, study, or research, with the results made available to the public, in order to be classified as an "action" organization outside the scope of §501(c)(3). Such activity would fit within the "Education" classification, and thus should not be condemned as an attempt to influence legislation.

144. For debate on the provision, see 78 CONG. REC. 5861, 5959, 7831 (1934). *See also* 110 CONG. REC. 5078-79 (1964).

145. With respect to the purpose of §501(c)(3), Senator Reed said: "There is no reason in the world why a contribution made to the National Economy League should be deductible as if it were a charitable contribution if it is a *selfish one made to advance the personal interests of the giver of the money.* This is what the committee was trying to reach . . . ." 78 CONG. REC. 5861 (1934) (emphasis added). Such an analysis would start from the premise that charitable purposes and political activities are not mutually ex-

error.[146]

Judicial opinion is split with respect to this question. The majority of courts follow Judge Learned Hand's statement that: "[P]olitical agitation as such is outside the statute, however innocent the aim. . . . Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them."[147] Section 501(c)(3) is thus interpreted as a broad prohibition against political activity.[148] Other courts have found political activity consistent with proper purpose,[149] and therefore, not grounds for denial of section 501(c)(3) status. Still others have concluded that the phrase refers only to direct communication with legislators.[150] The only certain conclusion to be drawn from these divergent views is that an organization cannot be sure when it is engaging in activities that "influence legislation" and imperil its tax-exempt status.[151]

The further requirement of section 501(c)(3), that legislation-influencing

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clusive. If it could be shown that the political activity is in fact in furtherance of the organization's charitable purpose, the activity would not be a potential cause of preferred tax status revocation.

146. In reference to the provision of §501(c)(3) prohibiting political activity, Senator Reed stated: "[W]e found great difficulty in phrasing the amendment. I do not reproach the draftsmen. I think we gave them an impossible task; but this amendment goes further than the committee intended to go." 78 CONG. REC. 5861 (1934).

147. Slee v. Commissioner, 42 F.2d 184, 185, 2 U.S.T.C. ¶552, at 2302 (2d Cir. 1930).

148. In Estate of Blaine, 22 T.C. 1195, 1213 (1954), the court denied charitable deductions for contributions made to an organization whose "ultimate aim . . . was the attainment of a political objective." Similarly, preferred tax status was denied because of attempts to mold public opinion in favor of a certain revision of the law in American Hardware & Equip. Co. v. Commissioner, 202 F.2d 126, 1953-1 U.S.T.C. ¶9221 (4th Cir.), *cert. denied*, 344 U.S. 865 (1952). *Accord*, Kuper v. Commissioner, 332 F.2d 562, 1964-2 U.S.T.C. ¶9541 (3d Cir.), *cert. denied*, 379 U.S. 920 (1964); Marshall v. Commissioner, 147 F.2d 75, 1945-1 U.S.T.C. ¶10,166 (2d Cir.), *cert. denied*, 325 U.S. 872 (1945).

149. These courts responded to Judge Hand's dictum in Slee v. Commissioner, 42 F.2d 184, 185, 2 U.S.T.C. ¶552, at 2302 (2d Cir. 1930), that political activity that was "mediate to the primary purpose" would not be improper. In Dulles v. Johnson, 273 F.2d 362, 1960-1 U.S.T.C. ¶11,916 (2d Cir. 1959), the court found the activities of a bar association, including reporting to the legislature on proposed and existing legislation, to be beneficial to the public. It therefore permitted donations made in support of these actions to be taken as §170 charitable deductions. *Accord*, International Reform Fed'n v. District Unemployment Compensation Bd., 131 F.2d 337 (D.C. Cir. 1942); Martha H. Davis, 22 T.C. 1091 (1954).

150. Seasongood v. Commissioner, 227 F.2d 907, 1956-1 U.S.T.C. ¶9135 (6th Cir. 1955). This interpretation attempted to restrict the prohibition against influencing legislation by focusing on the *form* of the activity rather than on its purpose. Prohibiting direct lobbying but permitting "grass roots" lobbying has been criticized as allowing an organization to do indirectly what it is forbidden to do directly. *See* Note, *The Revenue Code and a Charity's Politics*, 73 YALE L.J. 661, 673 n.56 (1964).

151. Another factor adding to the organization's uncertainty is the selective and sporadic nature of the Service's enforcement of §501(c)(3). For example, it has been suggested that the Sierra Club lost its §501(c)(3) status not for the opinion it expressed in a full page ad, but because of the openness with which it acted. *See* Note, *The Internal Revenue Code's Provisions Against Legislative Activity on the Part of Tax Exempt Organizations: A Legitimate Safeguard or a Violation of the First Amendment?*, 3 N.Y.U.L. & SOCIAL CHANGE 159, 164 (1973).

activities may not constitute a "substantial" part of the organization's operations, presents a similar but distinct problem. In *Seasongood v. Commissioner*[152] the Sixth Circuit concluded that attempts to influence legislation were not substantial when constituting only five per cent of the organization's total activities.[153] Unfortunately, the court's attempt to quantify the statutory term has not generally been followed.[154] Rather, weight has been given to more qualitative factors such as the sporadic nature of the legislative activity,[155] the amount of time spent on such activities in comparison to the total activities of the organization,[156] and the benefit that the group's over-all activities bestow on the community.[157]

An additional problem in determining substantiality is the question of how much, if any, of the organization's supporting activities should be considered. In *Kuper v. Commissioner*[158] the time devoted by the League of Women Voters in discussing issues, formulating alternatives, and agreeing on a position with respect to various legislative measures was taken into account in determining the substantiality of the time spent attempting to influence legislation. Another court impliedly rejected this position by refusing to disallow deductions for contributions to the same organization, because its "sporadic forays into the political arena were of little consequence [when] viewed against the background of the whole of their efforts in behalf of better government."[159] Perhaps the only conclusion that can be reached concerning judicial guidelines in this area is that the absence of accord in defining "substantial" makes the courts' inability to define "influencing legislation" less problematical.

Several commentators have suggested that the restraints imposed by section 501(c)(3) on political activity should be totally or partially removed.[160] Because section 162(e) allows a business expense deduction for direct lobbying activities, organizations such as public interest groups arguably should be permitted to use political means to create an adversary viewpoint representative of segments of society that lack political or economic power. Imposition of political sterility on these organizations also seems contrary to the first and

152. 227 F.2d 907, 1956-1 U.S.T.C. §9135 (6th Cir. 1955).

153. *Id.* at 912, 1956-1 U.S.T.C. at 54,210.

154. *See* Note, *supra* note 151, at 162.

155. Liberty Nat'l Bank & Trust Co. v. United States, 122 F. Supp. 759, 766, 1954-2 U.S.T.C. ¶9537, at 46,403 (W.D. Ky. 1954).

156. Kuper v. Commissioner, 332 F.2d 562, 1964-2 U.S.T.C. ¶9541 (3d Cir.), *cert. denied*, 379 U.S. 920 (1964); League of Women Voters v. United States, 180 F. Supp. 379, 1960-1 U.S.T.C. ¶11,924 (Ct. Cl. 1960).

157. *Compare* Dulles v. Johnson, 273 F.2d 362, 1960-1 U.S.T.C. ¶11,916 (2d Cir. 1959) (donations to a bar association, which reported to the legislature on existing and proposed legislation, held deductible), *with* Hammerstin v. Kelley, 235 F. Supp. 60, 1964-2 U.S.T.C. ¶12,269 (E.D. Mo. 1964), *aff'd*, 349 F.2d 928, 1965-2 U.S.T.C. ¶12,343 (8th Cir. 1965) (contributions to medical society held not deductible because its political and legislative activities were substantial).

158. 332 F.2d 562, 1964-2 U.S.T.C. ¶9541 (3d Cir.), *cert. denied*, 379 U.S. 920 (1964).

159. Liberty Nat'l Bank & Trust Co. v. United States, 122 F. Supp. 759, 766, 1954-2 U.S.T.C. ¶9537, at 46,403 (W.D. Ky. 1954).

160. *See, e.g.*, Garrett, *supra* note 133; Note, *supra* note 151.

fourteenth amendments.[161] Indeed it is difficult to find any basis that justifies this unequal treatment.[162]

Although section 501(c)(3) exempts organizations for "charitable . . . or educational purposes,"[163] the Supreme Court has recently concluded that the common law concept of charity—benefit to the entire society—subsumes all section 501(c)(3) classifications.[164] As a result, section 501(c)(3) status has been denied, for example, to educational institutions that discriminate on the basis of race.[165] The net effect of these varying judicial and administrative interpretations of ambiguous statutory language, exacerbated by arbitrary enforcement, is that an organization cannot be certain of its compliance with the requirements for tax-exempt status. Because an organization attempting to enjoin revocation or denial of section 501(c)(3) status must either demonstrate that it is outside the scope of the section 7421(a) prohibition, or that it can satisfy the stringent *Williams Packing* test, this interpretational uncertainty over the parameters of permissible action places a virtually insuperable burden on the organization.

Lower Court Decisions Granting Injunctive Relief

Informative in determining the scope of section 7421(a) are several recent cases in which taxpayers successfully enjoined the Service from affording tax-exempt status to certain private organizations. Attempts to circumvent federal court integration orders resulted in the formation of numerous white-only private schools, many of which were accorded section 501(c)(3)

161. See Note, *supra* note 151, at 166-76.

162. One counter-argument is that because corporations pay taxes and 501(c)(3) organizations do not, a taxpayer may be forced to support a distasteful viewpoint if exempt groups are allowed to lobby. This ignores, however, the direct tax subsidies such as oil depletion allowances that support the corporate establishment. Additionally, the corporate goal of profit maximization has not suffered because of an overabundance of concern for social issues. The economic power of the country is increasingly concentrated in corporations. *See* Berle, *Property, Production, and Revolution*, 65 COLUM. L. REV. 1 (1965). Corporate subsidies tend to cluster at one end of the socio-economic spectrum. Tax exempt organizations represent virtually the only viable adversary viewpoint with a capability to illuminate the other end. Without indirect tax subsidies through allowances of lobbying, the omnipotence of corporate wealth may tend to impose increasingly unilateral approaches on congressional action.

163. The entire text of §501(c)(3) is set out in note 134 *supra*.

164. In Alexander v. "Americans United," Inc., 94 S. Ct. 2053, 2065 n.10, 1974-1 U.S.T.C. ¶9439, at 84,082 n.10 (1974), it was noted that "the §501(c)(3) revocation is arrived at by the Commissioner not solely by construing the language of §501(c)(3), but by his assertion that that section and §170(a)(1) and (c)(2)(D) are *in pari materia*. Thus, the idiosyncracies of the word 'charitable' in §170(a)(1) are engrafted upon, and entwined with, the 'organized and operated exclusively for religious charitable . . . or educational purposes' standard of §501(c)(3)." *Accord*, Green v. Connally, 330 F. Supp. 1150, 1157-61, 1971-2 U.S.T.C. ¶9529, at 87, 146-49 (D.D.C.), *aff'd per curiam sub nom.* Coit v. Green, 404 U.S. 997, 1972-1 U.S.T.C. ¶9123A (1971) (conclusion that "educational purposes" require actions in best interests of society as a whole, as opposed to a limited group, derived from law of charitable trusts).

165. Green v. Connally, 330 F. Supp. 1150, 1971-2 U.S.T.C. ¶9529 (D.D.C.), *aff'd per curiam sub nom.* Coit v. Green, 404 U.S. 997, 1972-1 U.S.T.C. ¶9123A (1971).

status. In *Green v. Kennedy*[166] black plaintiffs sued for declaratory and injunctive relief, arguing that the exemptions amounted to government aid of racial discrimination in violation of the due process clause of the fifth amendment. Although the Service had changed its position in the interim and construed the Code to exclude such schools from tax-exempt status,[167] the court issued a permanent injunction to ensure the plaintiffs adequate relief.[168] The decision was defended on two grounds. First, discrimination was found to be inconsistent with the common law notion of "charitable."[169] Second, and more compelling,[170] was the fact that affording preferred tax status to institutions following racially discriminatory admissions practices amounted to a frustration of federal policy against racial segregation in education, an impermissible result because "[t]he Code must be construed and applied in consonance with the Federal public policy."[171] While the section 7421(a) bar was not directly asserted in this case,[172] the fact that a taxpayer was permitted to interfere with an IRS determination of section 501(c)(3) status showed that the Service's power in this area is not plenary, a recognition long overdue.

Less than a year later, the question of the Anti-Injunction Act's applicability in this context was brought before the same court.[173] Grasping the

166. 309 F. Supp. 1127, 1970-1 U.S.T.C. ¶9176 (D.D.C. 1970). In the original class action, Green v. Kennedy, 309 F. Supp. 1127, 1970-1 U.S.T.C. ¶9176 (D.D.C. 1970), plaintiffs sought a preliminary injunction prohibiting the Service from granting any future exemptions, pending a determination of whether the schools actually were "part of a system of private schools operated on a racially segregated basis as an alternative to white students seeking to avoid desegregated public schools." *Id.* at 1140, 1970-1 U.S.T.C. at 82,732. A preliminary injunction was issued because the court found that the tax benefits constituted "substantial and significant support by the Government," thus raising a question of constitutional violation if the schools in fact were part of a segregated private school pattern. *Id.* at 1134, 1970-1 U.S.T.C. at 82,728. Additionally, the injunction was issued because of the "probability of irreparable harm to plaintiffs' class and the public interest." *Id.* at 1139, 1970-1 U.S.T.C. at 82,731.

167. News Release, 7 CCH 1970 STAND. FED. TAX REP. ¶¶6790, 6814.

168. It was in the sequel action, Green v. Conally, 330 F. Supp. 1150, 1971-2 U.S.T.C. ¶9529 (D.D.C., *aff'd per curiam sub nom.* Coit v. Green, 404 U.S. 997, 1972-1 U.S.T.C. ¶9123A (1971), that a permanent injunction, covering all the racially discriminating private schools in Mississippi, was issued. The court said: "We think plaintiffs are entitled to a declaration of relief on an enduring, permanent basis, not on a basis that could be withdrawn with a shift in the tides of administration, or changing perceptions of sound discretion." *Id.* at 1170-71, 1971-2 U.S.T.C. at 87,156.

169. This conclusion was reached after an extensive discussion of the law of charitable trusts. 330 F. Supp. at 1157-61, 1971-2 U.S.T.C. at 87,146-49.

170. The court admitted that while there was merit in interpreting Code provisions by reference to the common law background, "the ultimate criterion for determination . . . [is] Federal policy." *Id.* at 1161, 1971-2 U.S.T.C. at 87,149.

171. *Id.* at 1163, 1971-72 U.S.T.C. at 87,151. The court pointed out that federal public policy included the Civil Rights Act of 1964, 42 U.S.C. §§2000c to 2000d-4 (1964). *Id.* at 1164, 1971-72 U.S.T.C. at 87, 151.

172. Notwithstanding this fact, one commentator has suggested that because this case recognized the underlying issue to be one of social policy, it could be used to support the argument that §7421(a) should not bar injunctive relief in a case involving social policy, because there is no question of revenue generation. *See* Comment, *supra* note 30, at 599.

173. McGlotten v. Conally, 338 F. Supp. 448, 1972-1 U.S.T.C. ¶9185 (D.D.C. 1972). The

functional utility of section 7421(a) with a refreshing clarity of thought, the court held that this indeed was a case where the "central purpose of the [Anti-Injunction] Act is inapplicable,"[174] because the plaintiff did not "seek to *limit* the amount of revenue collectible by the United States."[175] The importance of this case lies in its limitation of section 7421(a) to situations in which a revenue effect is discernable.[176] To hold otherwise would afford the Service essentially unlimited power in this area because it would be able to invoke the protective shield of section 7421(a) virtually at will. Thus, a taxpayer beyond the scope of the Anti-Injunction Act, as in this case, should never be subjected to the rigorous examination required under the *Williams Packing* doctrine.

Since *Williams Packing*, there have been few cases in which a taxpayer within the scope of section 7421(a) has been able to overcome its formidable prohibition and obtain an injunction against the Service.[177] A notable exception is the case of *Center on Corporate Responsibility, Inc. v. Schultz*.[178] Plaintiff filed suit when faced with protracted delay over its request for section 501(c)(3) status, despite compliance with all of the Service's suggestions and the apparent favorable stance of the IRS.[179] Shortly thereafter, the Service ruled that the plaintiff was not entitled to section 501(c)(3) status. The court held to the contrary, however, nullifying the exemption denial on

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contested exemptions in this case arose from INT. REV. CODE OF 1954, §501(c)(8), which covers fraternal organizations.

174. *Id.* at 454, 1972-1 U.S.T.C. at 83,752, *quoting* Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7, 1962-2 U.S.T.C. ¶9545, at 85,289 (1962).

175. 338 F. Supp. at 453, 1972-1 U.S.T.C. at 83,751 (emphasis added). In this context the net revenue effect, if any, would be favorable to the Government if plaintiff prevailed. Thus, application of §7421(a) would produce an effect diametrically opposed to the central purpose of the Act. Loss of tax exempt status would produce tax revenue on the organization's income.

The court went on to hold that the provision, which grants a tax deduction for charitable contributions, is a grant of federal financial assistance within the scope of the 1964 Civil Rights Act, as is the exemption provided fraternal orders by §501(c)(8). In contrast, the motion to dismiss was granted as to the nonprofit clubs exempted under §501(c)(7) because that exemption was limited to member-generated funds. In reaching the issue of the constitutionality of federal tax benefits to these groups, the court noted: "The minds and hearts of men may be beyond the purview of this or any other court; perhaps those who cling to infantile and ultimately self-destructive notions of their racial superiority cannot be forced to maturity. But the Fifth and Fourteenth Amendments do require that such individuals not be given solace in their delusions by the government." *Id.* at 454, 1972-1 U.S.T.C. at 83,752.

176. *But see* discussion accompanying notes 201-225 *infra*.

177. Of course, the *Green* and *McGlotten* cases are exceptional, because they were aimed at forcing the Service to *withdraw* or *refrain from granting* such status.

178. 368 F. Supp. 863, 1974-1 U.S.T.C. ¶9118 (D.D.C. 1973), *appeal dismissed*, 9 CCH 1974 STAND. FED. TAX REP. 70,707. The Government had moved to dismiss its appeal. T.I.R. No. 1277; 9 CCH 1974 STAND. FED. TAX REP. ¶6463.

179. The stated purpose of the taxpayer was to "engage in and conduct educational and charitable activities on a non-profit basis to improve and better the conditions of American life and institutions by promoting the development of increased responsibility and awareness on the part of corporate entities and decision-makers to use the corporate institution and power to better the social welfare." *Id.* at 866, 1974-1 U.S.T.C. at 83,047.

procedural grounds.[180] To buttress its conclusion, the court observed that even without this nullification plaintiff was entitled to section 501(c)(3) status because it satisfied the operational test for such groups.[181]

Although the Center had instituted the action as a refund suit for FICA taxes, its primary purpose was clearly injunctive relief. Although this question immersed it in the section 7421(a) quagmire, the district court met the challenge directly by finding that it had the power to grant the requested remedy. Because the FICA refund necessitated resolving the tax-exempt status issue, the court found that the injunctive request would not burden the Government with additional litigation, an ancillary purpose of section 7421(a).[182] Moreover, because the plaintiff was legally entitled to section 501(c)(3) status, "a suit to prevent collection of those revenues [to which there is no legal entitlement] cannot be a suit interfering with the collection of legal revenues, as forbidden by the Statute."[183] Thus, the central purpose[184] of the Act was not contravened. Instead of holding that these facts placed the plaintiff outside section 7421(a), however, the court used them to show that the Center had satisfied the first *Williams Packing* requirement— assured success on the merits.[185] The second prong was established because, *inter alia,*

180. Because the Service failed to comply with a discovery order, which was intended to determine the extent of political influence on the ruling, the court invoked the sanction of FED. R. CIV. P. 37(b)(2)(A), and held plaintiff's allegation of political influence on the Service's decision established as fact.

181. See text accompanying notes 137-140 *supra.*

182. 368 F. Supp. at 879, 1974-1 U.S.T.C. at 83,058. In Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7-8, 1962-2 U.S.T.C. ¶9545, at 85,289 (1962), the Supreme Court noted that "a collateral objective of the [Anti-Injunction] Act [is] protection of the collector from litigation pending a suit for refund."

183. 368 F. Supp. at 879, 1974-1 U.S.T.C. at 83,058.

184. In Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7, 1962-2 U.S.T.C. ¶9545, at 85,289 (1962), the Supreme Court said that the "manifest purpose of §7421(a)" is to assure the Government of "prompt collection of its *lawful* revenue." Where the Government cannot possibly achieve this goal "the central purpose of the Act is inapplicable." (Emphasis added.)

185. In light of its statements, the court's application of the *Williams Packing* doctrine warrants further analysis. As previously indicated (see text accompanying notes 181-184 *supra*), the court found that the plaintiff was not attempting to do anything forbidden by the Act. Nevertheless, it proceeded to analyze the situation until it was satisfied that "the Plaintiff has fully demonstrated that it fits the *exception* to 26 U.S.C. §7421(a) as specified in *Williams Packing.*" 368 F. Supp. at 880, 1974-1 U.S.T.C. ¶9118, at 83,059 (emphasis added). The question then becomes: Why did the court require the plaintiff to show that it satisfied the *Williams Packing* exception to §7421(a) when it had previously found that the plaintiff was not attempting to do anything that §7421(a) condemned? The logical answer is that the court, at least implicitly, viewed the *Williams Packing* situation as the *only* context in which §7421(a) would not bar the action. In other words, the court read the *Williams Packing* statement that "[i]f it is clear that under no circumstances could the government ultimately prevail, the central purpose of the Act is inapplicable," 370 U.S. at 7, 1962-2 U.S.T.C. ¶9545, at 85,289, to mean that certain government defeat on the merits was the *only* case when the Act would not be applied. This rationale rejects the purpose-oriented approach taken in the Gambling Tax cases (*see* text accompanying notes 131-132 *supra*), which would interpret this language in *Williams Packing* to mean that whenever the central purpose of §7421(a) is not served the Act should not be applied, with *Williams Packing's* factual circumstance being merely one example of such a situation.

the organization was exposed to probable extinction if forced into repeated litigation. Further equitable grounds were found in the "dirty hands"[186] of the Service. The court thus held that the plaintiff satisfied the *Williams Packing* requirements, and it enjoined the Service from denying section 501(c)(3) status.

In comparing this case to the most recent Supreme Court decisions in the area,[187] it is of critical importance to note that the Center was able to litigate the section 501(c)(3) issue by instituting the action as an FICA refund suit. Once the plaintiff's right to tax-exempt status had been settled in the FICA controversy, the organization was able to use this determination to prove that it satisfied the strict, first prong of *Williams Packing*. Thus, by raising the question of injunctive relief as a collateral issue in a refund suit, the Center was able to overcome the section 7421(a) bar. Unfortunately, not all groups are able to survive the financial strain involved in waiting to litigate their tax-exempt status in a suit for refund. For less financially solid organizations, section 7421(a) provides a serious threat to survival.[188]

Recent Supreme Court Decisions

On July 10 and July 19, 1970, the Service announced that private schools following racially discriminatory admissions policies would no longer be eligible for tax-exempt status, and that gifts to such institutions could no longer be deducted as charitable contributions.[189] Upon receipt of an inquiry letter regarding its admissions practices, Bob Jones University, a fundamentalist institution, replied that its religious beliefs[190] forbade an open admissions policy. When negotiations reached an impasse, the University

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This rejection of a purpose-oriented approach to the application of §7421(a) appears to comport with the position taken by the Supreme Court in the *Bob Jones* case. See text accompanying notes 204-205 *infra*.

186. 368 F. Supp. 880, 1974-1 U.S.T.C. at 83,058-59. The court pointed principally to the defendants' refusal to grant the exemption despite the fact that the plaintiff had made all the changes the Service had specified as necessary to its receipt of §501(c)(3) status.

187. Bob Jones Univ. v. Simon, 94 S. Ct. 2038, 1974-1 U.S.T.C. ¶9438 (1973); Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 1974-1 U.S.T.C. ¶9439 (1974).

188. It has been estimated that under optimum conditions there would be a one- to two-year time lag between a revocation ruling by the Service and adjudication of an organization's claim of §501(c)(3) status at the district court level. Thrower, *I.R.S. Is Considering Far Reaching Changes in Ruling on Exempt Organizations*, 34 J. TAX. 168 (1971). An appeal would add several additional years to the timespan. *E.g.*, Christian Echoes Nat'l Ministry, Inc. v. United States, 470 F.2d 849, 1973-1 U.S.T.C. ¶9129 (10th Cir. 1973), *cert. denied*, 414 U.S. 864 (1973) (final judicial review of a 1966 revocation, litigated in an F.I.C.A. refund suit, was not concluded until 1973).

189. Rev. Rul. 71-447, 1971-2 CUM. BULL. 230. See text accompanying notes 183-184 *supra*.

190. The school subscribes to the doctrine that God intended the various races of men to live separately, and that intermarriage is contrary to God's will and the Scriptures. *See* Bob Jones Univ. v. Connally, 472 F.2d 903, 904-05, 1973-1 U.S.T.C. ¶9185, at 80,287 (4th Cir. 1973).

filed suit requesting that the Service be enjoined from revoking its tax-exempt status.[191]

"Americans United" (AU), an organization dedicated to the separation of Church and State, had enjoyed section 501(c)(3) status for nearly twenty years. On April 25, 1969, the Service revoked the ruling on the ground that a "substantial" part of the organization's activities constituted attempts to influence legislation.[192] Although AU's *income* tax status was not affected because it was granted a section 501(c)(4) exemption,[193] the ruling caused the organization to be liable for Federal Unemployment (FUTA) taxes.[194] More significantly, AU was removed from the list of organizations to whom tax-deductible contributions could be made.[195] Asserting that the 1969 ruling caused a "substantial decrease in its contributions," AU filed suit for declaratory and injunctive relief from the Service's revocation of its section 501(c)(3) status.[196]

In both cases the Government moved to dismiss the action on the ground that the suit was for the purpose of restraining the assessment or collection of a tax, and thus barred by section 7421(a).[197] Although both the Fourth Circuit in *Bob Jones University v. Connally* and the District of Columbia Circuit in *"Americans United" v. Walters* adopted a purpose-oriented approach, they evolved widely differing tests[198] and reached opposite conclusions as to the applicability of section 7421(a).

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191. *Id.*

192. "Americans United" Inc. v. Walters, 477 F.2d 1169, 1172, 1973-1 U.S.T.C. ¶9165, at 80,216 (D.C. Cir. 1973).

193. INT. REV. CODE OF 1954, §501(c)(4) lists "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. . . . the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes" for exemption under §501(a) from income tax liability only.

194. *See* INT. REV. CODE OF 1954, §§3301, 3306(c)(8). As §501(c)(3) organizations are exempt from social security (FICA) taxes, while §501(c)(4) organizations are not, the shift in AU's status would, in the ordinary case, result in this additional tax burden. But, because AU had been voluntarily paying FICA taxes for more than eight years, it was now incapable of terminating the election even if it had retained its §501(c)(3) status. *See* INT. REV. CODE OF 1954, §§3121(b)(8)(B), 3121(k)(1); Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 1974-1 U.S.T.C. ¶9139 (1974).

195. In order to qualify as a charitable contribution, deductible under INT. REV. CODE OF 1954, §170(a)(1), INT. REV. CODE OF 1954, §170(c)(2)(D) requires that a gift be made to an organization "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . ." Organizations that meet this and the other requirements of §170(c) are listed in the Service's Publication No. 78, "Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954." Because the actions that caused AU's §501(c)(3) status to be revoked also contravened §170(c)(2)(d), the organization was excluded from the "Cumulative List" as well.

196. "Americans United" Inc. v. Walters, 477 F.2d 1169, 1973-1 U.S.T.C. ¶9165 (D.C. Cir. 1973).

197. Bob Jones Univ. v. Conally, 472 F.2d 903, 904, 1973-1 U.S.T.C. ¶9185, at 80,287 (4th Cir. 1973); "Americans United" Inc. v. Walters, 477 F.2d 1169, 1177, 1973-1 U.S.T.C. ¶9165, at 80,217 (D.C. Cir. 1973).

198. The D.C. Circuit limited its inquiry to the effect that the requested relief would have on the taxes of the organization itself. Although an injunction would cause

The Supreme Court granted certiorari[199] to resolve this conflict between circuits. In each case the Court denied injunctive relief, holding section 7421(a) applicable. Although separate opinions were handed down, the cases

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contributions to be deductible, and thus decrease the tax liability of AU's donors, this result was held to be "at best a collateral effect of the action, [beyond] the primary design," and insufficient to trigger §7421(a). 477 F.2d at 1179, 1973-1 U.S.T.C. at 80,221. Moreover AU was exempt from income taxes by virtue of its §501(c)(4) status, its attack was placed "in a posture removed from a restraint on assessment or collection." *Id.* Therefore, the court refused to hold the action barred by §7421(a).

In its original opinion the Fourth Circuit's approach was considerably less constrained. That court found that the withdrawal of Jones University's tax exempt status would subject the organization to tax liability and prohibit donors from taking deductions. Noting that "[e]ither event would result in an increase in taxes," the court held §7421(a) applicable. 472 F.2d at 906, 1973-1 U.S.T.C. at 80,288. While these statements clearly imply that donor-deductibility would be a sufficient reason for invoking §7421(a), the court seemingly retreated from this position in its opinion denying rehearing. Bob Jones Univ. v. Connally, 476 F.2d 259, 1973-1 U.S.T.C. ¶9306 (4th Cir. 1973). There, the court attempted to reconcile its original opinion with *"Americans United"* by noting that, although AU would have been exempt from income taxes regardless of the outcome of the litigation, injunctive relief would have affected Jones University's income tax liability. *Id.* at 260, 1973-1 U.S.T.C. at 80,650. (This distinction, based on the fact that AU had §501(c)(4) status while Jones University did not, was expressly rejected by the Supreme Court. See text accompanying notes 219-220 *infra.*)

The test as originally articulated, however, was accepted and applied by other courts, in one case notwithstanding knowledge of the Fourth Circuit's seeming retreat. *See, e.g.*, Crenshaw County Private School Foundation v. Conally, 474 F.2d 1185, 1973-1 U.S.T.C. ¶9287 (5th Cir. 1973), *cert. denied*, 94 S.Ct. 2604 (1974); Peach Bowl, Inc. v. Shultz, 1973-2 U.S.T.C. ¶9705 (N.D. Ga. 1973). In *Crenshaw*, a nonprofit, religious private school, threatened with termination of its tax-exempt status because it would not publicly advertise a racially nondiscriminatory admissions policy, filed suit requesting that the Service be enjoined from withdrawing its §501(c)(3) exemption. The institution argued that its suit was not for the purpose of restraining the assessment or collection of a tax, because the administrative acts that it sought to enjoin did not constitute an "assessment or collection" of a tax, and because the purpose of the contested acts was to compel compliance with the Government's policy of racially integrated education, not to raise revenue. Stating that it "agree[d] with the Fourth Circuit in *Bob Jones University*," the court rejected both arguments. The reasons for the Government's action were found to be "irrelevant." With respect to the question of whether the Service's actions constituted an "assessment or collection" of a tax, the court, citing *Bob Jones University*, said: "If those rulings are withdrawn, appellant will be liable for taxes on any net income realized by it and contributors to it will not be permitted to deduct from their gross income the amount of their contributions. Either event will result in an increase in taxes. On the contrary, if the injunction issues, any assessment or collection of such increased taxes will be prohibited. Section 7421(a) is directed against that result." 474 F.2d 1185, 118, 1973-1 U.S.T.C. ¶9287, at 80,581-82. The *Peach Bowl, Inc.* court noted that *Bob Jones University* had "impliedly agree[d] that assessment and collection of taxes upon contributors to would-be §501(c)(3) organizations was not sufficient to raise the bar of §7421(a)." 1973-2 U.S.T.C. at 82,284 n.1. But in denying injunctive relief, it declined to follow this logic, opting for the test as originally articulated in *Bob Jones University*, because it agreed with the *Crenshaw* court. *Id.*

199. Bob Jones Univ. v. Simon, 414 U.S. 817 (1973); Alexander v. "Americans United" Inc., 412 U.S. 927 (1973).

will be analyzed together because the Court's rationale in applying section 7421(a) to AU relies and builds upon the *Bob Jones* decision.[200]

Purpose. The question of "purpose" in this context connotes the coalescence of two similar, but distinct issues: the purpose of section 7421(a) and the purpose of the litigation under consideration.

A careful reading of *Williams Packing* suggests that it *can* be read to endorse a purpose-oriented approach to the application of section 7421(a).[201] Noting that "[t]he manifest purpose of §7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention,"[202] the Supreme Court stated that a clear showing of the government's inability to succeed in its claim would make *"the central purpose of the Act . . .* inapplicable," thus permitting "the attempted collection [to] be enjoined if equity jurisdiction otherwise exists."[203] In other words, section 7421(a) should not be applied where a denial of injunctive relief would not serve the central purpose of the statute.[204]

Jones University's attempt to avoid the application of section 7421(a) reflected this approach. It contended that the Service's actions represented an attempt to regulate the admissions policies of private universities, rather than to protect revenue, and thus the case was not one to which the Anti-Injunction Act was meant to apply. The Court rejected this argument, stating that as the Service was attempting "to enforce the technical requirements of the tax laws . . . we cannot say that its position . . . is unrelated to the protection of the revenues. The Act is therefore applicable."[205]

The implications of this conclusion merit further consideration. It must be remembered that section 7421(a) literally prohibits a suit for the *purpose* of restraining the assessment or collection of any *tax*. It does not prohibit a suit that seeks to restrain enforcement of a *Code provision*, nor one that *ultimately results* in restraining a *tax*. Inferring a revenue-protecting *purpose* from an attempt to enforce a Code section requires an unarticulated major premise that the provision is a revenue-raising measure. But such is not the case with section 501(c)(3).[206] Its purpose, rather, is to "assure the existence

200. Bob Jones Univ. v. Simon, 94 S. Ct. 2038, 1974-1 U.S.T.C. ¶9438 (1974); Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 1974-1 U.S.T.C. ¶9439 (1974).

201. *See* Comment, *Applicability of Prohibition of Suits To Restrain Assessment and Collection of Taxes To Revocation of Tax Exemptions Under Section 501(c)(3) of the Internal Revenue Code*, 73 COLUM. L. REV. 1502, 1510-15 (1973), where the commentator articulates the dichotomy resulting from a focus on *purpose* or *effect* and advocates use of the test applied by the D.C. Circuit in *"Americans United."*

202. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 7, 1962-2 U.S.T.C. ¶9545, at 85,289 (1962).

203. *Id.* (emphasis added).

204. *Cf.* cases discussed in note 14 *supra;* Comment, *supra* note 201. The Third Circuit has noted that "section [7421(a)] presupposes a bona fide attempt of the government to collect revenue." Iannelli v. Long, 487 F.2d 317, 318, 1973-2 U.S.T.C. ¶16,098, at 82,728 (3d Cir. 1973).

205. 94 S. Ct. at 2047, 1974-1 U.S.T.C. at 84,069.

206. It is true, of course, that revocation of §501(c)(3) exemption could, in the proper case, result in a change in net revenue. Therefore, the provision could be *used* to generate

of truly philanthropic organizations and the continuation of the important public benefits they bestow."[207] Nor can a purpose of tax assessment be inferred from the factual background giving rise to the Service's action. The proceedings against Jones University were begun "in accordance with an announced policy of withdrawing tax-exemption and deductibility-assurance rulings of schools having racially discriminatory policies."[208] Indeed, the organization had only to conform its admissions policy to the social goals expressed in the 1964 Civil Rights Act in order to have its exemption returned.[209] By finding a mere tax nexus sufficient to trigger section 7421(a), the Court effectively read the word "purpose" out of the Act insofar as the Government is concerned, and repudiated the purpose-oriented approach to the Act's application suggested in *Williams Packing*.[210] An uncollectible assessment has thus been made the *only* situation where the Act will be held inapplicable, rather than merely one example of a case where failure to comport with the central purpose of section 7421(a) placed the action outside the Act.

Both Jones University and AU attempted to persuade the Court that, regardless of the government's objectives, their own purpose was not to restrain any tax. Because Jones University would be liable for FICA, FUTA, and probably income taxes[211] if its suit were successful, the Court had no problem holding that "in any of its implications this case falls within the literal scope and the purposes of the Act."[212] AU, on the other hand, presented a more difficult situation. Because the organization also had a section 501(c)(4) classification, the outcome of the suit would have no effect on its income tax liability. Moreover, AU was already locked into paying FICA taxes,[213] and it

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revenue. At this point, however, we are concerned only with the purpose of the provision itself, and in the words of Commissioner Alexander "the exempt organization provisions of the law must be interpreted in light of their special purpose and their place in the tax law. Their purpose *is not* to raise revenue." BNA Daily Tax Report, Aug. 30, 1973, at J-1 (emphasis added).

207. 94 S. Ct. at 2064, 1974-1 U.S.T.C. at 84,081 (Blackmun, J., dissenting).

208. Bob Jones Univ. v. Conally, 472 F.2d 903, 904, 1973-1 U.S.T.C. ¶9185, at 80,287 (4th Cir. 1973).

209. Bob Jones Univ. v. Connally, 341 F. Supp. 277, 284, 1971-1 U.S.T.C. ¶9245, at 83,882 (D.S.C. 1971).

210. See text accompanying notes 201-204 *supra*. *Compare* the approach taken in the Wagering Tax cases (see text accompanying notes 129-132 *supra*), *with* the suggested implication of the *Center on Corporate Responsibility* rationale. See note 185 *supra*.

211. In support of its claim of irreparable harm, Bob Jones University alleged that it would be subject to "substantial" income tax liability if the Service were permitted to revoke its §501(c)(3) exemption, an allegation that the Court found somewhat difficult to reconcile with the institution's claim that it was not attempting to restrain the assessment or collection of a tax. 94 S. Ct. at 2046, 1974-1 U.S.T.C. at 84,068. But the Court noted that "petitioner's assertions that it will owe federal income taxes should its §501(c)(3) status be revoked are open to debate, because they are based in part on a failure to take into account possible deductions for depreciation of plant and equipment." 94 S. Ct. at 2047, 1974-1 U.S.T.C. at 84,069.

212. *Id.*

213. See note 194 *supra*.

expressed willingness to pay any FUTA taxes.[214] Therefore, the issuance of an injunction could have tax consequences only with respect to the organization's contributors. AU vigorously maintained that such result was not *its purpose.* Instead, its primary design was to "avoid the disposition of contributed funds away from" itself; the removal of tax burdens from contributors was at best a collateral effect.[215] The Court responded by stating that because the organization's objective could be accomplished only by permitting donors to deduct their contributions, the purpose of the suit was "to restrain the assessment and collection of taxes . . . ."[216]

Once again the Court's definition of the word "purpose" goes far beyond the normal characterization. While some element of effect is implicit, the term is normally limited to the object that one *desires* to achieve.[217] Here the Court has included within its meaning all the tax consequences that could conceivably result. Thus, the Court has done implicitly what it expressly stated it would not do; it has made the prohibition of section 7421 coextensive with the Declaratory Judgment Act's ban on suits "with respect to Federal Taxes."[218]

Taxes. Having decided that "purpose" includes the consequences of the action, the Court was next faced with the question of whose tax consequences were included within the Anti-injunction Act's prohibition against restraint of "any tax." While granting injunctive relief would have no effect on AU's tax outlay, it would increase Jones University's assessment.[219] The Court,

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214. "Americans United" had begun paying FUTA taxes in 1970. stating that it preferred to continue doing so rather than challenging their imposition via a refund suit. 94 S. Ct. at 2056 n.4, 2059 n.13, 1974-1 U.S.T.C. at 84,075 n.4, 84,077 n.13.

215. 94 S. Ct. at 2058-59, 1974-1 U.S.T.C. at 84,077.

216. 94 S. Ct. at 2058, 1974-1 U.S.T.C. at 84,077.

217. "Purpose" is defined as "[t]he object toward which one strives . . . [a] result or effect that is intended or desired." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1062 (W. Norris ed. 1971). Moreover, its distinguishing characteristic is that it connotes "what one *proposes* to accomplish . . . in distinction from . . . the *actual* or envisioned outcome." WEBSTER'S NEW DICTIONARY OF SYNONYMS 458 (P. Gove ed. 1973) (emphasis added).

218. 28 U.S.C. §2201 (1970). *See* Bob Jones Univ. v. Simon, 94 S. Ct. 2038, 2044 n.7, 1974-1 U.S.T.C. ¶9438, at 85,066 n.7 (1974); Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 2057-58 n.10, 1974-1 U.S.T.C. ¶9439, at 84,076 n.10 (1974). The Supreme Court's decision, that the scope of the Acts is coextensive, is not unusual. Several courts have agreed with the D.C. Circuit's statement that although the Declaratory Judgment Act is "[l]iterally broader than §7421(a) in its preclusion of tax oriented remedies, the §2201 [Declaratory Judgment] exception has literally been found coterminus [*sic*] with that provided by §7421(a)." "Americans United" Inc. v. Walters, 477 F.2d 1169, 1176, 1973-1 U.S.T.C. ¶9165, at 80,219 (D.C. Cir. 1973); *accord, e.g.*, Tomlinson v. Smith, 128 F.2d 808, 1942-2 U.S.T.C. ¶9540 (7th Cir. 1942); McGlotten v. Connally, 338 F. Supp. 448, 1972-1 U.S.T.C. ¶12,827 (D.D.C. 1972). But the Supreme Court's *focus* is unique. The lower courts have found the Declaratory Judgment Act to be coterminous with the more restrictive language of §7421(a). In contrast, the Supreme Court's interpretation of §7421 has the effect of making that Act's restrictions conform to the broader language of the Declaratory Judgment Act.

219. See text accompanying notes 211-215 *supra.*

however, found this distinction "irrelevant";[220] it would not avail AU because "a suit to enjoin the assessment or collection of *anyone's* taxes triggers the literal terms of section 7421(a)."[221] Consequently, it became necessary to consider the effect of the litigation on contributors to the organization. It was contended that granting the requested injunctive relief would not affect even the donors' tax liability; a fortiori contributors would continue to achieve tax deductibility, even if the injunction were denied, by merely redirecting their gifts to other exempt organizations. The Court rejected this argument, finding it "too speculative to be persuasive."[222] Therefore, because the contributors' tax liability *could* be affected by the outcome of the litigation, section 7421(a) applied.[223]

In his dissent, Justice Blackmun severely reproached the majority for giving such a sweeping definition to the Act's prohibition. He predicted that section 7421(a) would become "an absolute bar to any and all injunctions, irrespective of tax liability, of purpose, or effect of the suit, or of the character of the Service's action."[224] Moreover, he warned that the combination of section 7421(a)'s sweeping prohibition of judicial review and section 501(c)(3)'s lack of clear statutory requirements raised grave concerns about possible administrative abuse.[225]

As suggested by Justice Blackmun's statements, the Court's acceptance of a scintilla of revenue effect as sufficient to trigger the Anti-Injunction Act's prohibition, without consideration of the magnitude of such effect or its nexus to a litigant's primary purpose, appears dubious. When the first revenue effect occurs at the donor level, as in *"Americans United,"* the nexus to primary purpose is slight indeed. Why should a litigant be denied injunctive relief because of an arguable revenue effect of very low magnitude that is far removed from his purpose? He did not, after all, bring a class action. It would seem that a minimum threshold level, beyond which such effect is de minimis in relation to the "central purpose" of the statute, should be defined by the judiciary in order to ensure that a litigant who is properly

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220. Alexander v. "Americans United" Inc., 94 S. Ct. 2053, 2059 n.13, 1974-1 U.S.T.C. ¶9439, at 84,077-78 n.13 (1974).

221. 94 S. Ct. at 2058, 1974-1 U.S.T.C. at 84,077 (emphasis added).

222. This point was addressed in the *Bob Jones* opinion. 94 S. Ct. at 2047 n.10, 1974-1 U.S.T.C. at 84,069 n.10. The court took issue with the premises of the argument that all donors who take §170(c)(2) deductions will both desert those organizations and contribute equivalent amounts to other tax-exempt organizations. *See also* Note 238 *infra*.

223. 94 S. Ct. at 2047 n.10, 1974-1 U.S.T.C. at 84,069 n.10. In his dissent, Justice Blackmun questioned the wisdom of such a broad interpretation. Addressing "Americans United's" assertion that its contributions had "dried up" due to the loss of its favorable ruling letter, resulting in "contributors [finding] other [tax deductible] objects for their bounty," he concluded: "When nothing more than *possible* collateral effect on the revenues is involved, the Court's wide-ranging test of applicability of §7421(a), announced today, is, for me, too *attenuated* and too removed to be encompassed within the intendment of the statute's phrase, 'for the purpose of restraining the assessment or collection of any tax.' " 94 S. Ct. at 2062, 1974-1 U.S.T.C. at 84,080 (Blackmun, J., dissenting) (emphasis added).

224. 94 S. Ct. at 2063, 1974-1 U.S.T.C. at 84,081.

225. See text accompanying note 180 *supra*.

outside the jurisdictional prerequisites to section 7421(a) is not subjected to its strictures. By declining to recognize that the *Williams Packing* criteria are irrelevant in a situation where the revenue effect is so attenuated as to be secondary to the need for equitable jurisdiction, the Court appears to have eschewed the judicial function.[226]

Procedural Adequacy. Although the District of Columbia Circuit held that AU's suit was not barred by section 7421(a) because, *inter alia*, "an alternate legal remedy in the form of adequate refund litigation [was] unavailable,"[227] the Supreme Court found that AU was not being *foreclosed* from judicial review. An FUTA refund suit would provide an opportunity to litigate the legality of the Service's withdrawal of its section 501(c)(3) status. The inability of this remedy to prevent irreparable harm in the form of lost contributions was inconsequential, because it satisfied only the second prong of the *Williams Packing* test.[228]

While the Court's logic with respect to the availability of a legal remedy contains a superficial appeal, a careful analysis places its conclusion in doubt. As implied in both *Bob Jones* and *"Americans United,"* a finding of some alternative access to judicial review of disputed section 501(c) (3) status appears crucial to the application of section 7421(a).[229] In holding that an FUTA refund suit provides the proper litigatory opportunity, the Court said that AU's voluntary payment of these taxes "does not alter this conclusion. A taxpayer cannot render an available *review procedure* an inadequate remedy at law by voluntarily foregoing it."[230]

But is the FUTA action in fact a "review procedure?" That term connotes a method for passing upon the correctness of a decision with respect to a claim,[231] in this case AU's complaint that its section 501(c)(3) status should not have been revoked. But an FUTA refund suit fails to meet this definition for two reasons. First, judicial review is not available based solely on the section 501(c) (3) claim. Rather AU must first raise the issue of its FUTA liability—an issue it did *not* want to litigate—before this route becomes available. Therefore, the FUTA refund suit is not a review procedure for the *wrong complained of,* but rather for a different action that has its roots in a common legal and factual issue. Moreover, the remedy addresses

226. See text following note 249 *infra.*

227. 477 F.2d 1169, 1180, 1973-1 U.S.T.C. ¶9165, at 80, 222 (D.C. Cir. 1973).

228. 94 S. Ct. at 2059, 1974-1 U.S.T.C. at 84,077.

229. In *Bob Jones University* the Court said: "This is not a case in which an aggrieved party has no access at all to judicial review. Were that true, our conclusion might well be different." 94 S. Ct. at 2050, 1974-1 U.S.T.C. at 84,071. Similarly, the Court's refutation of the possibility that "respondent lacks an opportunity to have its claims finally adjudicated by a court of law" in *"Americans United"* implies that such a failing would otherwise have been fatal. 94 S. Ct. at 2059, 1974-1 U.S.T.C. at 84,077.

230. 94 S. Ct. at 2059 n.13, 1974-1 U.S.T.C. at 84,077 n.13 (emphasis added).

231. "Review" is defined: "to *re-examine* judicially," and as a "consideration for purposes of correction." BLACK'S LAW DICTIONARY 1425 (rev. 4th ed. 1968). Clearly, the FUTA refund suit is not for the purpose of correcting the alleged mistake made in determining AU's §501(c)(3) status. *See* text following immediately.

a wrong other than the one with which AU is primarily concerned. It seems an unwarranted distortion of the term "judicial review" to say that it may be satisfied by the availability of another, "manufactured" action.

Even assuming that the FUTA refund suit does provide suitable alternative access to judicial review, there is no assurance of its availability. By deciding to refund the FUTA assessment rather than to litigate, the Service can completely eliminate judicial review of the section 501(c)(3) claim.[232] This conclusion renders curious Justice Powell's statement in the majority opinion that "this is not a case in which an aggrieved party has no access at all to judicial review. *Were that true, our conclusion might well be different.*"[233]

It is worthy of note that the Service's power to moot the litigation is not limited to the FUTA situation; it extends to all Tax Court and refund litigation. In the typical case this power presents no problem. Since the taxpayer is usually concerned with the size of his tax bill, by refusing to contest the issue the Service provides the relief sought. But when an organization's claim to section 501(c)(3) classification is litigated in a refund suit, the desired relief (determination of tax-exempt status) is not obtained from the Service's failure to contest the refund. Thus, by using section 7421(a) in conjunction with a refusal to contest an assessment, the Service is able to preclude judicial review of its section 501(c)(3) determinations. Power of control over the availability of redress in the hands of the one from whom redress is sought is inconsistent with the term "right," and the existence of this power renders the present statutory procedure inadequate for claims of this sort.[234]

Fairness. In discussing the problems faced by an organization seeking judicial review of its section 501(c)(3) status, the Court recognized that "these

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232. In his dissent, Justice Blackmun said: "There is little doubt that the Commissioner possesses the authority to make the refund and moot the suit if he chooses not to litigate the underlying issues." In response to the Commissioner's assertion that such action would amount to impermissible bad faith, he said that it would be virtually impossible for the organization to prove bad faith where, as here, "sound administration may not warrant the time and expense necessary to contest a claim of small amount when vital issues and conceivably profound precedents are at stake." He also noted the possibility that the Service might inadvertently concede the refund. 94 S. Ct. at 2067, 1974-1 U.S.T.C. at 84,084 (Blackmun, J., dissenting). Thus, the FUTA Refund Procedure merely changes the stage at which the Service's decision with respect to an organization's §501(c)(3) status becomes final, rather than guaranteeing access to judicial review.

233. Bob Jones Univ. v. Simon, 94 S. Ct. 2038, 2050, 1974-1 U.S.T.C. ¶9438, at 84,071 (1974) (emphasis added).

234. This inadequacy has not gone unnoticed. *See generally* Worthy, *Judicial Determination of Exempt Status: Has the Time Come for a Change of Systems?*, 40 J. TAX. 324 (1974). There, the commentator suggests that the jurisdiction of the Tax Court include determination of an organization's exempt status. Noting that "there is now a precedent for declaratory judgments in exempt organization matters in the Tax Court in a little noticed provision of the omnibus Pension bill, H.R. 4200," he suggests a similar provision for §501(c)(3) organizations. *Id.* at 327. Commissioner Alexander has endorsed legislation that would provide for such direct appeal. *See* 40 J. TAX. 273 (1974).

avenues of review . . . present serious problems of delay during which the flow of donations to an organization will be impaired and in some cases perhaps even terminated."[235] It held, however, that forcing the organization to meet the standards of section 7421(a) and *Williams Packing* did not amount to a denial of due process of law "in light of the *powerful* governmental interests in protecting the administration of the tax system from premature judicial interference."[236]

In deciding whether a procedure violates the due process clause, the extent of the infringement must be weighed against the asserted governmental interest.[237] In terms of the actual revenue involved, a suit aimed primarily at litigating tax-exempt status, such as AU's, has only a de minimis revenue effect.[238] Detriments to the taxpayer include the delay inherent in the judicial process, a time span frequently measured in years.[239] The typical charitable organization cannot survive such a delay; its very existence depends upon maintenance of a flow of contributions. Even if the organization is able to survive the lack of contributions long enough to litigate the issue, it is faced with additional procedural problems. Refund suits are "geared to a determination of the technical aspects of [tax] liability and not to the larger constitutional issues,"[240] and the relief granted may be inadequate.[241] More-

235. 94 S. Ct. at 2051, 1974-1 U.S.T.C. at 84,072.

236. *Id.* (emphasis added).

237. *See* Roe v. Wade, 410 U.S. 113 (1973).

238. Assuming AU cannot be forced to withhold its FUTA payments, the only revenue restrained by an injunction will be that which otherwise would have become due from contributors to the organization. It would seem that the majority of large contributions are part of an "intelligent tax plan." That is, they are contingent upon the availability of a tax deduction. Therefore, the requested relief would have no revenue effect with respect to these contributions. Such donors would merely reallocate their gifts to other tax-exempt organizations. *See* Garrett, *supra* note 133, at 581-82; Note, *The Revenue Code and a Charity's Politics*, 73 YALE L.J. 661 (1964). Thus, the "governmental interest" is reduced to the minority of donations that come from contributors whose interest in a *specific* organization is such that they will make contributions to it regardless of the tax consequences. There are so many §501(c)(3) organizations with similar goals that a donor can virtually always find another tax-exempt group that will put his money to the same use. Thus, the purpose of the organization is not the controlling factor. Rather, allegiance to the institution is the key. *See* Garrett, *supra* note 133. But even these contributions represent an overstatement of the government's interest. Because §170 charitable contributions are not included in §62 of the Code, they must be deducted *from* adjusted gross income and can be taken only *in lieu of* the standard deduction. *See* INT. REV. CODE OF 1954, §§62, 63, 141, 170. Therefore, donors in this category who elect the standard deduction could not take advantage of the tax benefit regardless of its availability. Consequently, the grant of injunctive relief will have tax consequences only for the subcategory of donors who itemize deductions.

239. *See* note 188 *supra*.

240. 94 S. Ct. at 2067, 1974-1 U.S.T.C. at 84,083. But at least one organization has successfully used a refund suit as a vehicle for vindicating its claim to §501(c)(3) status. See discussion of Center on Corporate Responsibility v. Schultz, 368 F. Supp. 863, 1974-1 U.S.T.C. ¶9,118 (D.D.C. 1973), accompanying notes 178-188 *supra*.

241. It is not at all clear that a district court has the power to grant injunctive relief in a suit for refund. In *Bob Jones*, the Court said: "Petitioner did not bring this case as a refund action. Accordingly, we have no occasion to decide whether the Service is correct in asserting that a district court may not issue an injunction in such a suit, but

over, the organization must contend with the unfettered power that is vested in the Service.[242] The availability of section 501(c)(3) status involves:

> [S]ocial policy . . . a matter for legislative concern. To the extent these determinations are reposed in the authority of the Internal Revenue Service, they should have the system of checks and balances provided by judicial review *before* an organization['s status] . . . is imperiled by an allegedly unconstitutional change of direction on the part of the Service.[243]

Finally, application of section 7421(a) retards the development of clarifying case law,[244] and the resulting ambiguity surrounding section 501(c)(3)'s applicable scope tends to inhibit vital innovation, experimentation, and adaptation.[245]

In the final analysis, the competing considerations in a due process analysis are these: the government is interested in protecting revenues obtainable through a percentage tax assessment on contributions made by those donors who neither follow intelligent tax planning nor take the standard deduction.[246] Arrayed against this need are the interests of the organization and of society. The harm to the organization includes at least irreparable harm and possibly extinction through the loss of donations, and the further possibility that procedural problems may produce nonexistent or inadequate relief. The injury to society stems from the abuse potential inherent in the Service's virtually uncontrolled power over section 501(c)(3) status, and from the "chilling effect" of such power on creative experimentation by tax-exempt organizations. Simply to state these competing factors is sufficient to compel agreement with Commissioner Thrower's statement that to prefer the former over the latter "offends my sense of justice."[247]

A recurring element of the foregoing analysis has been a sense of distortion of reality. In reaching its decision, the Court defined "purpose" to

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is restricted in any tax case to the issuance of money judgments against the United States." 94 S. Ct. at 2051 n.22, 1974-1 U.S.T.C. at 84,072 n.22. Absent such action, it is questionable whether potential contributors would regard a favorable outcome of such suit, which carries with it no assurance of future deductibility, as possessing the reliability of a favorable letter-ruling by the Service.

242. With respect to §7421(a)'s foreclosure of judicial determination of suits for injunctive relief from revocation of §501(c)(3) status, Commissioner Thrower said: "This is an extremely unfortunate situation for several reasons . . . . [I]n practical effect it gives a greater finality to I.R.S. decision than we would want or Congress intended." Thrower, *supra* note 188, at 168.

243. 94 S. Ct. at 2065, 1974-1 U.S.T.C. at 84,082 (Blackmun, J., dissenting).

244. Thrower, *supra* note 188, at 168.

245. *See* 1965 Treas. Dep't Information Rep. on Private Funds, *quoted in* "Americans United," 94 S. Ct. at 2064 n.8, 1974-1 U.S.T.C. at 84,081 n.8 (Blackmun, J., dissenting).

246. See note 238 *supra*.

247. Thrower, *supra* note 188, at 168. This statement was quoted in both the *Bob Jones University* majority opinion, 94 S. Ct. at 2052 n.23, 1974-1 U.S.T.C. at 84,072-73 n.23, and in Mr. Justice Blackmun's dissent in "Americans United," 94 S. Ct. at 2067 n.14, 1974-1 U.S.T.C. at 84,083 n.14.

include any conceivable consequences, and stated that the requisite "tax" effect will be found whenever anyone's taxes are influenced. An awesome barrier to injunctive relief has thus been erected, as demonstrated by the Court's seizure upon an artificial procedure to provide satisfactory alternative relief. The confluence of these factors produces a result that is difficult to reconcile with the notion of fairness.

The Court could have avoided many of the objectionable features of its interpretation by adopting a purpose-oriented approach to the application of section 7421(a).[248] By limiting application of the Act to factual situations in which its central purpose is contravened, the terms "purpose" and "tax" would assume more rational and definite meanings. Particularly, the plaintiff organization would not be barred by the potential effect that its suit would have on the taxes of others. Moreover, it would not be necessary to employ such artificial procedures as FICA and FUTA refund suits as the appropriate forms of relief. Finally, the increased availability of judicial relief would place a needed restriction on the Service's power in this area.

For Congress to carve out a specific statutory exception, providing injunctive relief for section 501(c)(3) groups, is a process measured in years.[249] Certainly in the case of AU any revenue effect caused by litigation of its status was negligible in comparison with the need for judicial review. A judiciary that is not willing to carry out its role as a "feedback system," correcting power imbalances without the legislative time lag, strains the operational efficiency of a tripartite political system. Due process considerations are reduced to responses to "average" factual situations. This is inappropriate in an AU situation where a litigant is effectively barred from access to the courts by an abrogation of jurisdictional powers in favor of an already powerful administrative agency. A limited judiciary function is not compatible with the complex problems facing this society in the future.

CONCLUSION

Although section 7421(a) is undeniably useful in situations where the suit simply delays assessment or collection of taxes, its abuse potential is extremely high in several areas. The statute has been used in conjunction with the jeopardy assessment and wagering tax provisions as a fairly effective harassment tool. The presence of arbitrary assessment appears to be more than occasional, yet there seems to be no effective restraint.

In the area of exempt organizations, it would appear that public policy favors a means of obtaining equity relief in contesting revocation of section

248. But the Court rejected the purpose-oriented approach because: "[W]e think our reading of §7421(a) is compelled by the language and apparent congressional purpose of this statute." 94 S. Ct. at 2059 n.14, 1974-1 U.S.T.C. at 84,078 n.14. By adopting this posture and interpreting §7421(a) as a broadly based prohibition, the Court apparently truncated judicial responsiveness to a litigant's plight.

249. For example, there are indications that the breadth of §501(c)(3)'s prohibition against political activity is the result of an error in draftsmanship. See note 146 *supra*. Yet this language remains intact forty years later.

501(c)(3) status. For example, the political influence in *Center on Corporate Responsibility* served to deny section 501(c)(3) status to a group with ideas and values contrary to those of the current administration, but arguably in the best interests of many poorly represented segments of the American public. This result vividly portrays the abuses that can occur when virtually unfettered power to interpret and enforce social policy is vested in an administrative agency. Certainly, in factual situations like that of *"Americans United,"* the remoteness of any possible revenue effect and the tenuous nexus to a litigant's primary purpose indicate that judicial caution should be observed in permitting section 7421(a) to bar injunctive relief. Otherwise, the Service may be able to rely on section 7421(a) to avoid equity jurisdiction even though the central purpose of the statute is not being contravened.

Recent Supreme Court decisions appear to have sounded the death knell for attempts by the judiciary to delimit the already vast scope of section 7421(a). In fact, under *Bob Jones University* and *"Americans United,"* it would appear that the often fatal loss of contributions stemming from revocation of tax-exempt status can never be challenged in the courts at the preliminary stage. Even if the organization manages to survive, its lack of taxable income would preclude the tax assessment necessary for Tax Court or refund relief. Alternatively, an FICA or FUTA refund suit, aside from the lengthy time factor involved, may not allow litigation of the actual issues. Moreover, it is subject to the whims of the Service, which may moot the litigation before the section 501(c)(3) issues can be reached. Certainly, one cannot find any indication that good faith is in overabundance within this agency[250] in light of the arbitrary assessment techniques sometimes employed in the jeopardy assessment and wagering tax areas.

It appears that legislation is desirable in several areas to provide access to judicial relief. Specifically, it is suggested that exceptions to section 7421(a) be codified to permit organizations to contest Service determinations of tax-exempt status in a suit for injunctive relief. This would permit litigation of the section 501(c)(3) issue before the sweeping prohibitions of section 7421(a) could be imposed, thereby alleviating the problem of ineffective judicial remedies for such groups.[251] Further, within section 501(c)(3) itself, it is recommended that provision be made for tax-exempt organizations to devote a specified portion of their activities to direct lobbying. The purpose of such a provision would be to provide an adversary voice to that of the business and industrial lobbyists, who can deduct lobbying expenses under section 162(e).

Because the Supreme Court has interpreted section 7421(a) to preclude injunctive relief where there is the slightest revenue effect, it seems that the Court has ignored its function as a flexible corrective body, operational when

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250. *See* Clark v. Campbell, 501 F.2d 108, 1974-2 U.S.T.C. ¶9687 (5th Cir. 1974) (opinion quoted at note 85 *supra*); Sherman v. Nash, *** F.2d ***, 1974-1 U.S.T.C. ¶9111 (3d Cir. 1973) (bad faith jeopardy assessment enjoined); Anderson v. Richardson, 354 F. Supp. 363 (S.D. Fla. 1973).

251. See note 234 *supra*.

abuses of the law have occurred. It thus remains to be seen if the protracted methods of legislative remedies will be sufficient or indeed capable of confronting these problems.

RICHARD CANDELORA
JOHN W. HAWKES

Jeopardy and Termination Assessments After *Laing* and *Hall*: Jeopardizing the Fourth Amendment

SAMUEL ROSENTHAL*

The physical power to get the money does not seem to me a test of the right to tax. Might does not make right even in taxation.[1]

Introduction

On January 31, 1973, state troopers searched the home of Elizabeth Jane Hall in Shelbyville, Kentucky, following the arrest of her husband on drug related charges in Texas.[2] The police found controlled substances there. The next day the acting District Director of Internal Revenue notified Mrs. Hall that she owed $52,680.25 in taxes for the first 30 days of 1973.[3] Because she was unable to pay the full amount of the assessment immediately, the Internal Revenue Service seized Mrs. Hall's 1970 Volkswagen, offered it for sale, and took $57 from her bank account.[4] The Service justified the summary seizure of Mrs. Hall's assets on the basis of its power to levy termination assessments.

In *United States v. Hall,* the Supreme Court held that the procedure used against Mrs. Hall failed to comply with the statutory requirement providing for notice to the taxpayer of the tax deficiency within 60 days after the assessment is made and before any seized assets are offered for sale. This notice of deficiency is of critical importance to the taxpayer because it enables him to file a petition with the Tax Court for a redetermination of the deficiency. Because the Court based its decision on the definition of a "deficiency" within the meaning of the Internal Revenue Code, it found it unnecessary to consider the constitutionality of the termination assessment scheme.[5] Nevertheless, the Court specifically

* Cornell University, B.S. 1973, J.D. 1976.

[1] International Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435, 450 (1944) (Jackson, J., dissenting).

[2] United States v. Hall, 96 S. Ct. 473, 478 (1976), *aff'g* 493 F.2d 1211 (6th Cir. 1974), *rev'g* Laing v. United States, 496 F.2d 853 (2d Cir. 1974).

[3] *Ibid.* The District Director "immediately terminated" Mrs. Hall's taxable year, allowing the Service to make a demand for the immediate payment of the tax which was asserted as due.

[4] Counsel for Mrs. Hall asserted that $57 had been taken from her bank account and that the Service "would, or did, seize her paycheck." *Id.* at 478 n.10.

[5] Because the Court decided the case on the basis of the Service's failure to

identified at least two separate constitutional issues which might arise upon a jeopardy assessment. The jeopardy and termination provisions —sections 6851,[6] 6861[7] and 6862[8]—often have been criticized on con-

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issue a deficiency notice and on the definition of a deficiency within the meaning of section 6211(a), it found it unnecessary to reach the taxpayer's contentions that the termination provisions constituted a violation of due process under the fifth amendment. *See* United States v. Hall, 96 S. Ct. 473, 485 n.26 (1976). However, Justice Brennan, in a concurring opinion, indicated that he felt the Court should have considered the constitutional claims and that the procedure did violate fifth amendment due process. Justice Brennan rejected the Service's claim that there were overriding governmental interests at stake which might justify the summary termination assessments. *Id.* at 487.

[6] Section 6851(a)(1) provides for terminating the taxpayer's taxable year:

> If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice for such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

[7] Section 6861(a) provides for jeopardy assessments of income, estate and gift taxes:

> If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

[8] Section 6862(a) provides for jeopardy assessments of taxes other than income, estate and gift taxes:

> If the Secretary or his delegate believes that the collection of any tax (other than income tax, estate tax, gift, and certain excise taxes) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary or his delegate for the payment thereof.

stitutional grounds[9] and have frequently been the subject of calls for legislative reform.[10]

To date, constitutional challenges have focused on the issue of whether or not jeopardy assessments result in a denial of due process in violation of the fifth amendment. Any comprehensive analysis of the jeopardy provisions must also take into account the fourth amendment prohibition against unreasonable searches and seizures[11]—a protection of a set of values different from that which the due process clause safeguards. This article concludes that the fourth amendment is applicable to summary tax seizures and requires the approval of any assessment by a neutral, detached magistrate prior to the seizure of assets. The first part of this article describes the summary seizure procedures available to the Service, the effect that they may have on an assessed taxpayer, and the failure of existing remedies to provide meaningful safeguards against abuse. The second and third parts discuss the constitutionality of the summary seizure provisions in light of the fourth and fifth amendments. The last part analyzes the most recent proposal calling for independent review of jeopardy assessments and considers what remedy should be made available to a taxpayer who has had his assets illegally seized.

Defining the Problem

Procedures for Determining and Collecting Jeopardy Assessments

The Service's authority to impose summary tax assessments gives it wide latitude to deal with delinquent tax payments. Present law au-

[9] *See, e.g.*, Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures*, 22 U.C.L.A.L. REV. 1191 (1975); Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701 (1967); Note, *Jeopardy Terminations Under Section 6851: The Taxpayer's Rights and Remedies*, 60 IOWA L. REV. 644 (1975); Note, *Termination of the Taxable Year: The Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184 (1974).

[10] *See, e.g.*, Tax Reform Act of 1975, H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975); Gould, *Jeopardy Assessments: When They May Be Levied and What to Do About Them*, 18 N.Y.U. INST. 937 (1960); Odell, *Assessments: What Are They—Ordinary? Immediate? Jeopardy?*, 31 N.Y.U. INST. 1495 (1973); Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701 (1967); Note, *Jeopardy Terminations Under Section 6851: The Taxpayer's Rights and Remedies*, 60 IOWA L. REV. 644 (1975); Note, *Termination of the Taxable Year: The Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184 (1974); Note, *Termination of Taxable Year: Procedures in Jeopardy*, 26 TAX L. REV. 829 (1971).

[11] The fourth amendment to the Constitution reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

thorizes the summary assessment and collection of taxes at any time,[12] even before the taxpayer has had a chance to litigate the validity of the assessment.[13] The power to make such assessments is delegated to each of the 64 District Directors[14] and is limited only by agency discretion.[15]

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[12] Jeopardy assessments are authorized at any time after the assessed tax is payable and due. I.R.C. §§ 6861(a), 6862. If the Commissioner determines that a tax payment is in jeopardy before the end of a taxpayer's taxable year he may terminate the taxable period and assess the tax which is due based on the terminated period. I.R.C. § 6851. Finally, where there is any claim for income, estate and gift taxes in bankruptcy and receivership proceedings, the Commissioner may immediately assess any deficiency. I.R.C. § 6871.

While termination assessments are not technically jeopardy assessments (CCH INTERNAL REVENUE MANUAL ¶ 9329, at 28,142 (1974)), because both types of assessments give the Service summary seizure power, this article will discuss both. The Service has stated that it utilizes the same procedures for jeopardy assessments as it does for terminations of a taxpayer's taxable year (except where departing aliens are concerned). *Ibid.* Until recently, the Service maintained that a termination taxpayer need not be given the notice of deficiency which is required in the jeopardy assessment situation. *See* N. 27 *infra.*

[13] Under normal procedures, the Service must send the taxpayer a notice of deficiency, and wait 90 days before seizing the taxpayer's assets. I.R.C. §§ 6212(a), 6213(a). The taxpayer has that 90 days in which to petition the Tax Court for a redetermination of the deficiency. I.R.C. § 6213(a).

[14] Section 6861(a) provides for the Secretary or his delegate to make the determination as to the propriety of each jeopardy assessment. I.R.C. §§ 6861(a), 6851(a). In practice, the recommendation for a jeopardy assessment is processed through the Service division in which it originates, either audit or intelligence, and then is approved by the chief of the division. However, prior to actually levying the assessment all recommendations must be channelled through the audit division and approved by the District Director or acting District Director. Reg. § 1.6851–1(a); CCH INTERNAL REVENUE MANUAL ¶ 9329, at 28,142 (1974).

[15] The decision by the District Director is nonreviewable. *See, e.g.,* Transport Mfg. & Equipment Co. v. Trainor, 382 F.2d 793, 799 (8th Cir. 1967) ("[C]ourts have refused to scrutinize the grounds underlying the Director's determination of jeopardy and have accordingly declined to substitute their judgment for that of the Director."); Lloyd v. Patterson, 242 F.2d 742, 744 (5th Cir. 1957) ("It is within the sole legal discretion and judgment of the Commissioner to determine when this authority is to be exercised."); Homan Mfg. Co. v. Long, 242 F.2d 645, 655 (7th Cir. 1957), *cert. denied,* 361 U.S. 839 (1959); Publishers New Press, Inc. v. Moysey, 141 F. Supp. 340, 343 (S.D.N.Y. 1956); Communist Party, U.S.A. v. Moysey, 141 F. Supp. 332, 336 (S.D.N.Y. 1956); Foundation Co. v. United States, 15 F. Supp. 229, 246 (Ct. Cl. 1936); Estate of Kohler, 37 B.T.A. 1019, 1030 (1938); Brown-Wheeler Co., 21 B.T.A. 755 (1930); Continental Products Co., 20 B.T.A. 818, 828 (1930); James Couzens, 11 B.T.A. 1040, 1158 (1928). *See also* Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures,* 22 U.C.L.A.L. REV. 1191, 1195 (1975); Odell, *Assessments: What are They—Ordinary? Immediate? Jeopardy?,* 31 N.Y.U. INST. 1495, 1507 (1973); Note, *Jeopardy Assessment: The Sovereign's Stranglehold,* 55 GEO. L. J. 701, 702 n.13 (1967); Note, *Termination of Taxable Year: Procedures in Jeopardy,* 26 TAX L. REV. 829 (1971).

Judicial review may be available, however, to determine whether the District Director's decision to levy a jeopardy assessment was such an abuse of discretion

Furthermore, there are no limitations in the Code as to the scope of the power delegated to the Service. Almost all property is subject to a lien or actual seizure,[16] without regard to the actual value or amount of the property[17]; the amount of the jeopardy assessment is not limited to the amount of the anticipated tax or to the amount specified in the notice of deficiency sent to the taxpayer after the initial assessment.[18]

The power vested in the District Director is triggered whenever he "believes that the assessment or collection of a deficiency . . . will be jeopardized by delay."[19] Similarly, with regard to terminations of the taxpayer's taxable year under section 6851,[20] the director is authorized to use summary seizures whenever he finds that the taxpayer's conduct suggests that the collection of the tax would be jeopardized under ordinary collection procedures.[21] Although the Service has, by its own initiative, specified what conduct is necessary to indicate when the collec-

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as to fail to satisfy even the minimal requirements under the statute, *i.e.*, that there existed a belief that the tax payment would be jeopardized by delay. *See, e.g.*, Rinieri v. Scanlon, 254 F. Supp. 469, 474 (S.D.N.Y. 1966) (granting summary judgment for the taxpayer in a refund suit under section 6851 where the court found the government's action to be "arbitrary, capricious and unconscionable").

[16] Section 6331 provides that failure to pay a federal tax authorizies a levy "upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided . . . for the payment of such tax." *See* Field v. United States, 263 F.2d 758, 763 (5th Cir. 1959). Section 6334(a) exempts from seizure (1) wearing apparel and school books; (2) fuel, provisions, furniture and personal effects not exceeding $500 in value; (3) books and tools of a trade, business or profession not exceeding $250 in value; (4) unemployment benefits; (5) undelivered mail; (6) certain annuity and pension payments; (7) workmen's compensation; and (8) salary, wages or other income necessary to comply with a court order providing for support of a minor child.

[17] Sections 6861(a) and 6862(a) specify only that the District Director is able to assess the tax or deficiency "together with all interest, additional amounts, and additions to the tax provided for by law." In one case the amount of the jeopardy assessment was $19,500,000. United States v. First National City Bank, 379 U.S. 378 (1965).

[18] I.R.C. § 6861(c). Although section 6212(c) prohibits additional deficiencies after the petition is filed in the Tax Court, it does not prevent additional assessments in excess of the amount specified in the prior deficiency notice.

[19] I.R.C. § 6861(a).

[20] I.R.C. § 6851(a).

[21] *See generally* Kaminsky, *Administrative Law and Judicial Review of Jeopardy Assessments Under the Internal Revenue Code*, 14 TAX L. REV. 545, 556–60 (1959). Kaminsky argues that the use of the word "believes" in section 6861(a) was intended by Congress to require an actual finding on the part of the Secretary or his delegate, in which case the District Director's finding at least would be subject to review under the Administrative Procedure Act. Although section 6851 uses the word "finds" to describe the Secretary's determination, it has not been suggested that the use of the two different words suggests a different level of determination by the District Director with respect to each section of the Code.

tion of a tax payment would be jeopardized by delay,[22] it would not be subject to meaningful judicial review for failing to meet its own criteria.[23] Unfortunately, there is evidence that the Service has not limited itself in the past to its stated criteria for determining when a tax payment is in jeopardy.[24]

In addition to having a wide degree of discretion in determining when to use its summary assessment power, the Service also has a great deal of control in deciding how to carry out a summary assessment. Once the government determines that a deficiency exists it is then authorized to (1) assess, (2) notify the taxpayer and demand payment and (3) levy upon or seize all of the taxpayer's property.[25] There is no requirement that a taxpayer receive the statutory notice of deficiency prior to having his assets seized and, in fact, notice demand and seizure may occur contemporaneously.[26] Even though the government may send the taxpayer the required statutory notice of deficiency any time within 60 days after the summary assessment is made,[27] the effect of the assessment is immediate. Although the summary assessment is not a final de-

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[22] The *Internal Revenue Manual* states:

> Before a jeopardy assessment may be made, at least one of the three following conditions must exist unless prior approval has been secured from the Director, Audit Division:
>
> (a) the taxpayer is or appears to be designing to depart quickly from the United States or to conceal himself.
>
> (b) the taxpayer is or appears to be designing to quickly place his property beyond the reach of the government either by removing it from the United States, by concealing it, by transferring it to other persons, or by dissipating it.
>
> (c) the taxpayer's financial solvency is or appears to be imperiled.

CCH INTERNAL REVENUE MANUAL ¶ 9329, at 28,142 (1974).

[23] *See* N. 15 *supra*. This point is apparently true even though the law is clear on the point that administrative regulations are binding on the administrator and limit his otherwise unfettered discretion.

[24] *See* the text accompanying Ns. 39–46 *infra*. *See also* United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub. nom.* United States v. Dono, 428 F.2d 204 (2d Cir.), *cert. denied*, 400 U.S. 829 (1970).

[25] I.R.C. §§ 6861(a), 6862(a).

[26] I.R.C. § 6331(a).

[27] I.R.C. § 6861(b). The statutory notice of deficiency is required before the taxpayer can litigate the amount of the deficiency in the Tax Court. *See, e.g.*, Rambo v. United States, 492 F.2d 1060, 1062 n.3 (6th Cir. 1974) ("Such a deficiency notice . . . is a jurisdictional prerequisite to the right to petition the Tax Court for a redetermination of the tax."). Recently, the Supreme Court held that the notice of deficiency required to be sent the taxpayer under section 6861(b) must also be sent where the taxpayer's tax year is terminated pursuant to section 6851. Laing v. United States, 96 S. Ct. 473 (1976); United States v. Hall, 96 S. Ct. 473 (1976).

Although the assessment may be invalidated if the Service fails to send the deficiency notice within the 60 day period, under sections 6861 and 6862, the Service may make additional assessments despite the invalidity of initial assessments.

termination of the balance due the government,[28] it has the force of a judgment,[29] and upon notice and demand for payment an assessment becomes a lien on all of the taxpayer's assets.[30] If the Service wishes, it may use powers which it does not have in the ordinary assessment situation[31] and immediately seize all of the taxpayer's assets pending a decision by the Tax Court.[32]

The determination of whether or not a taxpayer's projected tax payment is actually in jeopardy is entirely committed to agency discretion. Although the Service has indicated that they will use the jeopardy assessment procedure "sparingly,"[33] there is no provision within the Code providing for independent review of the Commissioner's determination of jeopardy. The review which is available does not come until several months or years after a taxpayer has had his assets subject to either a

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See, e.g., United States v. Ball, 326 F.2d 898 (4th Cir. 1964). Berry v. Westover, 70 F. Supp. 537 (S.D. Cal. 1947); W. Cleve Stokes, 22 T.C. 415 (1954).

[28] United States v. Hardy, 299 F.2d 600 (4th Cir.), *cert. denied*, 370 U.S. 912 (1962).

[29] *See* Citizens Nat'l Trust & Sav. Bank v. United States, 135 F.2d 527, 528 (9th Cir. 1943); United States v. Peelle Co., 131 F. Supp. 341 (E.D.N.Y.), *aff'd*, 224 F.2d 667 (2d Cir. 1955); United States v. Canadian Am. Co., 100 F. Supp. 721 (E.D.N.Y. 1951).

[30] I.R.C. §§ 6321, 6322.

[31] Normally, the Service must send a "notice and demand" letter to the taxpayer, and wait ten days before levying upon the taxpayer's property. I.R.C. § 6331(a).

[32] In certain instances the Service has the power to dispose of the seized property. Under section 6861(a), the Service can sell the property if the taxpayer consents, or if the property is unduly expensive to maintain or is perishable. I.R.C. § 6863(b)(3)(B). However, unless the sale is justified under one of these exceptions, the Service is prohibited from disposing of the seized assets while the petition for a redetermination is pending before the Tax Court or while such proceedings are pending. I.R.C. § 6863(b)(3)(A). Where the Service improperly sells the taxpayer's assets, the taxpayer may be able to enjoin the sale. *See* Smith v. Flynn, 262 F.2d 781 (8th Cir. 1958), *modified per curiam*, 264 F.2d 523 (8th Cir. 1959).

Where the seizure of property is authorized under section 6862, the Service is authorized to sell the property before the taxpayer has a chance to litigate the validity of the assessment. STAFF OF THE HOUSE COMMITTEE ON WAYS AND MEANS, 94TH CONG., 1ST SESS., JEOPARDY AND TERMINATION ASSESSMENTS (Comm. Print 1975). In section 6862 seizures the Tax Court does not have jurisdiction and the taxpayer can only sue for a refund after payment. I.R.C. §§ 6214, 7442. Until recently, the law was unclear with respect to seizures pursuant to section 6851 terminations. However, *Laing* and *Hall* make clear that the provisions governing the sale of assets under section 6861 now apply to termination assessments under section 6851.

[33] The *Internal Revenue Manual* states: "Jeopardy assessments should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. They should be limited to amounts which reasonably can be expected to protect the Government's interest." CCH INTERNAL REVENUE MANUAL ¶ 9329, at 28,142 (1974).

lien or seizure, and does not include a reappraisal of the Commissioner's belief that the tax payment was in jeopardy.[34]

Impact of Summary Seizure Procedures on Taxpayer and Potential for Abuse

After reviewing the Service's summary seizure power, one court concluded that "a jeopardy assessment is a statutory label for the sovereign's stranglehold on a taxpayer's assets."[35] This characterization accurately describes the ability of a sudden jeopardy or termination assessment to choke off all of the taxpayer's resources.[36] The Code's summary seizure provisions deny the taxpayer access to resources which he needs in order to hire competent counsel or an accountant with which to adequately contest the tax liability,[37] or even funds to meet the everyday demands of living expenses.[38] Furthermore, despite the Service's recent proclamation that they will use the summary assessment power sparingly, a

[34] *See, e.g.*, Veeder v. Comm'r, 36 F.2d 342 (7th Cir. 1929); Adler v. Nicholas, 70 F. Supp. 514 (D. Colo. 1946), *rev'd on other grounds*, 166 F.2d 674 (10th Cir. 1948); Foundation Co. v. United States, 15 F. Supp. 229 (Ct. Cl. 1936); Brown-Wheeler Co., Inc., 21 B.T.A. 755 (1930); David Gray, 12 B.T.A. 956 (1928); Luman W. Goodenough, 12 B.T.A. 935 (1928); Paul R. Gray, 12 B.T.A. 916 (1928); James Couzens, 11 B.T.A. 1040 (1928).

[35] Homan Mfg. Co. v. Long, 242 F.2d 645, 651 (7th Cir. 1957), *cert. denied*, 361 U.S. 839 (1959).

[36] The power of the Service is not limited to placing a lien on the taxpayer's property but also extends to seizure of his assets. Although the Code contains certain exemptions, these will often represent a minor portion of the taxpayer's assets. *See* N. 16 *supra*.

[37] In Lloyd v. Patterson, 242 F.2d 742 (5th Cir. 1957), the Service filed a federal tax lien pursuant to a jeopardy assessment "against all the properties of Lloyd in favor of the United States," amounting to $165,631.25. Although the taxpayer argued that the lien would effectively leave him without sufficient assets to hire competent legal and accounting services to meet the civil and criminal charges then pending against him, the court concluded that even if proven, the taxpayer's allegations would not be "extraordinary and exceptional circumstances warranting the cancellation or abatement of the lien or enjoining the collection." 242 F.2d at 744. *See also* United States v. Rubio, 404 F.2d 678 (7th Cir. 1968), *cert. denied*, 394 U.S. 993 (1969) (taxpayer alleged that the seizure of his assets and subsequent return of only $1,000 denied him effective assistance of counsel in criminal charges then pending against him).

[38] *See, e.g.*, Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974) ("every meaningful asset" of the taxpayer seized); Kimmel v. Tomlinson, 151 F. Supp. 901, 902 (S.D. Fla. 1957) ("*every bit* of property (inclusive of bank accounts) of both taxpayers (and their wives) had been seized" (emphasis in original)). *See also* Clark v. Campbell, 501 F.2d 108, 122–123 (5th Cir. 1974), citing Gould, *Jeopardy Assessments: When They May Be Levied and What to Do About Them*, 18 N.Y.U. INST. 937 (1960): "The taxpayer may become 'indigent overnight' . . . . : 'The action of freezing the assets of the taxpayers prevents them from paying fire insurance premiums on their property, making necessary repairs, paying real estate taxes and from using their funds for the protection of their property and for ordinary living expenses.' "

review of case histories suggests that the Service seeks to maximize the impact that a termination or jeopardy assessment has on the taxpayer and that it fails to make certain that each computed assessment is justified.[39] Although this may have been an unintended consequence under the statutory scheme, the summary seizure power may leave the taxpayer totally without assets to defend against arbitrary governmental action and at the whim of the Service.

Additionally, the Service has been criticized for using its summary seizure power to accomplish ends sought by other law enforcement agencies.[40] In the area of narcotics enforcement, the Service had set up one project which was intended to combine tax enforcement procedures with weapons generally available to the government to combat illegal narcotics.[41] As a result of this arrangement, the Service used the summary seizure power at their disposal to penalize taxpayers suspected of

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[39] *See, e.g.*, Odell, *Assessments: What Are They—Ordinary? Immediate? Jeopardy?*, 31 N.Y.U. INST. 1495 (1973). Odell argues that "the Internal Revenue Service usually makes the jeopardy assessment by computing the greatest liability possible and immediately attempting to collect this amount by summary procedures, leaving the taxpayer denuded of all of his worldly possessions." *Id.* at 1512. *See generally* the cases collected therein: Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969) (jeopardy assessment of $282,440); Homan Mfg. Co. v. Long, 264 F.2d 158 (7th Cir. 1957), *cert. denied*, 361 U.S. 839 (1959) (jeopardy assessment of $3 million where Service admitted maximum tax liability of $300,000); Melvin Bldg. Corp. v. Long, 262 F.2d 920 (7th Cir. 1958) (jeopardy assessment of $550,000 where maximum tax due was $58,000).

[40] *See, e.g.*, Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures*, 22 U.C.L.A.L. REV. 1191 (1975); Silver, *Terminating the taxpayer's taxable year: How IRS uses it against narcotics suspects*, 40 J. TAXATION 110 (1974); Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701 (1967).

[41] *See* Silver, *Terminating the taxpayer's taxable year: How IRS uses it against narcotics suspects*, 40 J. TAXATION 110 (1974); *Taxing Tactic: The IRS Swiftly Grabs Drug Suspects' Assets in Crackdown Effort*, Wall Street J., April 10, 1974, at 1, col. 1 (West Coast Ed.). Silver cites an *Internal Revenue Manual* supplement, dated November 10, 1971, which describes the Service's "Narcotics Project" as designed to " 'disrupt the distribution of narcotics through the enforcement of all available tax statutes . . . maximum use [is to be] made of jeopardy, quick, and transferee assessments, and termination of taxable periods.' " 40 J. TAXATION at 111 n.1. In addition, Silver cites a directive from one of the District Directors to his field personnel: "The Phoenix District is fully committed to the narcotics traffickers project. An integral function to the success of the operation is the prompt termination of tax years, etc. When we are in possession of facts which warrant such action . . . procedures will be developed so that terminations, etc., can be made in less than two hours . . . . Emergency situations may be handled orally and covered thereafter by written reports." *Id.* at 110.

The Service has stated that it has terminated the narcotics traffickers program. Referring to an internal audit report, Commissioner Donald Alexander testified before the House Committee on Ways and Means:

I think that report dealt with a program of the Internal Revenue Service which

violating the narcotics laws,[42] and to deprive them of capital which the Service believed was being used in illegal activities.[43] In one case a jeopardy assessment was used to seize "every meaningful asset" of a taxpayer, merely on the basis of the government's "vague suspicion" that the taxpayer had been involved in illegal activities.[44] The tendency for abuse of the Service's power in such arrangements is clear: Instead of using the summary seizure power only to protect the legitimate governmental interest in the collection of taxes, present law encourages both the Service and the police to disregard constitutionally mandated procedures for ferreting out crime,[45] and to substitute for them an arbitrary system based on expediency.[46]

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we have terminated, a narcotics program. We are in favor of narcotics traffickers paying their taxes.

They are called on to do so, and the penalties for nonpayment and tax evasion apply to them. However, we are not in favor of using tools or weapons or powers given us to enforce the tax laws as a means to achieve other goals, however worthy.

Hearings on Proposals for Administrative Changes in Internal Revenue Service Procedures, Before the Subcommittee on Oversight of the House Committee on Ways and Means, 94th Cong., 1st Sess. 373 (1975).

[42] *See* STAFF OF THE SUBCOMMITTEE ON INTERNAL REVENUE TAXATION, 85TH CONG., 1ST. SESS., PROGRESS REPORT ON INTERNAL REVENUE ADMINISTRATION 73 (Comm. Print 1957), *cited in* Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 704 (1967) ("a frequent complaint is that jeopardy assessments are being used in specific instances for punitive and not revenue purposes").

[43] *See Hearings on Proposals for Administrative Changes in Internal Revenue Service Procedures, Before the Subcommittee on Oversight of the House Committee on Ways and Means*, 94th Cong., 1st Sess. 380 (1975): "As the Narcotics Traffickers Project progressed, the Service became increasingly concerned about the emphasis placed upon depriving narcotics traffickers of their working capital as opposed to emphasis that should be placed on enforcing the tax laws."

[44] Willits v. Richardson, 497 F.2d 240, 245 (5th Cir. 1974). The court summarized the Service's evidence upon which the jeopardy assessment was based as "scanty and largely inaccurate information which, at best, amounted to nothing more than a vague suspicion that [the taxpayer] must have come by her jewelry and cash by improper means since she admitted that she gambled for a living and was being kept by a man who police believed was dealing in narcotics." (Footnote omitted.) *See also* Aguilar v. United States, 501 F.2d 127, 130 (5th Cir. 1974), in which the Service seized an alien taxpayer's truck and money, "with no more than a vague suggestion that the Government 'suspected' that these strangers were trafficking in drugs."

[45] *See, e.g.*, United States v. Bonaguro, 294 F. Supp. 750, 753–54 (E.D.N.Y. 1968), *aff'd sub nom.*, United States v. Dono, 428 F.2d 204 (2d Cir.), *cert. denied*, 400 U.S. 829 (1970): "The inference is—in short—that [the Service] had not acted under the statute to protect the revenue interest and collect a tax that seemed to be in jeopardy, but had made a merely colorable use of the statutory forms at the suggestion of another agency of government in accordance with a pattern of conduct that is not strange to the courts." *See also* Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974).

[46] The court in Willits v. Richardson, 497 F.2d 240, 246 (5th Cir. 1974), con-

A further danger posed by the Service's summary seizure power is that the mere threat of an assessment can have the effect of coercing taxpayers into complying with the government. For instance, in *Fortugno v. Commissioner*,[47] the Service told a group of taxpayers after an audit that "they stood in danger of jeopardy assessments and possible criminal proceedings."[48] After two months of negotiating with the Service the group of eight taxpayers comprising the family partnership under investigation agreed to deposit with the District Director $1 million, to be credited against any tax deficiencies which the District Director might find. Despite the fact that the Service later agreed to reduce the aggregate deficiencies to one tenth the original amount, or a sum slightly in excess of $100,000,[49] the court found that under the statute the taxpayers were not entitled to interest on the additional amount which they had felt compelled to deposit with the District Director.[50]

Similarly, in *Foundation Co. v. United States*,[51] the taxpayer agreed to comply with Service demands, presumably in order to avoid an impending seizure of his property. After a telephone conversation with the

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cluded:

> The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use.

An additional criticism of the narcotics project is that it fosters the type of relationship between Service agents and police which encourages violations of constitutional rights by one agency in the hope that fruits of that illegality can successfully be used by the other agency to prosecute the individual in question. Several cases suggest that the Service does seek to use evidence obtained in illegal searches and seizures by police in order to compute jeopardy assessments or to bring civil charges of tax deficiencies. *See, e.g.*, Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969); Yannicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1972); Efrain T. Suarez, 58 T.C. 792 (1972).

[47] 353 F.2d 429 (3d Cir. 1965), *cert. dismissed*, 385 U.S. 954 (1966).

[48] 353 F.2d at 430.

[49] The Service's original prediction was based on its mistaken view that Anthony Fortugno was the sole owner of the Hudson Manure Co., from which the tax liability generated. The Service changed its claim when the Superior Court of New Jersey ruled that the company was owned by an eight way partnership.

[50] The court found that the Service had not actually made an assessment against the taxpayers nor had it acquiesced in a proposed deficiency. Consequently, the court ruled that the payments deposited with the District Director were not overpayments within the meaning of the statute providing for interest on overpayments.

[51] 15 F. Supp. 229 (Ct. Cl. 1936).

Commissioner, the taxpayer agreed to waive the statute of limitations which was about to terminate and not to file any claim for an abatement or a bond. The Commissioner immediately postponed the collection of an assessment which had been computed for $447,623.09.[52] The court found that although the assessment had not been made because of any fear that the collection of the tax would be jeopardized by delay, the Commissioner's reasons for making the assessment were not subject to review and the taxpayer was foreclosed from recovering any additional tax which might have been over assessed. The court found that the taxpayer had waived any right to have the Commissioner's determination of the amount reviewed since he had not filed the bond required for such review before the Tax Board.[53]

The summary seizure power also gives the Service the ability to extend the statute of limitations which would otherwise prevent the assessment of additional taxes beyond the normal three-year period.[54] Because the notice of deficiency need not be sent until 60 days after an assessment, the Service can assess the taxpayer immediately prior to the termination of the limitations period and wait 60 days before mailing the notice of deficiency.[55] This enables the Service to extend the statute

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[52] Although the causal connection between the taxpayer's offer to waive the statute of limitations and not to file a claim for an abatement or a bond and the Commissioner's decision to postpone the immediate collection of the assessment is speculative, it is at least arguable that the possibility of having an immediate seizure of his assets amounting to $447,623.09 was a paramount concern to the taxpayer.

[53] The court stated "the Commissioner did not make the jeopardy assessment because of any apprehension or belief on his part that collection of the tax would be jeopardized by the inability of the plaintiff to pay the amount which appeared at that time to be due." 15 F. Supp. at 245.

[54] *See* Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 719–22 (1967).

Sections 6501(a) and 6501(c)(2) provide that the applicable statute of limitations for tax deficiencies which are not "willful attempts to evade" the payment of a tax, is three years. However, taxpayers who fail to file any return may be subject to a deficiency assessment at any time, and a return which omits more than 25 percent of the property which is includable in gross income subjects its maker to a deficiency assessment for up to six years. I.R.C. §§ 6501(c)(3), 6501(e).

[55] Once the notice of deficiency is sent, the statute of limitations stops running for 60 days beyond the period during which the Service is prohibited from making additional assessments. I.R.C. § 6503(a)(1). As a result, the limitations period does not include the time during which the petition for redetermination is filed with the Tax Court and pending, when subsequent appeals are taken and an additional 60 days. The extension does not apply to the deficiency upon which notice is based, and hence, the Service cannot increase the deficiency. *See* Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 720 n.125 (1967), *citing* Comm'r v. Wilson, 60 F.2d 501 (10th Cir. 1932).

of limitations for an additional 60 days, thereby giving it further time to complete the audit. Although it may be argued that the statute of limitations does not confer a right upon the taxpayer but is only a matter of legislative grace,[56] the statutory language embodying the limitations period does not provide any support for this practice.[57]

Finally, the summary tax seizure provisions have been criticized as being potentially detrimental to the exercise of constitutional rights not necessarily connected with property interests.[58] Although the Service does maintain a procedure of internal controls over its assessment authority and has announced a policy of self-restraint in using its power, something more may be necessary. The past misuse of power under the Code, together with current allegations of Service wrongdoing generally,[59] indicate the need for meaningful limitations which currently do not exist.

Failure of Existing Remedies to Provide Meaningful Safeguards

Statutory Safeguards

The Code does include provisions intended to safeguard taxpayer interests:

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[56] Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945).

[57] Section 6501 provides simply that "the amount of any tax imposed by this title shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed) . . . and no proceeding in court without such assessment for the collection of such tax shall be begun after the expiration of such period."

[58] *E.g.*, sixth amendment right to counsel, see I.R.C. §§ 6321, 6322; Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures*, 22 U.C.L.A.L. REV. 1191, 1210 (1975); fifth amendment privilege against self-incrimination, see Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969); fourth amendment prohibition against unreasonable searches and seizures, see Tarlow *supra* at 1208–209; first amendment freedom of the press, see Publishers New Press Inc. v. Moysey, 141 F. Supp. 340 (S.D.N.Y. 1956) (allegations that jeopardy assessments were used to prevent publication of newspaper, and not to protect collection of taxes).

[59] *See, e.g., IRS Chief Says Pressures Prompt Some Tax Audits*, Los Angeles Times, Oct. 3, 1975, at 1, col. 1 (quoting Commissioner Alexander as admitting that a "special services staff" (SSS) had been set up to investigate protestors, including columnist Joseph Alsop, former New York Mayor John Lindsey, actress Shirley MacLaine, the National Education Ass'n, and the American Jewish Congress. Alexander admitted that the SSS had gone "way beyond the primary mission of the IRS"); *I.R.S. is Now Collecting Much More than Taxes*, N.Y. Times, April 20, 1975 (stating that Commissioner Alexander had admitted that the Service had operated a special school for undercover agents. One such use of the trained agents was "Operation Leprechaun," a Miami operation in which data was gathered on the sex lives and drinking habits of 30 Florida political figures).

(1) The taxpayer may post a bond to stay the collection of the assessment.[60]

(2) The Service may not sell any of the seized assets pending a determination by the Tax Court.[61]

(3) The Service has the power to abate an unreasonable assessment.[62]

(4) The taxpayer may seek judicial review under the statute.[63]

However, the statutory remedies do not provide the taxpayer with a means of questioning the validity of the Service's determination of jeopardy. Instead, they only attempt to ameliorate the hardship which results under the summary seizure power. Because the remedies available to the taxpayer do not give him a chance to question the underlying reasons for the assessment, the statutory safeguards do not minimize the potential for abuse. Furthermore, the statutory remedies fail in their essential purpose and are of only limited utility in lessening the hardship which occurs as a result of the seizure power.

Posting a Bond. The first statutory safeguard afforded the taxpayer is the ability to stay the collection of the assessment or the continued possession by the Service of the assets pending the determination of his case in the Tax Court by posting a bond.[64] The remedy fails in its primary purpose of protecting taxpayer interests since the statute requires that the bond be equal in amount to that of the assessment.[65] The Service can obviously frustrate the use of this remedy by depleting the taxpayer's resources with which he might have posted the necessary bond or by utilizing its discretion to foreclose the posting of the bond until irreparable injury has occurred.[66] A large assessment which is not in-

[60] I.R.C. §§ 6863, 6851(e).

[61] I.R.C. §§ 6331(a), 6863(b)(3).

[62] I.R.C. § 6861(g).

[63] I.R.C. §§ 6213(a), 6532.

[64] Section 6863 applies to jeopardy assessments. Section 6851(e) applies to termination assessments. Although under normal, nonjeopardy procedures, assessments will be prohibited until all appeals from an adverse Tax Court determination have been exhausted, where a jeopardy assessment is made the taxpayer must file a bond as provided for in section 7485 in order to stay the sale of seized property pending an appeal of the Tax Court decision. I.R.C. § 7481; Reg. § 301.6863–2(a)(2). In order to stay the forced sale of assets pending review of the Tax Court decision, section 7485 requires that the bond must be double the amount of the portion of the deficiency in respect of which the notice of appeal is filed, unless a jeopardy bond was already filed under the income or estate tax laws. I.R.C. §§ 7485(a)(1), (a)(2).

[65] I.R.C. §§ 6863(a), 6851(e). However, the taxpayer may stay the collection of a portion of the assessment by posting a bond equal to that amount. *Ibid.*

[66] The Code states that the bond must be filed "within such time as may be

tended to foreclose the bond remedy can have that effect by depriving the taxpayer of the collateral which is required in order to obtain a commercial bond.[67] This result has prompted many commentators to call the remedy "illusory,"[68] and at least one court to characterize it as a "mockery."[69]

Prohibition on Sale of Seized Assets. The Code also attempts to protect taxpayer interests by placing limitations on the power of the Service to sell seized property pending a determination by the Tax Court or until the time within which the taxpayer can file a petition for review expires. Although staying the forced sale of seized assets will obviously

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fixed by regulation." I.R.C. § 6863(a). Section 301.6863–1(a)(2) of the regulations provides:

> (2) The bond may be filed—
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> (i) At any time before the time collection by levy is authorized under section 6331(a), or
>
> (ii) After collection by levy is authorized and before levy is made on any property or rights to property, or
>
> (iii) In the discretion of the district director, after any such levy has been made and before the expiration of the period of limitations on collection.

Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 705 n.28 (1967), points out that since section 6331(a) authorizes the immediate collection without regard to the normal ten day waiting period, section 301.6863–1 (a)(2)(iii) of the regulations leaves the taxpayer's "right" to post a bond subject to the discretion of the District Director.

[67] *See* Kimmel v. Tomlinson, 151 F. Supp. 901, 902 (S.D. Fla. 1957):

> In the instant case *every bit* of property (inclusive of bank accounts) of both taxpayers (and their wives) has been seized; it would seem to be mere mockery to say they, after they have been stripped of all assets, are protected in that they may either post a bond or pay the three hundred odd thousand dollars of taxes and penalties assessed in order to stay the waste of a forced sale of their assets and the certain destruction of their business. (Emphasis in original.)

See also Shelton v. Gill, 202 F.2d 503, 507 (4th Cir. 1953); Macejko v. United States, 174 F. Supp. 87, 89 (N.D. Ohio 1959).

A commercial surety company is likely to require that the taxpayer have assets at least equal to the amount of the assessment. *See* Gould, *Jeopardy Assessments: When They May Be Levied and What to Do About Them*, 18 N.Y.U. INST. 937, 945 (1960); Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 705 (1967). However, in Yoke v. Mazzello, 202 F.2d 508 (4th Cir. 1953), the court indicated a willingness to allow the taxpayer to seek aid from personal friends. The court held that it was an abuse of discretion for a District Director to refuse to accept the surety of two friends of the taxpayer when such surety amounted to unencumbered real estate valued at over twice the amount of the assessment.

[68] *See, e.g.*, Gould, *Jeopardy Assessments: When They May Be Levied and What to Do About Them*, 18 N.Y.U. INST. 937, 944 (1960); Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures*, 22 U.C.L.A.L. REV. 1191, 1197 (1975); Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 705 (1967).

[69] 151 F. Supp. at 902.

lessen the injury which otherwise might result, the remedy extends only to certain assessments; the Service may sell seized assets whenever (1) the taxpayer consents to the sale, (2) the property is perishable or (3) the net proceeds of an eventual sale would be greatly reduced by the cost of conserving the asset until a final adjudication.[70]

Power to Abate Unreasonable Assessment. A third procedural remedy gives the District Director the power to abate an assessment if he concludes that the payment is not in jeopardy,[71] or to adjust the assessment if he concludes that the original assessment was unreasonably high.[72] However, the power to abate an assessment which has already been declared has little chance of protecting taxpayer interests. Since the decision as to whether or not to abate an initial assessment may come after the taxpayer has already been deprived of the use of his property, the remedy may come after irreparable injury has already occurred. In addition, when the plea for an abatement is filed with the same District Director who originally made the assessment, he is unlikely to be receptive to arguments that the initial assessment was the product of misjudgment on his part and that it should now be modified or terminated.[73]

Statutory Review. The taxpayer who has had his assets seized or encumbered under a tax lien may seek a judicial redetermination of the amount due. There is, however, no provision for review of the Commissioner's determination that the collection of the tax was in jeopardy at the time of the seizure or filing of the lien.[74] Under normal deficiency proceedings the government is denied the ability to take collection action against the assets of a taxpayer prior to the time allowed for filing a peti-

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[70] *See* N. 32 *supra.* But, where the District Director improperly seeks to sell seized assets under one of the above exceptions his decision may be enjoined. *See* Smith v. Flinn, 262 F.2d 781 (8th Cir. 1958), *modified per curiam,* 264 F.2d 523 (8th Cir. 1959).

[71] I.R.C. § 6861(g); Reg. § 301.6861–1(f).

[72] Reg. § 301.6861–1(e).

[73] Section 301.6861–1(f)(3) of the regulations specifies only that a "[r]equest for abatement of a jeopardy assessment, because jeopardy does not exist, shall be filed with the district director, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to determine that the collection of the deficiency is not in jeopardy." *See generally* Miller, *Jeopardy and Other Summary Assessments,* 7 N.Y.U. INST. 195, 200 (1949).

Since the provision for abatement appears only within the section dealing with jeopardy assessments, arguably, this remedy does not apply where termination assessments are made pursuant to section 6851. Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures,* 22 U.C.L.A.L. REV. 1191, 1198 n.57 (1975).

[74] *See, e.g.,* Veeder v. Comm'r, 36 F.2d 342 (7th Cir. 1929); Adler v. Nicholas, 70 F. Supp. 514 (D. Colo. 1946), *rev'd on other grounds,* 166 F.2d 674 (10th Cir. 1948); Foundation Co. v. United States, 15 F. Supp. 229 (Ct. Cl. 1936); Brown-Wheeler Co., Inc., 21 B.T.A. 755 (1930); David Gray, 12 B.T.A. 956 (1928); Luman W. Goodenough, 12 B.T.A. 935 (1928); Paul R. Gray, 12 B.T.A. 916 (1928); James Couzens, 11 B.T.A. 1040 (1928).

tion for redetermination and during the period within which litigation is pending in the Tax Court.[75] By contrast, the jeopardy taxpayer's assets are immediately subject to seizure.[76] His only remedy is to file a petition for redetermination in the Tax Court or to pay the amount of the deficiency and then claim a refund.[77]

Both the Tax Court redetermination and the suit for a refund suffer from two defects: (1) They are time consuming[78] and (2) they do not allow the taxpayer to challenge the underlying reasons for the assessment.[79] The suit for a refund is additionally difficult for the taxpayer to utilize since he must first pay the full amount of the assessment.[80] The amount of the assessment together with the cost of litigating a refund suit can easily have the effect of entirely foreclosing this remedy. Furthermore, the ability of the Service to seize assets which are being used to violate the revenue laws, without applying the value of the seized items to the asserted tax liability, further enables the government to effectively thwart district court review.[81]

Injunctive Relief

A taxpayer may be able to enjoin the continuance of a jeopardy assessment if he can adequately overcome statutory preclusion of such

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[75] I.R.C. § 6213(a).

[76] *See* Ns. 12–13 *supra.*

[77] I.R.C. § 6213(a). The taxpayer must file a petition with the Tax Court for a redetermination within 90 days of receiving the notice of deficiency. The notice of deficiency must be sent the taxpayer within 60 days of the assessment. I.R.C. § 6861(b).

A suit for a refund may not be litigated for six months following the filing of the claim, unless an earlier rejection of the claim occurs. I.R.C. § 6532(a).

[78] KEIR & ARGUE, TAX COURT PRACTICE 35 (4th ed. 1970), suggests that although the taxpayer has a right to petition the Tax Court within 90 days of receiving the deficiency notice, the Tax Court may not decide the case for two years. Since the time required to litigate the refund suit necessarily depends on the time necessary to obtain an administrative rejection of the claim, it is difficult to determine whether Tax Court review or a refund suit would produce a quicker result. *See generally* Note, *Termination of the Taxable Year: The Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184, 194–95 (1974). *See also* Laing v. United States, 96 S. Ct. 473 (1976); United States v. Hall, 96 S. Ct. 473 (1976).

[79] *See, e.g.*, Veeder v. Comm'r, 36 F.2d 342 (7th Cir. 1929); Adler v. Nicholas, 70 F. Supp. 514 (D. Colo. 1946), *rev'd on other grounds*, 166 F.2d 674 (10th Cir. 1948); Foundation Co. v. United States, 15 F. Supp. 229 (Ct. Cl. 1936); Brown-Wheeler Co., Inc., 21 B.T.A. 755 (1930); David Gray, 12 B.T.A. 956 (1928); Luman W. Goodenough, 12 B.T.A. 935 (1928); Paul R. Gray, 12 B.T.A. 916 (1928); James Couzens, 11 B.T.A. 1040 (1928).

[80] Flora v. United States, 362 U.S. 145 (1960).

[81] Tarlow, *Criminal Defendants and Abuse of Jeopardy Tax Procedures*, 22 U.C.L.A.L. REV. 1191, 1199, n.70 (1975), and the accompanying text, which

review.[82] Because a suit for an injunction may review the propriety of the assessment at an earlier stage than is normally available under statutory review, this remedy is more likely to prevent abuses. Although injunctions have successfully been employed to curtail abusive assessments,[82a] courts generally have not been inclined to enjoin the summary seizure powers given the Service.[83] Furthermore, even if injunctions were liberally granted, because an injunction still requires time and money to litigate and does not always prevent irreparable injury which may result from immediate seizure, the government could still abuse its assessment power.

Although the Code prohibits any "suit for the purpose of restraining the assessment or collection of any tax," [84] it is possible for a taxpayer to obtain injunctive relief. For instance, taxpayers who have not received the required statutory notice of deficiency are authorized to obtain injunctive relief under sections 6212 and 6213.[85] In addition to this statutory exception to the Anti-Injunction Act embodied in section 7421(a), courts have created a judicial exception to the statute where the taxpayer can show extraordinary and exceptional circumstances.

The Supreme Court, in *Miller v. Standard Nut Margarine Co. of Florida*,[86] fashioned the judicial exception to the general rule barring injunctive relief. In *Standard Nut* the Court temporarily enjoined the

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suggests that since the Service has the power to seize property subject to forfeiture without crediting it against the asserted tax liability, the government could use its power over forfeitures to further deplete the taxpayer's assets.

[82] I.R.C. § 7421(a).

[82a] Most recently, in Commissioner v. Shapiro, 96 S. Ct. 1062 (1976), the Court held that a taxpayer was not foreclosed from enjoining a jeopardy assessment levied pursuant to section 6861 of the Internal Revenue Code. See discussion accompanying Ns. 100–111 *infra*.

[83] Referring to the precursor to the present Anti-Injunction Act, Justice Stone, dissenting in Miller v. Standard Nut Margarine Co., 284 U.S. 498, 511 (1931) found: "Enacted in 1867, this statute, for more than sixty years, has been consistently applied as precluding relief, whatever the equities alleged." Similarly, the Supreme Court's decision granting injunctive relief in *Standard Nut* was regarded as "a tribute to the tenacity of the American taxpayer." GOROVITZ, FEDERAL TAXES 446 (1932).

[84] Section 7421(a) states: "except as provided in sections 6212(a) and (c), 6213(a) and 7426(a) and (b)(1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

[85] *Ibid.* The statutory notice of deficiency must be sent to the taxpayer within 60 days of the assessment. Injunctive relief is available regardless of whether the seizure or lien is made pursuant to a jeopardy or a termination assessment. Laing v. United States, 96 S. Ct. 473 (1976); United States v. Hall, 96 S. Ct. 473 (1976).

[86] 284 U.S. 498 (1932).

collection of a tax under the Oleomargarine Act of 1886.[87] After examining the language of the act, the Court concluded that the taxpayer's product could not have been reasonably taxed, hence, the order of the Commissioner was "arbitrary and oppressive."[88] The Court declined to hold that Congress's expressed desire to forbid an injunction of a tax based upon its alleged illegality was controlling; instead, the Court concluded that the tax "could by no legal possibility have been assessed" against the taxpayer.[89] Because the Commissioner's act was arbitrary and capricious and would have resulted in irreparable injury to the taxpayer, the Court held that the case presented "special and extraordinary facts and circumstances" which justified the granting of injunctive relief.[90]

Although the judicial exception to section 7421(a) remains, the Court has repeatedly construed it narrowly. In *Enochs v. Williams Packing & Navigation Co.*,[91] the Court found that the government's claim for social security and unemployment taxes was "not without foundation"[92] and refuse to enjoin the collection of back taxes. In doing so, the Court indicated that in order to succeed the taxpayer would have had to show (1) there was a substantial certainty of winning on the merits and (2) collection of the tax would have caused irreparable injury for which there was no legal remedy.[93]

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[87] Oleomargarine Act of Aug. 2, 1886, 24 Stat. 209, as amended by the Act of May 9, 1902, 32 Stat. 194.

[88] 284 U.S. at 510.

[89] The Court indicated that the Anti-Injunction Act would not prohibit an injunction based upon the type of illegality found in the instant case, but would prohibit an injunction based upon mere error in the amount of the tax. *Ibid.*

[90] *Id.* at 510–11.

[91] 370 U.S. 1 (1962), *rehearing denied*, 370 U.S. 965.

[92] 370 U.S. at 8. The Court held that "whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit." *Id.* at 7.

[93] 370 U.S. at 7. The Court in *Williams Packing & Navigation Co.* concluded that it did not have to reach the issue of whether or not the tax asserted against the taxpayer would have caused irreparable injury. Finding that the taxpayer was required to show both irreparable injury and that the government could not establish its claim, the Court held that the taxpayer's right to injunctive relief was foreclosed by his inability to win on the second issue. The conclusion that irreparable injury and the absence of an adequate legal remedy were not alone sufficient to warrant the granting of injunctive relief was based on a comparison of section 7421(a) with the Tax Injunction Act of 1937, which, by its express terms, forbade the granting of an injunction "where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State." 50 Stat. 738, as amended, 28 U.S.C. § 1341. The Court concluded that "if Congress had desired to make the availability of the injunctive remedy against the collection of Federal taxes not lawfully due depend on the adequacy of the legal remedy, it would have said so explicitly. Its failure to do so shows that such suit may not be entertained

In the companion cases of *Bob Jones University v. Simon*[94] and *Alexander v. "Americans United,"*[95] the Supreme Court again construed the judicial exception to section 7421(a) narrowly. The Court held that injunctive relief could not be granted to two, nonprofit, educational organizations which sought to contest the revocation of their tax-exempt status.[96] In deciding the cases, the Court admitted a willingness to construe the Anti-Injunction Act almost in its literal terms,[97] and as intended to assure a "minimum of preenforcement judicial interference."[98]

Even though the test developed in *Standard Nut* and *Williams Packing & Navigation Co.* has repeatedly been construed narrowly, courts

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merely because collection would cause irreparable injury, such as the ruination of a taxpayer's enterprise." 370 U.S. at 6.

[94] 416 U.S. 725 (1974).

[95] 416 U.S. 752 (1974).

[96] In both cases the taxpayer argued that the Service's decision to terminate its tax-exempt status, pursuant to section 501(c)(3), would have the effect of reducing charitable contributions, since contributors would lose the favored tax treatment under section 170(c)(2). In Bob Jones University v. Simon, 416 U.S. 725 (1974), the Service terminated the university's tax-exempt status for maintaining racially discriminatory admissions policies. In Alexander v. "Americans United," 416 U.S. 752 (1974), the favored status was withdrawn because the educational corporation had violated the statutory lobbying rules. The decisions construe suits enjoining "the assessment or collection of any tax" broadly, and foreclose any argument that the Anti-Injunction Act prohibits injunctions only where the tax has been definitively determined. *See generally* Asofsky, *Injunctions and Declaratory Judgments in Federal Tax Controversies*, 28 RUTGERS L. REV. 785, 803 (1975).

[97] The majority referred to *Standard Nut* as a "significant deviation from precedent," and indicated that "read literally," *Standard Nut* would "effectively repeal" the Anti-Injunction Act. 416 U.S. at 744. Justice Blackmun, dissenting in Alexander v. "Americans United," expressed the opinion that the Court was now interpreting the Anti-Injunction Act even more literally than it had in *Williams Packing & Navigation Co.*: "To read Williams Packing as broadly as the Court does today is to make § 7421(a) more restrictive than the Court in Williams Packing or Congress intended. The result is that § 7421(a) becomes an absolute bar to any and all injunctions, irrespective of tax liability, of purpose or effect of the suit, or of the character of the Service's action." 416 U.S. at 771. *See also* 416 U.S. at 736.

[98] The Court stated;

> The Anti-Injunction Act apparently has no recorded legislative history, but its language could scarcely be more explicit—"no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. . . ." The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference, "and to require that the legal right to the disputed sums be determined in suit for a refund." The Court has also identified "a collateral objective of the Act—protection of the collector from litigating pending a suit for refund."

416 U.S. at 736 (footnote and citations omitted).

have enjoined summary seizures under the Internal Revenue Code.[99] Recently, the Supreme Court declared that the Anti-Injunction Act did not prohibit a taxpayer from obtaining injunctive relief where the facts of the case brought it within the *Williams Packing & Navigation Co.* exception.[100] In *Commissioner v. Shapiro,* the Service assessed $92,726.41 in taxes against the taxpayer, and used notices of levy to freeze $35,000 in bank accounts and the contents of safe deposit boxes.[101] Because the taxpayer was subject to an imminent extradition order and pending criminal charges in a foreign country, he argued that he would not be able to litigate the issue of the assessments unless he could use the money in the levied bank accounts to post bail overseas.[102] The Court agreed with the taxpayer's contention that the combined effect of the extradition order and the jeopardy assessment would cause him irreparable injury,

[99] The Fifth Circuit has mainly been responsible for recent initiative in enjoining jeopardy or termination assessments. *See, e.g.,* Lucia v. United States, 474 F.2d 565, 573 (5th Cir. 1973):

> [T]his court holds that a taxpayer under a jeopardy assessment is entitled to an injunction against collection of the tax if the Internal Revenue Service's assessment is entirely excessive, arbitrary, capricious, and without factual foundation, and equity jurisdiction otherwise exists. We hold that such a set of facts would bring the taxpayer within the narrow bounds of the exception to the anti-injunction statute designed by the United States Supreme Court in *Standard Nut Margarine* and *Enochs.* (Footnote omitted.)

See also Aguilar v. United States, 501 F.2d 127 (5th Cir. 1974); Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974), *reversing and remanding* 362 F. Supp. 456 (S.D. Fla. 1973), *accord,* Shapiro v. Secretary of State, 499 F.2d 527 (D.C. Cir. 1974), *cert. granted sub nom.,* Comm'r v. Shapiro, 420 U.S. 923 (1975); Sherman v. Nash, 488 F.2d 1081 (3d Cir. 1973); Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied,* 396 U.S. 986 (1969); United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub nom.,* United States v. Dono, 428 F.2d 204 (2d Cir.), *cert. denied,* 400 U.S. 829 (1970). *But see* Irving v. Gray, 479 F.2d 20 (2d Cir. 1973); Ianelli v. Long, 487 F.2d 317 (3d Cir. 1973), *cert. denied,* 414 U.S. 1040 (1974); Lloyd v. Patterson, 242 F.2d 742 (5th Cir. 1957); Darnell v. Tomlinson, 220 F.2d 894 (5th Cir. 1955); Harvey v. Early, 160 F.2d 836 (4th Cir. 1947); Lalonde v. United States, 350 F. Supp. 976 (D. Minn. 1972); Parrish v. Daly, 350 F. Supp. 735 (S.D. Ind. 1972); Hamilton v. United States, 309 F. Supp. 468 (S.D.N.Y. 1969), *aff'd per curiam,* 429 F.2d 427 (2d Cir. 1970), *cert. denied,* 401 U.S. 913 (1971); McAllister v. Cohen, 308 F. Supp. 517 (S.D.W. Va. 1970), *aff'd per curiam,* 436 F.2d 422 (4th Cir. 1971); Publishers New Press, Inc. v. Moysey, 141 F. Supp. 340 (S.D.N.Y. 1956); Communist Party, U.S.A. v. Moysey, 141 F. Supp. 332 (S.D.N.Y. 1956).

[100] Commissioner v. Shapiro, 96 S. Ct. 1062 (1976).

[101] *Id.* at 1067. The assessments were based on deficiencies for the tax years 1970 and 1971. The 1970 assessment was based on an unexplained bank deposit of $18,000 and the assessment for 1971, on "$137,280 derived from respondent's alleged activities as a dealer in narcotics."

[102] Although the taxpayer was subsequently extradited and was able to meet a reduced bail amount, the Court remanded the case to the District Court to determine whether any additional irreparable injury remained from the levies. 96 S. Ct. at 1074.

and held that the Anti-Injunction Act did not foreclose injunctive relief.[103]

To meet the first of the two requirements under *Williams Packing & Navigation Co.* the taxpayer must show that the assessment is wholly invalid, which can be done "only if it is . . . apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim."[104] In *Shapiro,* the Court accepted the taxpayer's argument that unless the government is required to disclose the factual basis for the assessment, the taxpayer would never be able to prove the government's inability to prevail on its claim.[105] The Court specifically denied the government's contention that the Service could defeat the taxpayer's request for injunctive relief merely by claiming that the assessment was made in good faith.[106] Although the Court left the taxpayer with the ultimate burden of persuading the court of the propriety of in-

[103] The Court explicitly noted that if the failure to obtain a final determination in the Tax Court was due to the taxpayer's decision not to vigorously pursue that remedy, then equity would intervene and his complaint for injunctive relief would be dismissed. 96 S. Ct. at 1074 n.15. This requires the taxpayer to continue efforts to obtain relief in the Tax Court, while seeking injunctive relief.

[104] Enochs v. Williams Packing & Navigation Co. 370 U.S. 1, 7 (1962).

[105] 96 S. Ct. at 1070–1071.

[106] Although the Court found sufficient basis for its conclusion in the *Williams Packing & Navigation Co.* exception to the Anti-Injunction Act, the Court stated that "to permit the Government to seize and hold property on the mere good-faith allegation of an unpaid tax would raise serious constitutional problems in cases, such as this one, where it is asserted that seizure of assets pursuant to a jeopardy assessment is causing irreparable injury." 96 S. Ct. at 1072.

The Court's opinion in *Williams Packing & Navigation Co.* suggests that, even as applied to summary tax seizures, the good faith of the Service might be sufficient to sustain the official conduct:

> [T]o require more than good faith on the part of the Government would unduly interfere with a collateral objective of the Act—protection of the collector from litigation pending a suit for refund . . . . [I]n general, the Act prohibits suits for injunctions barring the collection of Federal taxes when the collecting officers have made the assessment and claim that it is valid.

370 U.S. at 7, 8. The opinion fails to state whether a finding of an improper purpose alone would be a sufficient ground for granting an injunction. *Compare* Ianelli v. Long, 487 F.2d 317 (3d Cir. 1973), *cert. denied,* 414 U.S. 1040 (1974), *with* Sherman v. Nash, 488 F.2d 1081 (3d Cir. 1973). In *Ianelli* the court found the Service's good faith to be relevant to whether or not the assessment was a "bona fide effort to collect revenue." 487 F.2d at 318. However, the court concluded that even though the purpose in levying the assessment was "to put economic pressure upon persons believed to be engaged in large scale criminal activities," an injunction was effectively prohibited by section 7421(a) since the levies were "potentially productive attempts to collect revenues." *Id.*

Although *Shapiro* apparently rejects the "good-faith" test in *Williams Packing & Navigation Co.,* it fails to specify the effect that a finding of an improper purpose in levying the assessment will have on a suit for injunctive relief.

junctive relief,[107] the opinion clearly indicates a duty on the part of the government to make available to the taxpayer facts in its sole possession which could be used to test the validity of the assessment.[108]

The second requirement under *Williams Navigation & Packing Co.* is that the taxpayer must be able to show that the collection of the tax would cause irreparable injury for which there is no legal remedy. The Court in *Shapiro* found compelling the taxpayer's argument that his extradition and incarceration without sufficient funds to post bail would cause irreparable injury and prevent him from litigating the validity of the assessment. The Court's decision leaves the way open for a taxpayer who is not subject to extradition to argue that, because the freezing or seizure of his assets will deprive him of the ability to hire competent counsel to contest the tax liability or to defend against criminal charges, the assessment will cause irreparable injury.[109]

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[107] Referring to the standard enunciated in *Williams Packing & Navigation Co.*, the Court held:

> [T]he taxpayer himself must still plead and prove facts establishing that his remedy in the Tax Court or in a refund suit is inadequate to repair any injury that might be caused by an erroneous assessment or collection of an asserted tax liability. Even then, the Government is not required to litigate fully the taxpayer's liability outside the statutory scheme provided by Congress. It is required simply to litigate the question whether its assessment has a basis in fact.

[108] The Court upheld the decision of the court of appeals, even though it declined to specify precisely how the government would make relevant facts available to the taxpayer on remand. The Court held that "it would appear to matter little whether the Government discloses such information because it is said to have the burden of producing evidence on the question or whether it discloses such evidence by responding to a discovery motion made or interrogatories served by the taxpayer." 96 S. Ct. at 1071.

Unfortunately, the Court failed to state whether the taxpayer can meet the burden imposed on him by *Williams Packing & Navigation Co.* by merely attacking the Commissioner's finding that collection of the tax was in jeopardy, or whether he must also prove the substantive illegality of the tax. Lower courts have generally focused on the inability of the Service to sustain the amount of the deficiency. *See, e.g.*, Aguilar v. United States, 501 F.2d 127, 130 (5th Cir. 1974) ("total—the word is total—lack of any basis for computing the quick terminated tax"); Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974) (insufficient evidence to link the taxpayer with an alleged sale of drugs on which tax was based); Lucia v. United States, 474 F.2d 565 (5th Cir. 1973) (evidence that computations of tax were taken from a single day's betting slips insufficient to demonstrate tax liability); Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969) (tax collected by use of a three day average of receipts and extrapolated over a five year period found totally excessive). *But cf.*, United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub nom.*, United States v. Dono, 428 F.2d 204 (2d Cir. 1969), *cert. denied*, 400 U.S. 829 (1970) (finding that the Service had failed to make sufficient findings to warrant the conclusion that the Commissioner had maintained the requisite belief under the statute that the tax payment was in jeopardy).

[109] *See* N. 37 *supra*.

Although *Shapiro* does give the taxpayer relief against irreparable injury, the potential availability of that remedy cannot be an effective substitute for measures which might prevent improper assessments in the first place. Even under *Shapiro*, an injunction will be denied where the injury resulting from the assessment is not irreparable, requiring the taxpayer to seek an adequate remedy at law.[110] Secondly, even if an injunction is granted, it will not lessen the irreparable injury which may occur immediately upon levy or seizure. Finally, the determination whether or not the Service has a chance of ultimately prevailing on its claim is to be resolved on the basis of the information available to the Commissioner at the time of suit; the government may still levy a spurious assessment in the hope of obtaining information to justify its levy or seizure prior to the suit.[111]

Constitutionality of Summary Seizure Power Under the Fifth Amendment

To date, no arguments have been advanced that the jeopardy and termination assessment provisions are unconstitutional based upon the guarantees of the fourth amendment.[112] Where the constitutionality of the summary seizure power has been attacked, the focus has been on

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[110] The fact that an assessment was computed on the basis of illegally seized evidence will not be sufficient grounds to warrant injunctive relief since the taxpayer has an adequate remedy at law. *See* McAllister v. Cohen, 308 F. Supp. 517 (S.D.W. Va. 1970), *aff'd per curiam*, 436 F.2d 422 (4th Cir. 1971). *See generally*, Ns. 134–36 and the accompanying text *infra*.

[111] Where an injunction is sought for an assessment of a tax which had already become due, there would be little sense in enjoining the collection of the tax; even if the assessment could be declared invalid, such a ruling would not prevent the Service from making additional assessments. However, in the case of a termination assessment, a tax may be correctly computed for the portion of the taxpayer's taxable year, but not due for up to fifteen months. In such case, even if the tax is correctly computed the taxpayer should not be denied the use of his assets unless the Service can prove that the collection of the tax is in jeopardy.

[112] *But cf.* General Motors Leasing Corp. v. United States, 514 F.2d 935 (10th Cir.), *cert. granted*, 96 S. Ct. 561 (1975). The court reversed a lower court decision which had concluded that jeopardy assessments resulting in the seizure of the taxpayer's automobile and documents were illegal seizures. However, the court of appeals limited its analysis to a determination of whether the Service had acted within the scope of the statutory authority granted them and did not reach the constitutional issues. Furthermore, the court based its decision, in part, on its finding that the lower court's reliance on the "malicious character" of the seizures was clearly erroneous. Since the taxpayer has argued that the search and seizure conducted by Service agents in carrying out the assessment was in violation of his constitutional right to privacy and, as such, was an illegal search and seizure, the case offers the Supreme Court an opportunity to confront the fourth amendment issues underlying the jeopardy assessment problem.

the right to an adversary hearing prior to the seizure of assets, under the fifth amendment due process clause.[113] Although the Supreme Court has held that the procedures do not constitute a denial of due process,[114] because it limited its analysis to an alleged infringement of property rights, it left open the question of whether or not the summary tax seizure provisions violate the guarantees afforded personal rights under the fourth amendment.

The claim that the summary seizure provisions result in a denial of due process was decided by the Supreme Court in *Phillips v. Commissioner*.[115] The case arose out of the attempt by the government to use

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[113] The fifth amendment to the Constitution states: "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for a public use, without just compensation." *See, e.g.*, Phillips v. Comm'r, 283 U.S. 589 (1931); Dyer v. Gallagher, 203 F.2d 477 (6th Cir. 1953); Continental Products Co. v. Comm'r, 66 F.2d 434 (1st Cir. 1933); Hamilton v. United States, 309 F. Supp. 468 (S.D.N.Y. 1969), *aff'd per curiam*, 429 F.2d 427 (2d Cir. 1970), *cert. denied*, 401 U.S. 913 (1971). *See also* Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701 (1967); Note, *Termination of the Taxable Year: the Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184, 196 (1974).

[114] Phillips v. Comm'r, 283 U.S. 589 (1931). However, in Laing v. United States, 96 S. Ct. 473 (1976), and United States v. Hall, 96 S. Ct. 473, 485 n.26 (1976), the Court left open the question of the constitutionality of the jeopardy and termination provisions under the fifth amendment. Recently, the Court, in Commissioner v. Shapiro, 96 S. Ct. 1062, 1072 (1976), noted the limitations on the summary seizure power imposed by the Due Process Clause:

> [T]o permit the Government to seize and hold property on the mere good-faith allegation of an unpaid tax would raise serious constitutional problems in cases, such as this one, where it is asserted that a seizure of assets pursuant to a jeopardy assessment is causing irreparable injury. This Court has recently and repeatedly held that, at least where irreparable injury may result from a deprivation of property pending final adjudication of the parties, the Due Process Clause requires that the party whose property is taken be given an opportunity for some kind of predeprivation or prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made. (Footnote omitted.)

[115] 283 U.S. 589 (1931). However, recently the Court distinguished the holding from dicta in *Phillips*, indicating an intention to construe *Phillips* narrowly. The Court in Commissioner v. Shapiro, 96 S. Ct. 1062, 1073 (1976), stated:

> [T]he Phillips case itself did not involve a jeopardy assessment and the taxpayer's assets could not have been taken or frozen in that case until he had either had, or waived his right to, a full and final adjudication of his tax liability before the Tax Court (then the Board of Tax Appeals). The taxpayer's claim in that case was simply that a statutory scheme which would permit the tax to be assessed and collected prior to any *judicial* determination of his liability—by way of a refund suit or review of the Board of Tax Appeals' decision was unconstitutional. [Footnote omitted.] Thus, insofar as *Phillips* may be said to have sustained the constitutionality of the Anti-Injunction Act, as applied

its summary seizure powers to collect unpaid profits and income taxes from a transferee of the property of the taxpayer.[116] The petitioner argued that even though the jeopardy assessment could be tested under deferred postseizure review, the assessment denied him due process. The Court rejected the petitioner's argument, basing its conclusion on the finding that summary proceedings to secure payment of obligations owed to the government had consistently been sustained where later judicial review of legal rights had been available.[117] Significantly, the Court expressly indicated that its decision was based solely on the alleged infringement of property rights and not on an infringement of personal liberty:

> Where only property rights are involved mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. Delay in

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to a jeopardy assessment and consequent levy on a taxpayer's assets without prompt opportunity for final resolution of the question of his liability by the Tax Court, it did so only by way of dicta.

Moreover, the Court by way of dicta in *Shapiro* questioned the applicability of *Phillips* where the taxpayer alleges that review in the Tax Court will be ineffective in preventing irreparable injury. The Court stated:

> [N]either the holding nor the dicta in *Phillips* supports the proposition that the tax collector may constitutionally seize a taxpayer's assets without showing some basis for the seizure under circumstances in which the seizure will injure the taxpayer in a way that cannot be adequately remedied by a Tax Court judgment in his favor.

[116] The assessment was made pursuant to section 280(a)(1) of the 1926 Code which is substantially the same as section 6861 of the present Code.

[117] "The right of the United States to collect its internal revenue by summary administrative proceedings has long been settled. Where, as here, adequate opportunity is afforded for a later judicial determination of the legal rights, summary proceedings to secure prompt performance of pecuniary obligations to the government have been consistently sustained." (Footnote omitted.) 283 U.S. at 595.

As was pointed out in the Court's opinion, "delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied." *Id.* at 597. *See, e.g.*, Central Union Trust Co. v. Garvan, 254 U.S. 554 (1921) (upholding statute allowing Congress to immediately seize property supposedly belonging to the enemy); Adams v. City of Milwaukee, 228 U.S. 572 (1913) (upholding the confiscation and immediate destruction of milk where it does not conform to municipal ordinances requiring tuberculin tests of cows from which the milk came); Hutchinson v. City of Valdosta, 227 U.S. 303 (1913) (requiring property owners to install sewage systems in their houses within 30 days under penalty of fine and imprisonment for noncompliance); North American Cold Storage Co. v. City of Chicago, 211 U.S. 306 (1908) (upholding the summary seizure and destruction of food which was unfit for human consumption).

the judicial determination of property rights is not uncommon where it is essential that Governmental needs be immediately satisfied.[118]

Consistent with the expressed limitation in *Phillips,* the Court has specifically declined to hold that the government's need to collect taxes may outweigh constitutionally protected personal rights. In *Marchetti v. United States*[119] and *Grosso v. United States,*[120] the Court held that the wagering tax statutes[121] interfered with the privilege against self-incrimination, and refused to uphold criminal convictions of those persons asserting fifth amendment grounds as a justification for not complying with the statutes.[122] Rejecting the government's suggestion that the Court could uphold the convictions by imposing use restrictions to the wagering information which the taxpayer was required to provide, the Court concluded that the taxing power granted Congress by the Constitution was not meant to be interpreted as being superior to the constitutional restrictions "which attend the exercise of those powers."[123]

Marchetti and *Grosso* are applicable to the jeopardy assessment problem. In *Pizzarello v. United States*[124] the taxpayer also had been charged with violating the wagering statutes. As a result of its then recent decisions in *Marchetti* and *Grosso,* the Supreme Court vacated the conviction against Pizzarello for failing to comply with the wagering statutes.[125] In response, the Service computed a jeopardy assessment against Pizzarello

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[118] 283 U.S. at 596–97 (citations omitted). *See also Id.* at 595–96: "Property rights must yield provisionally to governmental need. Thus, while protection of life and liberty from administrative action alleged to be illegal may be obtained promptly by the writ of habeas corpus . . . the statutory prohibition of any 'suit for the purpose of restraining the assessment or collection of any tax' postpones redress for the alleged invasion of property rights if the exaction is made under color of their offices by revenue officers charged with the general authority to assess and collect the revenue." (Footnote and citation omitted.)

[119] 390 U.S. 39 (1968).

[120] 390 U.S. 62 (1968).

[121] Marchetti was convicted for failing to register and pay an occupational tax required of those engaged in the wagering business, and for conspiring to evade payment of the occupational tax. I.R.C. §§ 4411, 4412. Grosso was convicted of failing to pay the excise tax on wagering, failing to pay the occupational tax imposed on those in the business of wagering and for conspiracy to evade the payment of these taxes. I.R.C. §§ 4401, 4411.

[122] Payment of the wagering tax does not "exempt any person from any penalty provided by a law of the United States or of any state for engaging in the same activity." I.R.C. § 4422.

[123] "The Constitution of course obliges this Court to give full recognition to the taxing powers and to measures reasonably incidental to their exercise. But we are equally obliged to give full effect to the Constitutional restrictions which attend the exercise of those powers." 390 U.S. 39 at 58.

[124] 408 F.2d 579 (2d Cir.), *cert. denied,* 396 U.S. 986 (1969).

[125] Stone v. United States, 390 U.S. 204 (1968).

for the amount of the unpaid taxes.[126] Although in a subsequent proceeding the court merely enjoined the Service from continuing the assessment,[127] it did suggest in dictum that since the statutory procedures for contesting the assessment would have required Pizzarello to provide wagering information, his fifth amendment privilege against self-incrimination would be violated.[128] Although *Marchetti, Grosso* and their application to the jeopardy assessment problem in *Pizzarello* all dealt with the constitutional protection of personal rights under the fifth amendment, they implicitly suggest that the taxing power should not be used to override constitutional guarantees of personal rights under the fourth amendment, which also attend the exercise of the taxing powers.

Constitutionality of Service's Summary Seizure Power Under the Fourth Amendment

The fourth amendment protects the individual from arbitrary governmental intrusions[129] and acts as a limitation on the scope of governmental action.[130] Because that amendment is not limited to the protection of property rights,[131] analysis of the summary seizure power under the fourth amendment is not barred by the Court's decision in *Phillips*.[132] Although a jeopardy or termination assessment which deprives the taxpayer of "every meaningful asset" or "every bit of property" may not deny the taxpayer due process under the fifth amendment, if the summary seizure is an arbitrary exercise of governmental power it may unreasonably intrude upon the privacy of the taxpayer and violate his fourth amendment rights.[133]

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[126] The jeopardy assessment was for $282,440.70. 408 F.2d at 582.

[127] The court found that the amount of the assessment was totally excessive since it was based on a miscalculation and on unconstitutionally seized evidence. *See* 408 F.2d at 583–85.

[128] *See* 408 F.2d at 587.

[129] *See, e.g.*, Berger v. New York, 388 U.S. 41 (1967) ("the basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials"); Ker v. California, 374 U.S. 23 (1963) ("implicit in the Fourth Amendment's protections from unreasonable searches and seizures is its recognition of individual freedoms").

[130] *See* Silverman v. United States, 365 U.S. 505 (1961) ("at the very core of the Fourth Amendment is the right of a man to retreat into his home and there be free from unreasonable governmental intrusion").

[131] "The premise that property interests control the right of the Government to search and seize has been discredited. Searches and seizures may be 'unreasonable' within the Fourth Amendment even though the Government asserts a superior property interest at common law. We have recognized that the principal object of the Fourth Amendment is the protection of privacy rather than property, and have increasingly discarded fictional and procedural barriers rested on property concepts." Warden v. Hayden, 387 U.S. 294, 304 (1967).

[132] Although the fifth amendment is not limited to protecting property rights

Although cases have relied upon the fourth amendment to invalidate jeopardy assessments which have been based on illegally seized evidence,[131] courts have yet to consider whether the procedural requirements of the fourth amendment should be held to apply to summary tax seizures generally. In order to evaluate fairly whether the fourth amendment does apply to summary tax seizures it is necessary to consider whether (1) the fourth amendment applies to prohibit governmental conduct unrelated to the prevention of crime, (2) that amendment applies to noninvestigatory seizures and (3) assuming that the fourth amendment does apply to the Service's summary seizure power, an assessment under the present procedures, conducted without the consent of a neutral, detached magistrate, is an unreasonable seizure within the meaning of the fourth amendment.

Applicability of Fourth Amendment to Prohibit Arbitrary Governmental Conduct Unrelated to Prevention of Crime

Initial justification for extending the protections of the fourth amendment to noncriminal cases stems from the Supreme Court's attempt to provide a meaningful remedy for violations of fourth amendment

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but applies equally to deprivations of "life, liberty, or property without due process of law," the Court in *Phillips* suggested that the only interests of the taxpayer intruded upon were his property rights. *See* N. 114 *supra* and the accompanying text.

Because the Supreme Court first applied the fourth amendment to administrative action in Camara v. Municipal Court of City & County of San Francisco, 387 U.S. 523 (1967), and See v. City of Seattle, 387 U.S. 541 (1967), it is possible to explain the Court's failure to treat summary seizures as violative of the individual's right to privacy and personal security as protected by that amendment. However, since it has been determined that the fourth amendment does apply to administrative action, it is now necessary to reexamine the outcome under the summary seizure cases.

[133] In Warden v. Hayden, 387 U.S. 294 (1967), the Court stated that the fourth amendment "was intended to protect against invasions of 'the sanctity of a man's home and the privacies of life' . . . from indiscriminate, general authority (citation omitted)." Insofar as the fourth amendment has been held to extend beyond the protection of mere privacy, it is no less of an invasion of the sanctity or privacy of one's home when it is seized as opposed to merely being searched. Katz v. United States, 389 U.S. 347, 350 (1967).

[134] Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969); Janis v. United States, No. 70–1383 (C.D. Cal., Feb. 27, 1973), *aff'd mem.* No. 73–2226 (9th Cir., July 22, 1974), *cert. granted*, 43 U.S.L.W. 3644 (U.S. June 9, 1975); Lassoff v. Gray, 207 F. Supp. 843 (W.D. Ky. 1962); James v. McKeever, 73–2 U.S.T.C. ¶ 16,119 (D. Ariz. 1973); United States v. Chase, 67–1 U.S.T.C. ¶ 15,733 (D.D.C. 1966); Efrain T. Suarez, 58 T.C. 792 (1972). *But see* Yannicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1973).

rights.[135] In fashioning the exclusionary rule, the Court commented upon the constitutional guarantees which the new rule was intended to protect: "This protection reaches all alike whether accused of crime or not, and the duty of giving it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws."[136]

In keeping with the broad rationale given the exclusionary rule in *Weeks v. United States*, the Court has barred evidence obtained illegally in a criminal investigation from being used in any subsequent proceeding.[137] Several courts have extended the reasoning to apply to summary

[135] Even if the fourth amendment were limited to the protection of rights in criminal cases, it is arguable that the punitive nature of jeopardy assessments would warrant their being considered within that category. *See* United States v. Blank, 261 F. Supp. 180 (N.D. Ohio 1966): "Where, as here, there is a correlative civil action open to the Government which imposes a penalty upon the citizen commensurate with the criminal sanctions to which an accused, victimized by an illegal search, would be exposed, then we see no distinguishable difference between the two forms of punishment which excuses the government from complying with constitutional mandates when prosecuting their action in a civil forum." *But cf.*, Helvering v. Mitchell, 303 U.S. 391 (1938).

Historically, the fourth amendment has been applied only in criminal investigations. *See* Murray v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272 (1856); *In re* Strouse, 23 F. Cas. 261 (No. 13,548) (D. Nev. 1871); *In re* Meador, 16 F. Cas. 1294, 1299 (No. 9375) (N.D. Ga. 1869); *cf.* Abel v. United States, 362 U.S. 217 (1960); Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186 (1946). However, it is clear from the period preceding the adoption of the fourth amendment that the colonists were especially concerned with invasions of their privacy by officials carrying out the tax laws. The colonists and the English argued bitterly against the use of civil warrants to enforce the customs laws. Comment, *State Health Inspections and "Unreasonable Search": the* Frank *Exclusion of Civil Searches*, 44 MINN. L. REV. 513, 521–22 (1960). In this regard, Pitt uttered the now famous words to contest the danger of excise officers entering his home to levy the "Cyder Tax": "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!" 15 HANSARD, PARLIAMENTARY HISTORY OF ENGLAND (1753–1765) 1307, *cited in* Frank v. Maryland, 359 U.S. 360, 378 (1959) (Douglas, J., dissenting).

Many commentators have expressed the opinion that the broad purposes of the fourth amendment as intended to protect the privacy of the home necessarily indicate that the amendment serves as a limitation on the power of civil as well as criminal investigators. *See, e.g.*, Abel v. United States, 362 U.S. 217 (1960) (Brennan, J., dissenting); Frank v. Maryland, 359 U.S. 360 (1959) (Douglas, J., dissenting); District of Columbia v. Little, 178 F.2d 13, 16–17 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950); Comments, *State Health Inspections and "Unreasonable Search": the* Frank *Exclusion of Civil Searches*, 44 MINN. L. REV. 513, 521–22 (1960); Note, *The Law of Administrative Inspections: Are* Camara *and* See *Still Alive and Well?*, 1972 WASH. U.L.Q. 313–14, ns.3 & 4. *See generally* LASSON, HISTORY AND DEVELOPMENT OF THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION (1970).

[136] Weeks v. United States, 232 U.S. 383, 392 (1914).

[137] Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392 (1920): "The

assessments and have held that assessments based on illegally seized evidence were invalid.[138] In one such case, *Efrain T. Suarez*,[139] the court rejected the notion that the governmental need to collect taxes through summary means was sufficient to outweigh constitutionally protected rights, a lesson made clear in *Marchetti* and *Grosso*. Significantly, the decision in *Suarez* extends the reasoning to apply to fourth amendment guarantees: "[W]e conclude that any competing consideration based upon the need for effective enforcement of civil tax liabilities . . . must give way to the higher goal of protection of the individual and the necessity for preserving confidence in, rather than contempt for, the processes of Government."[140]

If an assessment which has been computed on the basis of illegally seized evidence is invalid by reason of the fourth amendment, then, a fortiori, the fourth amendment should apply to limit the manner in which the tax seizure itself is carried out. This conclusion, and that the fourth amendment applies to noncriminal searches, is equally justified by the Supreme Court's decisions in *Camara v. Municipal Court of the City*

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essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all."

Extension of the exclusionary rule has barred the use of illegally seized evidence from being used in civil proceedings. *See, e.g.*, Knoll Associates, Inc. v. F.T.C. 397 F.2d 530 (7th Cir. 1968) (FTC proceedings); Powell v. Zuckert, 366 F.2d 634 (D.C. Cir. 1966) (discharge hearing of government employee); Berkowitz v. United States, 340 F.2d 168 (1st Cir. 1965) (forfeiture); District of Columbia v. Little, 178 F.2d 13 (D.C. Cir. 1949), *aff'd on other grounds*, 339 U.S. 1 (1950) (housing code inspections); United States v. Physic, 175 F.2d 338 (2d Cir. 1949) (forfeiture); Rogers v. United States, 97 F.2d 691 (1st Cir. 1938) (action to recover import duties); United States v. Stonehill, 274 F. Supp. 420 (S.D. Cal. 1967), *aff'd*, 405 F.2d 738 (9th Cir. 1968) (enforcement of tax lien); United States v. Blank, 261 F. Supp. 180 (N.D. Ohio 1966) (potential tax liability); United States v. $4,171.00 in United States Currency, 200 F. Supp. 28 (N.D. Ill. 1961) (forfeiture). *Cf.* Compton v. United States, 334 F.2d 212 (4th Cir. 1964) (tax assessment); F.T.C. v. Page, 378 F. Supp. 1052 (1974) (subpoena duces tecum before FTC). *See also* cases collected in Efrain T. Suarez, 58 T.C. 792, 803–04 (1972). *But see* American Tobacco Co. v. Werckmeister, 207 U.S. 284 (1907); Adams v. New York, 192 U.S. 585 (1904), both decisions being handed down prior to the Supreme Court's decision in Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

[138] Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969); Janis v. United States, No. 70–1383, (C.D. Cal., Feb. 27, 1973), *aff'd mem.* No. 73–2226 (9th Cir. July 22, 1974), *cert. granted*, 43 U.S.L.W. 3644 (U.S. June 9, 1975); Lassoff v. Gray, 207 F. Supp. 843 (W.D. Ky. 1962); James v. McKeever, 73–2 U.S.T.C. ¶ 16,119 (D. Ariz. 1973); United States v. Chase, 67–1 U.S.T.C. ¶ 15,733 (D.D.C. 1966); Efrain T. Suarez, 58 T.C. 792 (1972). *But see* Yannicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1973).

[139] 58 T.C. 792 (1972), *subsequent proceedings* 61 T.C. 841 (1974).

[140] 58 T.C. at 805.

& County of San Francisco[141] and *See v. City of Seattle.*[142] Those cases definitively foreclose any argument that the fourth amendment applies in civil cases to "fruits" of illegality committed in the criminal context, but not directly to the activities of civil agencies. Although the cases involved criminal convictions for failing to comply with an administrative regulation,[143] the Court found that the protections of the fourth amendment applied even where an individual was not suspected of criminal behavior.[144] Specifically, the Court held that the fourth amendment standard of reasonableness controlled the legality of searches conducted for the purposes of detecting building code violations. The outcome in the cases is consistent with the view that the fourth amendment serves as a broad limitation on all governmental conduct which invades the privacy and security of the individual, regardless of the purpose for which it is conducted.

Applicability of Fourth Amendment to Noninvestigatory Seizures

Although the fourth amendment has mainly been applied to situations involving searches for material to be used in a later judicial proceeding, it has also been applied where there has been no traditional search preceding the seizure.[145] For instance, in addition to applying to the law of arrests,[146] the fourth amendment applies to seizures in forfeiture ac-

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[141] 387 U.S. 523 (1967).

[142] 387 U.S. 541 (1967).

[143] San Francisco, Cal., Municipal Code § 507; City of Seattle Ordinance No. 87870, ch. 8.01; Seattle, Wash., Fire Code § 8.01.140.

[144] "We may agree that a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime . . . . But we cannot agree that the Fourth Amendment interests at stake in these inspections are merely 'peripheral.' It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." 387 U.S. at 530. Although the Court in Wyman v. James, 400 U.S. 309, 317 (1971), held that administrative inspections by welfare workers did not violate fourth amendment guarantees, the Court reaffirmed its earlier holding in *Camara* and *See* and reiterated "that one's Fourth Amendment protection subsists apart from his being suspected of criminal behavior."

[145] *See* CONSTITUTION OF THE UNITED STATES OF AMERICA, ANNOTATED, S. Doc. No. 82, 92d Cong., 2d Sess. (1973): "For the Fourth Amendment to be applicable to a particular set of facts, there must be a 'search' and a 'seizure' occurring typically in a criminal case with a subsequent attempt to use judicially what was seized."

[146] An arrest is, in effect, a seizure of the person. Clearly, the fourth amendment protects against arbitrary arrests. Giordenello v. United States, 357 U.S. 480 (1958); *Ex parte* Burford, 7 U.S. (3 Cranch) 448 (1806).

tions.[147] In *Boyd v. United States*,[148] the government contended that the Boyds, two New York City merchants, had illegally imported into the United States 35 cases of plate glass, thereby violating the revenue laws. The Supreme Court held that the fourth amendment did apply to prevent the compulsory production of the Boyds' books and records for the purpose of sustaining the forfeiture of the imported glass.[149] Significantly, the Court held that the compulsory production of the records, although not involving a search in the usual sense, still came within the protections of the fourth amendment.[150]

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[147] *See* California Bankers Ass'n v. Shultz, 416 U.S. 21, 65 (1974) (" 'the right to be let alone—the most comprehensive of rights and the right most valued by civilized men,' is not confined literally to searches and seizures as such, but extends as well to the orderly taking under compulsion of process" (citations omitted)); One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965); Bramble v. Richardson, 498 F.2d 968 (10th Cir. 1974), *cert. denied*, 419 U.S. 1069 (1975).

With respect to contraband, the Supreme Court has held that even though the owner of the seized property could not succeed on a motion for the return of the property, it was subject to fourth amendment standards and could not be introduced into evidence if illegally seized. United States v. Jeffers, 342 U.S. 48 (1951). However, certain exceptions exist for seizure of contraband in regulated industries involving licensing problems. *See* United States v. Biswell, 406 U.S. 311 (1972) (regulation of gun dealerships); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (regulation of liquor industry). Because the summary seizure power is not limited to regulated industries nor to individuals who are required to obtain licenses, this exception is inapposite to the problem of jeopardy and termination assessments.

[148] 116 U.S. 616 (1886). For a detailed explanation of the *Boyd* case, see LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT 49–61 (1966).

[149] *Boyd* would also militate in favor of applying the fourth amendment to noncriminal cases. Justice Bradley, speaking for the Court, admitted that the case was technically civil, but avoided the Court's holding 31 years earlier in Murray v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272 (1856), where it had held that the fourth amendment did not apply to a civil proceeding. Justice Bradley concluded that an action "instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal . . . . The information, though technically a civil proceeding, is in substance and effect a criminal one." 116 U.S. at 633–34. Insofar as summary tax seizures are often made because of alleged criminal violations and/or tax frauds, Justice Bradley's conclusions might also apply in the context of jeopardy and termination assessments. *See* N. 135 *supra*.

[150] "It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence, but it is the invasion of his indefeasible right of . . . private property." 116 U.S. at 630. Although limiting its comments to the protection of property rights under the fourth amendment, the Court suggested in dictum that the collection of taxes is within the category of seizures limited by the fourth amendment: "Distresses, executions, forfeitures, taxes, & c., are all of this discription, wherein every man by common consent gives up that right for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass . . . . The justification [for the trespass] is submitted to the judges, who are to look into the

Although *Boyd* dealt with a seizure for the purpose of obtaining evidence in a forfeiture action, the fourth amendment has also been applied to searches or seizures of other than evidentiary material.[151] For instance, in *Laprease v. Raymours Furniture Co.*,[152] the court held that the warrant requirement of the fourth amendment applied to the New York statute governing procedures in a replevin action.[153] The court concluded that "if the Sheriff cannot invade the privacy of a home without a warrant when the State interest is to prevent crime, he should not be able to do so to retrieve a stove or refrigerator about which the right to possession is disputed."[154] The court's opinion implicitly applies the fourth amendment to noninvestigatory seizures.

Similarly, in *Miloszewski v. Sears Roebuck & Co.*,[155] the fourth amendment was applied to the seizure of a television set which the seller had sought to retrieve under a court rule providing for recovery of personal property.[156] In language equally applicable to the government's attempt to collect its debts through summary seizures, the court held that the "sanctity and right to privacy are human values and human rights, and the value of defendants' attempt to collect a debt by an unlawful search palls into insignificance by comparison with plaintiff's human right of privacy."[157] Although the government arguably has a greater

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books, and see if such a justification can be maintained by the text of the statute law, or by the principles of the common law." *Id.* at 627.

[151] *See, e.g.*, Warden v. Hayden, 387 U.S. 294, 301 (1967): "On its face, the provision assures the 'right of the people to be secure in their persons, houses, papers, and effects . . . ,' without regard to the use to which any of these things are applied." The Court held that the fourth amendment was not limited to searches and seizures of "mere evidence" but also extended to searches and seizures of instrumentalities, fruits of crime or contraband. *See also* N. 147 *supra*.

[152] 315 F. Supp. 716 (N.D.N.Y. 1970).

[153] The court held that sections 7101, *et. seq.* 7102, 7110 of the New York Civil Practice Law and Rules, which governed the procedures in a replevin action, were unconstitutional under the fourth amendment. In accord on other statutes, see Miloszewski v. Sears Roebuck & Co., 346 F. Supp. 119 (W.D. Mich. 1972); Blair v. Pitchess, 5 Cal. 3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). For cases distinguishing *Laprease* and holding seizures under state attachment statutes as reasonable within the fourth amendment, see Jondora Music Publishing Co. v. Melody Recordings, Inc., 362 F. Supp. 494, 499–500 (D.N.J. 1973); Sellers v. Contino, 327 F. Supp. 230 (E.D. Pa. 1971); Lebowitz v. Forbes Leasing and Finance Corp., 326 F. Supp. 1335, 1353–54 n.77 (E.D. Pa. 1971); Epps v. Cortese, 326 F. Supp. 127, 136–37 (E.D. Pa. 1971). The Supreme Court has explicitly left open the question of state replevin statutes under the fourth amendment. *See* Fuentes v. Shevin, 407 U.S. 67, 96 n.32 (1972).

[154] 315 F. Supp. at 722.

[155] 346 F. Supp. 119 (W.D. Mich. 1972).

[156] Mich. Dist. Ct. Rule 757. The court held that it had jurisdiction to consider a suit for damages based upon a violation of the plaintiff's fourth amendment rights.

[157] 346 F. Supp. at 122.

interest in making certain that taxpayers pay their taxes than it does in providing an enforcement device for private debts, the government's need to collect taxes through summary assessments is not any greater than its need to prevent crime. Consequently, it would be illogical to give the government virtually unlimited power to utilize summary seizures for the purpose of collecting taxes, but not for preventing crime.[158]

Reasonableness of Existing Procedures Under Fourth Amendment

The fourth amendment prohibits only unreasonable searches or seizures.[159] Therefore, the Service's summary seizure power would violate the fourth amendment only if it were an unreasonable exercise of governmental power.[160] Where the search or seizure is not made based upon probable cause as determined by a neutral and detached magistrate,[161] the reasonableness of the seizure is to be determined by measuring the

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[158] The need to collect taxes must be distinguished from the need to use summary measures to carry out the tax laws. Furthermore, the Service has not limited itself to using the summary tax assessment power to collect revenues.

[159] Terry v. Ohio, 392 U.S. 1 (1968); Elkins v. United States, 364 U.S. 206 (1960); Harris v. United States, 331 U.S. 145 (1947).

[160] However, the fourth amendment guaranties against unreasonable searches and seizures are to be liberally construed. *See, e.g.*, Sgro v. United States, 287 U.S. 206 (1932); United States v. Lefkowitz, 285 U.S. 452 (1932); Go-Bart Importing Co. v. United States, 282 U.S. 344 (1931); Gouled v. United States, 255 U.S. 298 (1921).

[161] The second clause of the fourth amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The requirement that a warrant be issued by a neutral and detached magistrate has been read into the clause. *See* Johnson v. United States, 333 U.S. 10, 13–14 (1948):

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protections consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers.

The general rule is that " 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment.' " Coolidge v. New Hampshire, 403 U.S. 443, 454–55 (1971); Katz v. United States, 389 U.S. 347, 357 (1967). *See also* United States v. United States District Court for the E. Dist. of Mich., 407 U.S. 297, 321 (1972); Whiteley v. Warden, 401 U.S. 560, 564 (1971); Jones v. United States, 362 U.S. 257, 270 (1960).

need to search or seize against the invasion which the search or seizure entails.[162]

Although the Service procedures indicating conditions which must exist prior to levying an assessment do arguably provide a measure equivalent to "probable cause,"[163] there are no limitations on the use of the power to make certain that the Service will limit itself to its stated criteria in making assessments. Assuming that the present standards for determining jeopardy do comport with the probable cause requirement of the fourth amendment, it is still necessary to consider whether independent review of the Commissioner's determination by a neutral and detached magistrate is required by the warrant clause.[164]

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[162] Terry v. Ohio, 392 U.S. 1 (1968). However, cases admit no ready formula for determining "reasonableness" and indicate that each case must be determined on the basis of its own set of facts and circumstances. *See, e.g.*, Mapp v. Ohio, 367 U.S. 643 (1961); Harris v. United States, 331 U.S. 145 (1947).

[163] Although probable cause usually is applied to the issue of whether or not a violation of the law exists, it has been more generally applied. *See, e.g.*, Comm'r v. Shapiro, 96 S. Ct. 1062, 1074 (1976) (using probable cause to denote whether or not the Service can sufficiently justify a jeopardy assessment, so as to defeat a claim for injunctive relief); Camara v. Municipal Court of City & County of San Fran., 387 U.S. 523, 534 (1967) (" 'probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness").

[164] Although the Supreme Court has held that the Service may issue administrative summonses for the purpose of tax investigations without first determining that a violation exists, this article argues that the Service would have to show some evidence of jeopardy supporting its belief that an assessment is justified.

In United States v. Bisceglia, 420 U.S. 141 (1975), the Court held that the Service's authority to issue John Doe summonses was "not limited to situations in which there is probable cause, in the traditional sense, to believe that a violation of the tax laws exists." 420 U.S. at 146. The rationale for the decision was expressly limited to the investigative necessities of tax enforcement and the substantial safeguards which surround the use of the administrative summons. Insofar as the nature of certain investigations may make it impossible to describe the place to be searched or the person or things to be seized, the decision in *Bisceglia* is consistent with the power given other investigative bodies. *See, e.g.*, United States v. Morton Salt Co., 338 U.S. 632 (1950) (the FTC); Blair v. United States, 250 U.S. 273 (1919) (the grand jury). However, the rationale in *Bisceglia* is inapplicable to probable cause in the summary seizure context. First, the summary tax seizure power does not require the powers of investigation which the Service generally needs to investigate tax returns under the self reporting system. Unlike a general investigation to determine if there has been illegality, a summary tax seizure is designed to focus on a particular individual only where evidence already exists indicating that the tax payment is in jeopardy. Second, the Court in *Bisceglia* explicitly noted that substantial protection is afforded by the provision that an Internal Revenue summons can be enforced only by the courts. 420 U.S. at 151. Because enforcement by the court results in substantial review of the propriety and scope of the summons, it serves the same function as a neutral and detached magistrate. Consequently, even if the administrative summons power in *Bisceglia* was analogous to the Service's authority to make summary

The warrant clause embodies the conclusion that one asked to prosecute an offense "cannot be asked to maintain the requisite neutrality with regard to their own investigations—the 'competitive enterprise' that must rightly engage their single-minded attention."[165] The purpose of the clause is to interpose a neutral and detached magistrate between the official carrying out the search or seizure and the individual who will be the target of official action.[166] The rule is not limited to police officers engaged in criminal prosecutions, but also extends to administrative officers involved in inspections to detect housing code violations,[167] and even to the President and executive branch of the government in carrying out searches and seizures to protect the domestic security of the nation.[168] Because the Service must also act under the same competitive pressures and adversary system under which police and other officials must act, application of the warrant requirement to the Service would be justified.

Unlike an adversary hearing required under the fifth amendment, an ex parte hearing as required by the fourth amendment[169] would not interfere with the legitimate power given the Service. A decision by a neutral, detached magistrate could be made in less time than is now required by the Service to follow its own procedures,[170] and would mini-

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assessments, *Bisceglia* would still suggest that review by a neutral and detached magistrate was required.

[165] Coolidge v. New Hampshire, 403 U.S. 443, 450 (1971).

[166] The fact that summary tax assessments must be reviewed within the Service before actual levy is permitted would not be sufficient to meet the requirements of the warrant clause, which requires review by a neutral and detached magistrate. *See* N. 161 *supra.* Shadwick v. City of Tampa, 407 U.S. 345, 350 (1972), held that a magistrate issuing a warrant must "be neutral and detached, and he must be capable of determining whether probable cause exists for the requested arrest or search." The Court defined neutrality and detachment as requiring "severance and disengagement from activities of law enforcement." *Ibid.* Significantly, in finding that a clerk of the municipal court satisfied the requirement of a neutral and detached magistrate, the Court noted that "he is removed from prosecutor or police and works within the judicial branch subject to the supervision of the municipal court judge." *Id.* at 351. *See also* United States v. United States District Court for E. Dist. of Mich., 407 U.S. 297 (1972); Coolidge v. New Hampshire, 403 U.S. 443 (1971).

[167] *See* Camara v. Municipal Court of City & County of San Fran., 387 U.S. 523 (1967).

[168] *See* United States v. United States District Court for E. Dist. of Mich., 407 U.S. 297 (1972).

[169] *See* Fuentes v. Shevin, 407 U.S. 67, 93–94 n.30 (1972).

[170] [W]e have a review by our regional counsel. We also have a post review of every case at the regional level by the Office of the Regional Commissioner. The Director of the Audit Division in the National Office reviews 5 percent of all jeopardy and 10 percent of all termination cases, and so, consequently, they do have those reviews.

CONTINUED

6 OF 8

1. Restrictions on Title 18 Investigations

Your text material for a speech before the Annual Convention of the Tax Section of the American Bar Association, Honolulu, Hawaii, on August 14, 1974, indicated a strong and drastic move away from the use of the Internal Revenue Service as a "law enforcement agency." If this is to be your policy for the future, what role do you have planned for the Intelligence Division?

2. Restrictions of Arrests by Special Agents

In numerous conversations you have indicated strong opposition to Special Agents making arrests, particularly when shown photographs of suspected felons in handcuffs. Are you opposed to the use of established law enforcement procedures in tax cases, at the risk of the safety of the Special Agent and the arrested individual? Would you prefer that criminal investigators in the I.R.S. not make any arrests? If so, how do you expect the courts and the public to consider tax evasion a serious crime (which it must, if voluntary compliance is to continue) when I.R.S. does not consider it or treat it as a serious crime?

3. Prohibitions on Special Agents Participating in Raids

Improper conduct by a criminal investigator during a raid can generate unfavorable publicity and possible law suits for damages. However, such isolated instances do not call for the complete abandonment of this investigative technique but, rather, are a lesson upon which to formulate future conduct. If one of your investigators abuses his subpoena authority, does that mean that you will forbid all investigators from using this authority? Is there perhaps another reason for prohibiting your investigators from participating in raids and arrests with other Federal agencies, even when they can gain valuable information on a person they are investigating?

4. De-emphasis of Strike Force Program and Narcotics Traffickers Program

You have stated that the Internal Revenue Service has changed the criteria for involvement in these activities in that they must satisfy the revenue and professional criteria which have long been established within the I.R.S. as guides for channeling its resources. Further, you have stated that in the future, special activities will have to compete openly and equally for resources against the regular tax administration activities. It is the opinion of the Association that the I.R.S. cannot and should not divorce itself from the needs of the government as well as the public which it serves. In the areas of Organized Crime, Narcotics Traffickers and Political Corruption, history has proven that numerous skillful violators of various statutes of the U.S. Code have only been brought to justice through the judicious use of tax laws. Therefore, to curtail or restrict such resources from endeavors in these areas is to deny the public, for whom we all work, the right to a fair, unbiased and impartial return on its investment and to deny your criminal investigators the integrity of a system which should be operated impartially. Is

there not a need for I.R.S., as well as all other enforcement agencies, to be vitally concerned with law violators? Should we not utilize, whenever and wherever needed, all our resources to combat crime? Is not the I.R.S. one of these resources?

5. Restrictions on Premium Pay

This, above all else, has caused more complaints and rumors than any other subject. We understand that the study by Treasury has been completed and its preliminary draft presented to you for comments. Will you follow the guidelines published by Treasury? If not, what guidelines will you issue? Can you put to rest the persistent rumor that your restrictions on premium pay were designed to defeat the new legislation making such pay part of the base pay computation for retirement purposes?

Is it not to the benefit of the taxpayer that the investigation be completed as speedily and efficiently as possible? Is it not to the benefit of the witness contacted during an investigation that they be contacted in the evening rather than normal daytime working hours when they might suffer a loss of pay? Does not premium pay save the government and witnesses both time and money in addition to speeding up the investigation?

How can premium pay be applied after the fact when regulations prohibit it? What happens when an agent is required to interview a witness after hours, the situation is uncontrollable and the agent is not on premium pay? Why is I.R.S. the only U.S. Treasury law enforcement agency that administers premium pay differently? On again, off again - more off than on, regardless of whether the cases call for the investigator to be on premium pay.

6. Suspension of Information Gathering and Retrieval, and Confidential Funds

Since the inception of the Intelligence Division, it has always been the policy and DUTY to receive, evaluate, and when necessary, investigate fully any information which has a tax consequence and comes to the attention of any Special Agent. However, with the suspension and/or restrictions placed on Information Gathering and Retrieval and the use of Confidential Funds, you have removed your criminal investigative personnel from contacts with informants and the surveillance of organized crime figures, corrupt politicians and narcotics traffickers, since monies for these activities comes from Confidential Funds. Even worse, you have prohibited your criminal investigators from contacts with other law enforcement agencies (in developing information on the aforementioned people) since Internal Revenue Manual Section 9311.2(3) does not permit contacts outside of the I.R.S. other than public records. I would be remiss if I did not inform you that the suspension of the Manual provisions permitting agents from gathering information on people such as narcotics traffickers, corrupt politicians and organized crime figures might raise grave questions concerning these suspensions.

No responsible management official can fail to understand the importance of this function to any intelligence organization.

Will your future instructions limit the I.R.S. information gathering to merely straight tax information? Is it not true that many significant income tax cases are developed as a result of gathering information that appeared unrelated to taxes? For example, Former Vice President Agnew, Governor Hall and the Watergate tax cases. Is it not true that a large part of the Intelligence Division inventory comes from Information Gathering by the Special Agents? I am sure your Special Agents are not interested in the sex lives of any individuals unless an individual pays large sums of money for this service and this expenditure is not commensurate with his reported income. This should cause an agent to become suspicious of the tax return and rightly so. Would he not be remiss in his duty if he did not attempt to document this expenditure in any criminal tax case as a cost of living item in a net worth case?

7. Poor and Inadequate Communications by the Commissioner's Office and Others on Matters Affecting Employee Morale in the Intelligence Division

We have received allegations that the Director's communications are often misinterpreted by your staff before they reach your office. We have been told that one of your staff has stated that the Intelligence Division is "behind the times." A further remark allegedly made by this same individual while he was in a district was that he "one day would bring Intelligence to its knees." Would you please explain these remarks, if true . . . and if not true, put this rumor to rest?

8. Adversary Posture of the Commissioner Toward OC&R Section of the Department of Justice

Numerous reports of conflicts between your office and the Department of Justice suggest an adversary relationship rather than the spirit of cooperation needed to work together to perform effectively.

Since the Department of Justice handles the prosecution of all the criminal cases of the Intelligence Division, is that adversary posture another way of emasculating the Intelligence Division?

9. Restrictions on Legal Use of Electronic Surveillance

If the use of Electronic Surveillance is legal, why do you prevent your Intelligence Agents from using it? Do you plan to continue this restriction?

10. Failure to Endorse and Support Agressive Fraud Investigations of Major Political Figures, Organized Criminal Activities and Major Corporations

I would be remiss if I did not call to your attention the reaction of the public and media to your actions and statements that I.R.S. should prosecute the "little guy" i.e., the butcher, the baker and candlestick maker while organized crime figures, narcotics traffickers and major political figures are pushed into the background. Is this a correct evaluation of your policy? If not, will you please state your policy in this area?

11. Transfer of Wagering Enforcement to BATF

Why this was done we do not know. However, the effect is clear, as your men and other law enforcement people believe, that you did this because you did not consider your men capable of doing this type of investigation. Could you explain the reason for this transfer - especially when the I.R.S. Agents were fully trained and experienced in the field of wagering and BATF was forced to expend large sums of money to send its agents to school during a period when the President is calling for economy in government?

12. Retirement of The Director, Intelligence Division

It has been alleged that the Director of the Intelligence Division has retired because he was being pressured by your office to conduct investigations on the "little guy" as opposed to his policy of conducting investigations in accordance with the mission of the Intelligence Division. This mission is, in fact, the identification of and agressive enforcement of pockets of non-compliance which encompasses Narcotics Traffickers, Organized Crime Activities and political corruption. Will you advise whether or not these allegations are true?

13. Disclosure of Identity of Confidential Informants

Another recent development are the questions Internal Audit (a non-criminal division) is asking your criminal investigators about their contacts with "confidential informants" even though no payment was made to the informant. It appears from the questions that they are attempting to learn the names of these informants. As any criminal investigator knows, once an informant's name has been disclosed to another individual, two things usually occur: a) the informant is useless to the investigator from then on, and b) other informants discover that you divulged a name without the informant's permission, and they, therefore, refuse to give you any further information.

The above restrictions plus others instituted by the I.R.S. prevent the Intelligence Division from developing informants to give them information on corrupt politicians, organized crime figures and narcotics traffickers. How is the public going to react to the preclusion of your special agents in investigating political corruption, organized crime and narcotics cases? Will it not be a "black eye" for the entire agency?

14. Restrictions on Pre-Trial Publicity Far Beyond the Requirements of the Attorney General's Guidelines

Is it your policy to restrict pre-trial publicity so that the public will not be aware that I.R.S. does prosecute tax evaders?

In summary, Mr. Commissioner, whereas each of the circumstances mentioned herein, taken separately may be explained as a proper exercise of management's discretion, the sum total of all of these restrictions and curtailed activities can

create the impression that your intent is to reduce the effectiveness of all criminal investigative aspects of the Intelligence Division. Apparently you want criminal investigations conducted but more along the lines of an audit examination. In this manner, very few - if any - criminal cases will be made against organized crime figures, narcotics traffickers or corrupt politicians - but only on the low and middle income class people.

Finally, all of the above lend credence to the suspicions being whispered that it is your invention to destroy the effectiveness of the Intelligence Division, long recognized as one of the leading investigative agencies in law enforcement.

I am pleased to offer you the services of the Federal Criminal Investigators Association to assist you in any way we can to fulfill your law enforcement functions and to enhance the professional level of Federal Criminal Investigators. I sincerely hope that our correspondence will bring about improved understanding and communication between your office and your employees. Your views on these subjects will be disseminated throughout the Federal law enforcement establishment.

Sincerely yours,

FEDERAL CRIMINAL INVESTIGATORS ASSOCIATION

John P. Ryan

John P. Ryan

Executive Secretary

JPR/ecf

Department of the Treasury

Internal Revenue Service

Washington, D.C. 20224

Date MAY 16 1975

In reply refer to CP

Mr. John P. Ryan
Executive Secretary
Federal Criminal Investigators Association
P.O. Box 353
Forestville, Connecticut 06010

Dear Mr. Ryan:

Commissioner Alexander has asked me to reply to your letter of April 18, 1975, conveying your concerns, and those of your membership, about certain matters relative to the IRS Intelligence Division. In recent weeks, this particular arm of the Service has received considerable coverage in the news media -- much of it based on incomplete facts and considerable misinterpretation. Many of the issues raised in your letter are the same as those that have been receiving a great deal of attention from the news media. I welcome this opportunity to respond to the questions you have raised and, hopefully, help dispel any rumors or misinterpretations about the Intelligence Division and its continuing role as the criminal tax law enforcement arm of the Service.

In order to put my answers in proper perspective, I think that it would be useful if I were to explain why we believe that the criminal investigative role of the Internal Revenue Service must be limited to the enforcement of the tax laws. The reason is simply that we believe it is vital to the survival of the IRS as an effective administrator of our self assessment tax system.

The Internal Revenue Service probably intrudes more deeply and more frequently into the private affairs of more Americans than any other organization, public or private. Last year, for example, more than 83 million individuals (or fiduciaries) filed Federal income tax returns and over 1.76 million individual and fiduciary income tax returns were audited by the Service. It is essential to the continued viability of our self assessment system, and to the effective civil enforcement of the tax laws, that the public have confidence in the Internal Revenue Service. I believe that this confidence will be severely impaired if the Internal Revenue Service permits its civil enforcement powers and personnel to be used in mere fishing expeditions where there is, at best, a mere suspicion of tax evasion, or if the Service begins collecting information about the subjects of such suspicions, or paying confidential informants for information in such circumstances.

I want to make it clear that we are firmly behind the efforts to eliminate corruption in public office and other so-called white collar crimes, particularly tax crimes. I am sorely disappointed when a Federal prosecutor declines to prosecute, or a Federal judge declines to impose a jail sentence in a tax evasion case because of his/her view that tax evasion is not a serious offense. Whenever the Internal Revenue Service uncovers any evidence of a violation of Federal laws other than the tax law, we are quick to furnish that information to the appropriate agency. However, I also believe just as firmly that if the Internal Revenue Service permits itself and its employees to become entangled in investigations relating to those who are suspected of committing only non-tax related crimes, public confidence in the IRS as the tax administrator will be shattered, and our system of self assessment and our high voluntary compliance levels will be severely damaged. Quite simply, our present revenue collection system cannot be administered by an agency which lacks public confidence, and the type of criminal law enforcement activities which are currently being urged on the Service will destroy that confidence.

I am quite sympathetic with the budgetary and manpower pressures that affect the Justice Department, and with the fact that they do not have enough qualified people to do their job. However, the remedy is not for the Internal Revenue Service to do their job for them, because of the adverse impact this would have on our job of administering the tax laws. The Service stands ready to aid them in every way possible in acquiring the funds, personnel, and expertise which they need. For example, we are ready to provide accounting and auditing training to Justice Department employees who may need, but lack, those skills. And when they are able to develop sufficient indication of a criminal tax case, or when such an indication is developed by our Audit personnel, our Intelligence personnel will exert their full energies to bringing the case to a successful conclusion.

I will respond to each of your questions in the order in which they were presented in your letter.

1. Restrictions on Title 18 Investigations

The Intelligence Division will continue to be the criminal investigatory function within the IRS charged with the responsibility of enforcing Title 26 violations. In addition, violations of Title 18 provisions will be investigated when committed in contravention of the

tax laws. However, Intelligence Division resources will not be used to investigate violations of Title 18 which do not have any tax implications. This in no way affects the status of the Intelligence Division as a law enforcement agency. It is merely a position which focuses on the specific investigative jurisdiction and responsibilities which the Intelligence Division is authorized to enforce.

2. Restrictions of Arrests by Special Agents

The IRS does treat tax evasion as a serious crime and on many occasions the Commissioner has made very clear his position that tax violations are serious and that there should be more severe sentences for convicted tax criminals. The fact that tax cases are within the province of the Justice Department when most arrest situations arise, makes it the responsibility of the United States Marshals, not IRS special agents, to effect the arrests. Our position in this regard does not lessen the seriousness of tax evasion, but does recognize the U.S. Marshals as the proper arm of the judicial system to make post indictment arrests. Proper utilization of resources dictates that each agency within the government perform those functions for which they are responsible.

3. Prohibitions on Special Agents Participating in Raids

As you recognized in your letter, improper conduct by agents conducting raids is one of our concerns. However, a more likely danger exists in exposing our agents to possible legal actions involving alleged crimes and torts committed by other participants in a raid over which IRS has no control. It is important to note that the type raids you mention in your letter do not include IRS participation in the planning stages, and as a consequence the IRS has little control over the ultimate outcome. Furthermore, any tax-related information developed as a result of such raids can be obtained by IRS agents after the raid.

4. De-emphasis of Strike Force Program and Narcotics Traffickers Program

The IRS will continue to participate in the Strike Forces and to investigate significant narcotics traffickers provided the investigations are for tax law violations. The IRS cannot utilize its resources for the sole purpose of correcting social ills. Such results often do occur, however, as a by-product of our tax law enforcement activities. Nevertheless, we must bear in mind that the principal responsibility charged to the IRS by Congress is the effective administration of the tax laws, and our ability to discharge that responsibility can be impaired by our engaging in other activities.

5. Restrictions on Premium Pay

The IRS will continue to abide by the Treasury Department guidelines regarding premium pay. The present IRS policies on premium pay are temporary measures until the new Treasury guidelines are published. Any inference that the present IRS policies regarding use of premium pay are intended to reduce retirement benefits is simply not correct.

The IRS administers premium pay according to the Civil Service regulations which require periodic reviews to determine an employee's continued eligibility for premium pay and prohibit retroactive determinations. Where those reviews indicate that an employee should continue on premium pay, he will continue to have that status.

6. Suspension of Information Gathering and Retrieval, and Confidential Funds

The recent suspension of the Information Gathering and Retrieval System is a temporary measure. We are currently preparing guidelines for a new system, which will permit special agents of the Intelligence Division to continue to meet their responsibilities to seek and assemble information necessary for the discharge of their duties. The principal difference from the prior system will be a much greater emphasis on ensuring that the information gathered is directly tax-related. We have neither the duty nor the resources to assemble information which does not, in some way, relate to ongoing or contemplated IRS investigative actions. Rather than being a hindrance to law enforcement, we view the changes in our information gathering procedures as a major step in making our law enforcement activities more efficient.

With regard to the use of confidential funds, this is an area that is currently under intensive study, both within the IRS as well as by outside agencies. Decisions as to the ultimate continuance or modification of this practice have not yet been made.

7. Poor and Inadequate Communications by the Commissioner's Office and Others on Matters Affecting Employee Morale in the Intelligence Division

The establishment and maintenance of effective communications is perhaps the most common problem faced by large, multifunctional organizations. The IRS is no exception. We are constantly seeking better ways to keep our employees informed about the actions of management and, conversely, to keep ourselves informed about the

entire spectrum of IRS activities. The nature of our organization, of course, requires that communications pass through various levels of authority en route to their ultimate destination. This fact may have contributed to your inference that communications from the Director of Intelligence are often "misinterpreted" by members of the Commissioner's staff before they reach Commissioner Alexander.

What normally occurs is that the Director, Intelligence Division makes recommendations to me or prepares correspondence to the Commissioner for my signature. If I elect an alternative course of action to that proposed by the Director, Intelligence Division, it is not the result of misinterpretation of his views but the choice of another option reached after considering the various alternatives. I seriously consider his views when making any decision which impacts on his area of responsibility.

You also quote an unidentified member of the Commissioner's staff as having said that Intelligence is "behind the times", and that he "one day would bring Intelligence to its knees." I do not know whether such remarks were actually made by anyone. I can only assure you that they do not represent my views, nor the views of the Commissioner.

8. Adversary Posture of the Commissioner Toward OC&R Section of the Department of Justice

First, I would like to point out that in the processing of our criminal cases, our relationships with the Department of Justice continue to be excellent. It is in the area of policy considerations in the application of IRS resources that we have views that may differ from those of some Justice Department officials, particularly in the matter of Strike Forces. I believe we are in agreement that the basic concept of the Strike Force is sound and should be continued. However, I believe our major contribution must come about through our enforcement of the tax laws and tax-related Title 18 provisions. I think it is this posture that may have caused some misunderstanding between our two agencies. However, to label this an "adversary posture" is, in my view, a gross exaggeration of the situation.

9. Restrictions on Legal Use of Electronic Surveillance

The IRS does permit the use of electronic surveillance provided the consent of at least one of the participants has been obtained and that certain designated officials grant their approval. In order

to conduct electronic surveillance without any participant's consent, it is necessary to obtain a court order under Title III of the Omnibus Crime Control and Safe Streets Act. This statute does not authorize non-consensual monitoring to investigate violations of Title 26.

10. Failure to Endorse and Support Aggressive Fraud Investigations of Major Political Figures, Organized Criminal Activities and Major Corporations

It is simply not true that the IRS wants to prosecute the "little guy" at the expense of foregoing prosecutions of racketeers and political figures. There have been a significant number of racketeers and political figures prosecuted since Commissioner Alexander took office. To achieve the maximum levels of voluntary compliance with the tax laws, it is necessary that criminal enforcement activities be directed toward all segments of the taxpaying public. This would include some attention to the "ordinary" tax criminals as well as those involved in organized crime or political corruption.

11. Transfer of Wagering Enforcement to BATF

The decision to transfer this responsibility was made by top officials of the Treasury Department. Before making the decision, they reviewed position papers and proposals submitted by both agencies -- IRS and BATF. The facts cited in your letter regarding the availability of trained IRS personnel and their prior experience in enforcing these statutes were among many factors that were considered in making the decision. I have no doubt that IRS Intelligence personnel are fully qualified and capable to enforce the wagering laws, nor was any such doubt expressed by the officials making the decision. The key factor was to try to derive the greatest benefit from the effective deployment of Treasury's law enforcement personnel.

12. Retirement of the Director, Intelligence Division

The Director has stated that he is retiring for personal reasons.

13. Disclosure of Identity of Confidential Informants

The IRS Inspection Service has always had the responsibility to review the procedures and practices of other segments of IRS to ensure adherence to existing laws, regulations and rules. In the light of recent events, it has become necessary to conduct a thorough review of the use of informants by the Intelligence Division. Such a review may

require that Inspection be given the names of certain, selected informants for purposes of verification of payments and other procedures. This does not mean that complete lists of all informants used in a given district will be disclosed to Inspection. It does mean that each Intelligence Division Chief should maintain a list of informants and, upon receipt of a duly authorized request, reveal the names of a selected few informants for test check or verification purposes. This Inspection responsibility is not new, nor is the process of verifying transactions with informants. I believe the current concern on this issue has been sparked, to a great extent, by the recent misleading publicity regarding IRS informants.

14. Restrictions on Pre-Trial Publicity far Beyond the Requirements of the Attorney General's Guidelines

IRS guidelines regarding pretrial publicity were designed with two principal objectives in mind. First, they are intended to fix the responsibility for publicizing these actions with the agency that has jurisdiction in the case -- in this instance, the Department of Justice. Second, the guidelines are designed to avoid prejudicing an individual's right to a fair trial by causing excessive pretrial publicity. Both of these are genuine concerns that the IRS must recognize if it is to be successful in its criminal enforcement efforts.

On the other hand, we recognize that a prosecutive action can be more effective if it is publicized. For this reason, our guidelines are designed not to restrict, but simply to control our publicity generating activities.

Mr. Ryan, let me assure you and the members of your organization that both Commissioner Alexander and I are keenly aware of the need for a strong criminal enforcement program as an integral part of our tax system. We also recognize and appreciate the effective and efficient performance of the Intelligence Division in this regard. It is unfortunate that recent events have presented an unfair and distorted impression of Intelligence and of our views toward it.

Once again, I thank you for this opportunity to present our views on these very important issues. Please convey them to your members, along with my reassurance of support for the important role of the Intelligence Division as one of the top law enforcement agencies in the federal service.

With kind regards,

Sincerely,

S. B. Wolfe
Assistant Commissioner
(Compliance)

C. Treasury Policy

To: Edward C. Schmults, Under Secretary.
From: David R. Macdonald, Assistant Secretary (Enforcement, Operations & Tariff Affairs).
Subject: Narcotics trafficker program.

June 27, 1975.

As you requested, I have reviewed Commissioner Alexander's memoranda of June 7 and 9 to the Deputy Secretary concerning the Narcotics Trafficker Program. Although I share the Commissioner's desire that our tax enforcement policies should be equitable and enhance the Service's public image, it seems that we have different opinions regarding the role of the IRS special enforcement programs in achieving those goals.

The memoranda raise the following issues:

JUNE 7 MEMORANDUM

(1) The equity of the IRS tax enforcement policies.
(2) The public's reaction to those policies.
(3) The use of the IRS authority to terminate tax years and to make jeopardy assessments.
(4) The cost effectiveness of the NTP vs other IRS programs.
(5) The decline of the NTP activity at a time when there is national concern over the increase in the drug traffic.
(6) The allegation that NTP cases have not met the selection criteria that other cases have met.
(7) The proposal that resources previously allocated to NTP be allocated to other IRS programs.

JUNE 9 MEMORANDUM

(8) The advisability of sponsoring new legislation to amend 21 U.S.C. 881(a) to permit the forfeiture of cash or other property found in the possession of a drug trafficker.

COMMENTS

(1) Equity of IRS Enforcement Policies

For many years IRS enforcement policies have been vulnerable to the charge that they favor those engaged in illegal occupations. In FY 1974, IRS office auditors examined 1,455,000 returns, mostly of low and middle income taxpayers engaged in legal activities. The additional taxes and penalties recommended totalled $335,300,000—$230 per return. During the same year, the IRS Audit Division examined 2,030 NTP cases and recommended additional civil assessments and penalties totalling $69,500,000—$34,236 per case. Even if the NTP figure is discounted as much as 90%, the NTP average would still be 10–15 times larger than the average return from the office audit program which accounted for 82% of all the examinations of individual and fiduciary income tax returns completed in 1974.

These figures clearly show that the IRS civil enforcement effort is continuing to concentrate on the "little guy." One reason for that may be that the criminals do not willingly cooperate with the tax authorities. They do not even file returns in many instances. I understand, for example, that a high percentage of the NTP cases—perhaps 25% or more—involve persons who have failed to file income tax returns.

(2) Public Reaction to IRS Enforcement Policies

The only recent professionally conducted attitude survey related to IRS enforcement policies appears to have been the one sponsored in 1966 by the IRS and the Tax Division of the Department of Justice. It was conducted by the University of Michigan and the results were contained in a study published

by the IRS in 1968. The survey clearly shows that the public wants people engaged in illegal occupations to pay their rightful taxes and expects the Government to discriminate in prosecuting and penalizing tax violators.

The attached newspaper clippings indicate the favorable publicity developed for the IRS in connection with some of the NTP cases prosecuted in period 1971–1974. (Attachment A)

(3) The Use of the Authority to Terminate Tax Years and to Make Jeopardy Assessments

The Commissioner's memorandum does not state how many times NTP terminations and jeopardy assessments have resulted in substantial reductions and refunds. The frequency is only described as often. It is my understanding that in more than 4,000 such cases, involving assessments of more than $140,000,000, relatively few taxpayers contested the assessments. In the four years the Office of Law Enforcement was actively involved in the operation of NTP, the IRS reported no more than 8 or 9 cases in which there was adverse court action.

The service also makes seizures in connection with its routine collection activity. Those seizures have probably resulted in more adverse publicity than the seizures based on NTP terminations and jeopardy assessments. However, no one has suggested that they be abandoned.

Obviously, any summary authority should be used with discretion; nevertheless, virtually none of the revenue realized as a result of the NTP seizures would have been collected if the special assessment procedures had not been used. I fail to see why the use of these procedures should be condemned because they also happen to remove working capital from the illegal traffic in drugs. The precipitious drop in such assessments and seizures from $14,000,000 in FY 1973 to less than an estimated $3,000,000 in FY 1975 may have been a factor in the apparent increase in drug traffic during that period.

In my opinion, the IRS has a duty to use terminations and jeopardy assessments to protect the revenue whenever necessary; there should be no reluctance to use its powers, based upon probable cause and in compliance with the statute, just because illegal income is involved.

(4) Cost Effectiveness of the NTP vs Other IRS programs

The Commissioner's memorandum does not contain enough information to make a meaningful analysis and is, in fact, misleading for the following reasons:

(a) The $35 million revenue figure appears to be very questionable.

(b) The cost figure used in the comparison is more than twice as large as it should be.

The revenue is understated and the cost is overstated.

The IRS normally does not have the capability to determine the amount of revenue collected as the result of the assessments made in connection with a given program. To our knowledge, there has been no attempt to develop similar figures for any other program. While we have not examined the procedure used to develop the figures for NTP, the figures cited in the IRS memorandum are suspect. From the inception of the program through the 3rd Quarter of FY 1975, the IRS reported seizures of $32.7 million and total collections of $35 million. The spread of $2.8 million is not realistic. Most of the cases against major traffickers which did not involve seizures should have produced several million additional dollars in revenue. Furthermore, the 3rd Quarter FY 1975 report from the IRS (Attachment B) shows a $34.5 million figure for collections through FY 1974. It also indicates that collection figures are not available for FY 1975. Under these circumstances, we find it difficult to rely on $35 million as a true indication of what has been collected.

On the cost side, the IRS memorandum states that $53 million was expended to collect whatever revenue was actually collected. Included in the $53 million was $32 million expended by the Intelligence Division. As most IRS managers well know, the Intelligence Division does not raise revenue. Audit programs are judged on the basis of additional assessments recommended versus Audit costs. Collection programs are evaluated on revenue collected versus Collection costs. The activities of the Intelligence Division are not directly related to revenue collections; its principal purpose is to encourage voluntary compliance with the self-assessment system. Therefore, Intelligence costs of $32 million should be subtracted from the $53 million cited. The NTP revenue raising activities actually cost $21 million.

While we do not know the total amount collected as a result of the NTP activities, it is obvious that, since more than $30 million was seized, the civil side of the program has more than paid for itself. If NTP is to be compared with other audit or collection activities, the comparisons should be made with each of the other programs, by audit class and type of return filed. The overall statistics are distorted by corporate returns, and the statistics from the examinations of the returns of individuals suffer by comparison.

In terms of the return on the Intelligence Division's activities, the newspaper clippings referred to in (2) above and the much longer prison terms imposed on NTP tax evaders speak for themselves. On the basis of the conclusions of the IRS-Justice study on the *Role of Sanctions in Tax Compliance*, NTP has been very successful. The punishment of the violators has been significant, and it has been communicated to the tax paying public. Very little publicity is generated by most of the cases against nurses, doctors and mechanics.

(5) Decline of NTP Activity During a Period When the Drug Traffic Is Increasing

The IRS quarterly reports on NTP show a steady decline in activity beginning in 1973 when the Office of Law Enforcement reduced its role in the management of the program. At a time when the Vice-President and other senior people in the Administration are very concerned about the drug traffic, the IRS has reported that it is not using a major portion of the funds allocated to it for the fight against drug dealers. The statistics and the Commissioner's remarks (Attachment C) indicate that the program is being deliberately phased out.

The Treasury Department could be severely criticized for its failure to support NTP; especially since Treasury has been so active in other anti-narcotics efforts.

(6) Allegation That NTP Cases Have Not Met the Selection Criteria That Other Cases Have Met

The statement that the NTP cases did not initially meet the test of being tax related is false. In fact, on the average, the quality of the cases has decreased. The following statistics on additional assessments are based on IRS reports:

Fiscal year	Average for all cases	Average for target cases
1972	$78,665	$275,893
1973	39,024	86,847
1974	34,236	57,712
1975 (9 mo)	29,425	38,990

Until recently, all "target" (major traffickers) cases were screened by a National Office Committee for tax potential and drug relatedness before an investigation or audit was initiated. The balance of the cases involves close associates of those who were selected by the Committee or terminations resulting from cash found in the possession of persons arrested on drug charges.

All of the statistics, as well as the personal observations of my staff, contradict the statement that the quality of the cases has improved.

(7) The proposal that resources allocated to NTP be shifted to other programs

Contrary to the IRS claims, few of the IRS programs are as productive in terms of additional assessments per case. In NTP's worst year, 1975, the average per case was over $29,000. The latest available figures for all examinations of individual and fiduciary returns indicate that, in 1974, the average additional assessment per return was $697, a small percentage of the assessment in an average NTP case. These statistics clearly show that drug dealers constitute a significant pocket of flagrant non-compliance.

Obviously, NTP examinations are more difficult and time consuming to complete than the audit of a bank clerk, but that is not a reason for neglecting them. To do so would indicate that only those who are relatively compliant are going to be required to file returns and pay taxes.

What will happen if NTP is abolished can be easily surmised from what has happened during the last two years. While the program was being de-emphasized and decentralized, the productivity and effectiveness of the program steadily declined. IRS programs dealing with persons in illegal activities historically have required strong support from top management in order to succeed. Many IRS

officials have a natural repugnance to dealing with the criminal element even though it is productive from a revenue point of view.

(8) New legislation to permit forfeiture of currency under 21 U.S.C. 881(a)

While I have no objection to such legislation, it will not do the entire job. The Government will still be required to prove that the cash was connected to the drug activity. Even if that could be done, the IRS, in many instances, would find it necessary to conduct a tax examination. The tax law does not exempt drug dealers from liability for Federal income tax.

On June 9, before I was aware of his memoranda of June 7 and 9, I sent the Commissioner the attached memorandum regarding NTP (Attachment D) and invited his suggestions on how NTP might be revitalized. I believe my memorandum is still valid and that the IRS, perhaps with additional oversight from Treasury, should reactivate NTP at this time.

Attachments.

INTERNAL REVENUE SERVICE MEMORANDUM

JUNE 7, 1975.

To: Mr. Stephen S. Gardner, Deputy Secretary.
From: Commissioner.
Subject: Narcotics traffickers program.

Since becoming Commissioner of Internal Revenue nearly two years ago, I have sought to have all of the Service's policies and practices reflect equity in the administration and enforcement of the tax laws. The public's trust in the IRS as a wholly impartial administrator of the revenue laws is a basic underpinning of our voluntary tax compliance process. When the Service is assigned missions, whose primary objectives are not directly tax related, aimed at selectively concentrating its enforcement efforts against particular activities or individuals, the public may come to accept the view that the IRS is a tool to be wielded for policy purposes, and not an impartial component of a democratic mechanism which applies equally to us all.

In 1974, as a result of the concerns expressed above, I had the objective of the Service's participation in the Treasury Department's Narcotics Traffickers Program (NTP) revised as follows:

"To achieve maximum compliance with the internal revenue laws by use of the civil and criminal sanctions against middle and upper echelon narcotics traffickers."

Subsequently, after considerable thought and study, I further reappraised the IRS role in NTP, and determined that our Narcotics Traffickers Program activities should be integrated into the Service's regular tax enforcement efforts. This decision has been reflected in our FY 1975 MBO objectives, in which the Service's NTP activities have been subsumed under our overall Tax Fraud objectives.

This decision to re-orient our NTP activities vis-a-vis our other compliance programs has not been based solely upon the issue of equity or simple concern for our public image. The Narcotics Traffickers Program has raised significant operational issues for us as well. Because of the special nature of NTP cases, the Service has been called upon to make disproportionate use of termination and jeopardy assessments, powerful enforcement measures originally intended for extreme exigencies under the normal revenue collection process. Upon detailed full year follow-up examinations, however, such assessments have often resulted in substantial reductions and refunds. This has left the Service open to charges of improper behavior; therefore, action was taken to restore restraint and to exercise careful judgment in order to avoid excessive and unreasonable termination and jeopardy assessments.

Moreover, the Narcotics Traffickers Program is deficient as a tax-related activity, in that it has not proven cost-effective, based on revenue yield to date. From its inception in FY 1972 through the close of FY 1974, the program has cost the Service approximately $53 million, compared to revenue collections of only $35 million. Therefore, although the program has been successful in obtaining criminal convictions, it has been very disappointing in terms of its revenue results when compared with our other compliance programs. Although we recognize that the primary IRS objective of this program is improved compliance rather than immediate direct tax yield, there is no quantifiable measurement available to gauge the impact on compliance resulting from the number of prosecutions, indictments, convictions, etc., in the Narcotics Traffickers Program. It is quite probable that the general tax fraud program would generate a some-

what greater ripple effect on compliance than would the Narcotics Traffickers Program.

Recently, there has also been a steady decline in NTP cases, due in part to our applying the same selection criteria as applied in other cases so as to assure that only cases with substantial documentable tax violations are included in the Narcotics Traffickers Program. This trend is continuing. It is becoming increasingly clear that, in terms of voluntary compliance effect, our enforcement manpower would be better applied to other compliance activities. This is particularly important at present, as our FY 1976 budget, now before Congress, provides funds only for maintaining current programs, without provision for expansion.

The actions which I have taken integrate the Narcotics Traffickers Program into the other compliance programs. Thus, if the NTP workload continues to decline according to present indications, this would permit the utilization of unused NTP manpower in the other compliance programs. Of course, the Service will continue to make narcotics traffickers the subjects of investigations. However, potential NTP cases will have to meet the same screening and selection criteria that all other cases must meet in our compliance programs. The selected cases involving narcotics traffickers would fall into one of the other categories of our tax fraud and audit programs, as the Narcotics Traffickers Program would lose its identity as a separate program. The manpower necessary to pursue these cases effectively will still be available from our other programs. In the near future I expect to inform Congress, because of Congress' prior actions, of our plans for change in focus with respect to the Narcotics Traffickers Program, along with a justification of the rationale for this change.

I have attached a more detailed analysis exploring some of the operational results of the Narcotics Traffickers Program. I think the data show that alternative use of the NTP manpower is in order.

Attachment.

ANALYSIS OF NARCOTICS TRAFFICKERS PROJECT

The Narcotics Traffickers Project was established by the Treasury Department on July 7, 1971, following President Nixon's June 17, 1971 omnibus drug control message to Congress announcing the Administration's expanded effort to combat the menace of drug abuse. This message included the establishment of a high priority program to conduct systematic tax investigations of middle and upper echelon narcotics traffickers. The original purpose of this program, as stated by the Treasury Department, was "To mount a nationally coordinated effort to disrupt the narcotics distribution system by employing the tool of intensive tax investigations of these key figures. By utilizing the tax laws, both civil and criminal, our objective is to drastically reduce the profits of this activity by attacking the illegal revenues of the narcotics trade."

To carry out the Narcotics Traffickers Program, in FY 1972 Congress authorized $7.5 million and 541 positions (250 man-years) of which 200 were special agent, 200 revenue agent and 141 operational support positions. These positions were annualized in the FY 1973 budget at a cost of $14.4 million. In addition, in FY 1973 Congress authorized supplemental funds of $4.5 million and 238 positions (198 man-years) of which 168 were special agent and 70 revenue agent positions. In FY 1974 Congress approved the IRS budget request for 901 average positions for the Narcotics Traffickers Program at a total one year cost of $23.2 million (270 revenue agent, 353 special agent and 278 operational and administration support positions).

Annually, the resource levels allocated to the Narcotics Traffickers Program are as follows:

Fiscal year	Man-years				
	Special agent	Revenue agent	Operational support	Administration support	Total
1972	230	91	135	26	482
1973	324	265	214	51	854
1974	361	255	248	49	913
Total	915	611	597	126	2,249
1975 estimate	315	240			

Since the Service was concerned about the interpretation of its role in the Narcotics Traffickers Program—which should have been the placing of emphasis on narcotics traffickers who violate the tax laws—the objective of this program was revised by the Internal Revenue Service as follows: "To achieve maximum compliance with the internal revenue laws by use of the civil and criminal sanctions against middle and upper echelon narcotics traffickers and financiers."

We have recently conducted an evaluation of the Narcotics Traffickers Project. From this program analysis we have determined that the costs for the Narcotics Traffickers Project have exceeded its tax yield, based on revenues collected through FY 1974. From its inception in FY 1972 through the close of FY 1974, the total IRS costs are $52.6 million, compared with revenue collections of $34.6 million (Table 1 attached). These collections represent about 16% of the $218.1 million NTP assessments recommended by our Audit Division. It is recognized that at the close of fiscal 1974 there were a number of NTP cases still in the Audit, Collection, and Intelligence pipeline and that for cases already worked some portion of the NTP recommended assessments will become collectible in the future. In addition, as of the close of FY 1974, the Collection Division had assets with an estimated value of $3.6 million under seizure and levy which are still to be liquidated. It is uncertain how much of this $3.6 million will be realized.

Revenues collected of $34.6 million represent approximately 24% of the reported assessments of $143.6 million received by the Collection Division (Table 1). These assessments primarily pertain to termination and jeopardy assessments and cover FY 1973 and FY 1974 (no data on assessments received by the Collection Division are available for FY 1972). This overall percentage of collections in terms of assessments is not expected to change appreciably in the near future, even though the percentages of dollars collected on cases recently assessed appear higher than on cases previously assessed. This recent trend is a result of actions taken by IRS in FY 1974 to prevent excessive termination and jeopardy assessments. IRS issued instructions that these assessments should only be made in strict accordance with the special provisions of the Internal Revenue Code that permit them and that there should be substantial evidence to make a more reasonable determination of actual tax liability.

The low percentage of collections in relation to NTP recommended assessments is due in part to the fact that full year follow-up examinations of termination assessments for non-target cases (very few termination assessments were made on target cases) often result in substantial reductions and refunds to the taxpayers (these assessments account for $103 million, about 50% of the $218.1 million total recommended assessments, Table 5 attached).[1] As mentioned above, in FY 1974 IRS took action to prevent excessive termination assessments by issuing instructions aimed at basing these assessments on a more reasonable determination of actual tax liability.

The IRS Intelligence activity on the Narcotics Traffickers Project includes the following accomplishments: For the period from fiscal 1972 through fiscal 1974, 1309 investigations completed, 516 prosecution recommendations, 205 indictments and 139 convictions with an average jail sentence of 29 months (Table 2 attached). A number of prosecution recommendations is still under review by Chief Counsel or the U.S. Attorney's office.

From the inception of NTP through the first six months of FY 1975, 2,142 target cases were selected. However, the number of target cases has been steadily declining due, in part, to the application of more stringent IRS case selection criteria designed to ensure that only narcotics traffickers with substantial tax violations are included in the program. The decline in the number of target cases selected began in FY 1974 and has continued through the first six months of FY 1975, as evidenced by the completion of fewer investigations during the first six months of FY 1975 compared with the first six months of FY 1974 (201 investigations completed in the first six months of FY 1975 compared with 277 cases completed in the first six months of FY 1974).[2]

The decline in NTP cases is also reflected by the reduced number of Audit examinations of narcotics traffickers target cases and the corresponding diminu-

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[1] Internal Audit Report on Examination of On-Line Audit of the Narcotics Traffickers Program—Termination Assessments, Office of Assistant Commissioner (Inspection), Internal Audit Division.

[2] Data for the first 6 months of fiscal year 1974 are not shown in table 2.

tion in recommended assessments (157 target cases examined with $4.2 million in assessments during the first six months of FY 1975 compared with 250 target cases examined with $18.9 million in assessments during the first six months of FY 1974, Table 4 attached).[3]

There is also a declining trend in the number of termination and jeopardy assessment cases and the corresponding dollars assessed (175 termination and jeopardy assessments with $3.8 million assessed during the first six months of FY 1975 compared with 342 spontaneous assessments with $38.4 million assessed during the first six months of FY 1974).[3] This decline in termination and jeopardy assessments reflects the adherence to the aforementioned FY 1974 IRS instructions aimed at basing these assessments on a more reasonable determination of actual tax liability.

The reduction in workload is further reflected by the underrealization of resources applied to the Narcotics Traffickers Program for the first six months of FY 1975, as seen below:

PLANS VERSUS ACCOMPLISHMENTS FOR NTP FOR 1ST 6 MO OF FISCAL YEAR 1975: DIRECT TIME IN MAN-DAYS

	Plan	Actual	Percentage realized
Audit Division	22,273	17,076	77
Intelligence Division	31,721	24,328	77

The decline in the number of target cases as well as the underrealization of manpower applied to NTP can be expected to continue as evidenced by the declining inventory of target cases.[4] Further, although the program has been successful in obtaining criminal convictions, it has been very disappointing in terms of its revenue results compared with the regular audit program in which the marginal yields are at least three times the marginal cost. Although we recognize that the primary IRS objective of this program is improved compliance rather than immediate direct tax yield, there is no available quantifiable measurement to gauge the impact on compliance resulting from the number of prosecutions, indictments, convictions, etc. in the Narcotics Traffickers Program. It is quite probable that the regular tax fraud programs would generate a somewhat greater ripple effect on compliance than would the Narcotics Traffickers Program.

With these facts in mind and in view of the limited success the Service has had in gaining resource support for high priority tax administration programs—programs which would have a high revenue yield and an improved effect on tax law compliance—it would appear that a reorientation of our enforcement resources devoted to the Narcotics Traffickers Program is in order. This is particularly important since our FY 1976 budget, now before Congress, provides funds for maintaining current programs only, without any provisions for expansion.

These considerations suggest that actions should be taken to integrate the man-years devoted to the Narcotics Traffickers Program with the other compliance programs. Of course, the Service will continue to make narcotics traffickers the subjects of investigations or examinations. However, potential NTP cases will have to meet the same screening and selection criteria that all other cases must meet in the compliance programs of the Service. The manpower necessary to effectively pursue these cases will still be available from the other programs.

The man-years devoted to the Narcotics Traffickers Program would be integrated with the other compliance programs and beginning in FY 1977, the Narcotics Traffickers Program will no longer be separately identified. If the NTP workload continues to decline according to present indications, this would permit the utilization of unused NTP manpower in the other compliance programs: Thus, for example, if in FY 1977 the NTP workload were to warrant a one-third reduction of the manpower allocated to NTP in FY 1976 (300 special agent and 225 revenue agent man-years are planned for NTP in FY 1976), this would permit 100 special agent man-years and 75 revenue agent man-years to be applied to

[3] Data for the first 6 months of fiscal year 1974 are not shown in table 4.
[4] As of December 31, 1974, 301 joint investigations of target cases were in inventory compared with an inventory of 462 such cases as of June 30, 1974 (Table 2).

other tax law enforcement programs. With 100 special agent man-years, 290 investigations could be completed in the regular tax fraud program.[5] If there were sufficient NTP workload, 120 NTP investigations could be completed with the same amount of manpower. Consequently, approximately 170 additional investigations could be completed in FY 1977 (290 less 120).

Similarly, with 75 revenue agent man-years, approximately 3,300 field audit examinations could be made in the regular audit program.[6] If there were sufficient NTP workload, approximately 500 examinations of returns from NTP targets could be completed (closed by the Audit Division) with the same amount of manpower.[7] Consequently, approximately 2,800 additional field audit examinations could be completed in FY 1977 (3,300 less 500).

It should be reemphasized that although the Narcotics Traffickers Program will be discontinued as a separately identifiable program beginning in FY 1977, we will continue our enforcement efforts, through the other compliance programs, against narcotics Traffickers who violate the tax laws. The selected cases involving narcotics traffickers would fall into one of the other categories of the Service's tax fraud and audit programs.

TABLE 1.—Summary of costs, recommended assessments, and revenues collected under the narcotics traffickers project in the Internal Revenue Service, July 1, 1971 to June 30, 1974 [1]

	Millions
1. Total costs (encompassing the entire Internal Revenue Service)[2]	$52.6
2. Total recommended assessments by Audit Division [3] Fiscal Year 1972 to Fiscal Year 1974	218.1
Fiscal Year 1972	54.2
Fiscal Year 1973	94.4
Fiscal Year 1974	69.5
Fiscal Year 1975 (First 6 months) (not included in $218.1 million total)	4.7
3. Assessments received by Collection Division Fiscal Year 1973 to Fiscal Year 1974 [4]	143.6
Fiscal Year 1973	95.2
Fiscal Year 1974	48.4
Fiscal Year 1975 (First 6 months) (not included in $143.6 million total)	6.5
4. Revenues collected (Fiscal Year 1972 to Fiscal Year 1974)	34.6
Fiscal Year 1972	7.1
Fiscal year 1973	10.9
Fiscal Year 1974	16.5
Fiscal Year 1975 (first 6 months) (not included in $34.6 million total)	2.3

[1] Intelligence activity accomplishments are presented in Table 2.
[2] For man-years applied to the Narcotics Traffickers Program, see Table 3. Costs include personnel compensation and benefits for all technical and nontechnical personnel, overtime pay, holiday pay, travel, transportation, and other costs including $4.6 million in the Narcotics Reserve Fund. The Narcotics Reserve Fund provided for additional operating costs for such expenses as premium pay, travel, operation of government owned vehicles, securing (purchasing) evidence, communications, printing and other costs.
[3] For more details, see Table 4.
[4] These assessments primarily pertain to jeopardy and termination assessments. Data on assessments received by the Collection Division are not available for FY 1972.

[5] Based on the completion of 2.9 investigations per man-year (in the regular tax fraud program) and on the completion of 1.2 NTP investigations per man-year.
[6] Based on an estimated examination rate of 44 examinations per man-year in the regular audit program. Grade of revenue agents was considered in this calculation.
[7] For more details, see Table 6.

5. Amounts reported as uncollectible (Fiscal Year 1972 to Fiscal Year 1974 [5]	25.6
Fiscal Year 1972	6.0
Fiscal Year 1973	2.3
Fiscal Year 1974	17.3
Fiscal Year 1975 (first 6 months) (not included in $25.6 million total)	15.1

[5] Statistics on amounts reported uncollective prior to FY 1974 are not fully comparable with such statistics for FY 1974 and thereafter, since the reporting system designating an account uncollectible was changed in FY 1974.

NOTE.—Details may not add to totals because of rounding.

TABLE 2.—SUMMARY OF IRS INTELLIGENCE ACTIVITY UNDER THE NARCOTICS TRAFFICKERS PROJECT JULY 1 1971 TO JUNE 30, 1974 AND 1ST 6 MO OF FISCAL YEAR 1975

INTELLIGENCE ACTIVITY

	Fiscal year—				Fiscal year 1975
	1972	1973	1974	Cumulative	(1st 6 mo)
Target cases selected	791	831	421	2,043	99
Investigations completed	143	503	663	1,309	201
Prosecution recommendations	54	217	245	[1] 516	62
Indictments	23	96	86	205	21
Convictions	6	45	88	139	37
Average jail sentence				([2])	
Inventory of target cases (joint investigations) as of June 30	554	748	462		[3] 301

[1] A number of prosecutions recommendations are still under review by Chief Counsel or the U.S. Attorney's Office.
[2] 29 months.
[3] As of Dec. 31, 1974.

TABLE 3.—BREAKDOWN OF COSTS [1] AND TECHNICAL MAN-YEARS INCURRED IN NARCOTICS TRAFFICKERS PROJECT BY INTERNAL REVENUE SERVICE JULY 1, 1971 TO JUNE 30, 1974

Division	Technical man-years	Total costs (millions)
Intelligence	915	$31.6
Audit	611	19.6
Collection	63	1.3
Appellate	2	
Chief Counsel	2	.1
Other	([2])	
Total	1,594	52.6

[1] Costs include personnel compensation and benefits for all technical and nontechnical personnel, overtime pay, holiday pay, travel, transportation, and other costs including $4,600,000 in the narcotics reserve fund. The narcotics reserve fund provided for additional operating costs for such expenses as premium pay, travel, operation of Government-owned vehicles, securing (purchasing) evidence, communications, printing and other costs.
[2] Less than 1.

Note: Details may not add to totals because of rounding.

Source: Technical man-years, manpower costs and other costs for Intelligence and Audit Divisions were obtained from IRS long-range plans. Technical man-years and costs for the Collection and Appellate Divisions and Chief Counsel were obtained from information supplied by the respective divisions and Fiscal Management Division.

TABLE 4.—SUMMARY OF RECOMMENDED TAX ASSESSMENTS [1] FOR NARCOTICS TRAFFICKERS PROJECT BY FISCAL YEAR [2]

[Dollar amounts in millions]

	Fiscal 1972		Fiscal 1973		Fiscal 1974		Fiscal 1975	
	Cases	Amount	Cases	Amount	Cases	Amount	Cases	Amount
Target cases examined by Audit Division [3]	73	$23.2	455	$26.6	570	$26.3	157	$4.2
Related cases	4		60	1.7	56	2.5	21	.5
Total	77	23.2	515	28.3	626	28.8	178	4.7
Jeopardy assessments (included above)	35	18.8	53	6.3	22	9.0	4	.2
Spontaneous assessments:								
Selected NTP target cases: Terminations	36	7.7	24	15.0	7	.9	2	.2
Non-selected NTP (nontarget) cases:								
Terminations	542	22.5	1,780	46.9	1,362	38.5	157	3.0
Jeopardy	34	.8	100	4.2	35	1.3	10	.2
Total spontaneous assessments	612	31.0	1,904	66.1	1,404	40.7	169	3.4
Total assessments	689	54.2	2,419	94.4	2,030	69.5	347	8.1
Seizures		8.5		14.3		8.1		1.4
Revenues collected		7.1		10.9		16.5		2.3

[1] Includes additional taxes and penalties.
[2] Covers cases with over $2,500 in recommended assessments.
[3] Examinations completed through District Audit Review Staff (not necessarily closed by the Audit Division).

Note: Details may not add to totals because of rounding.

TABLE 5.—SUMMARY OF RECOMMENDED ASSESSMENTS IN THE NARCOTICS PROGRAM JULY 1, 1971 TO JUNE 30 1974 [1] (DETAILS GIVEN IN TABLE 4) [2]

	Number of Cases	Recommended Assessments by Audit Division [3] (millions)
Total	5,138	$218.1
Target cases plus related cases examined [4] (by Audit Division)	1,218	80.3
Cases with jeopardy assessments	110	34.1
Other target and related cases examined	1,108	46.2
Spontaneous assessments [5]	3,920	107.9
Termination assessments:		
Target cases	67	23.6
Nontarget cases	3,684	107.9
Jeopardy assessments: Nontarget cases	169	6.3

[1] Covers cases with over $2,500 in recommended assessments.
[2] Details may not add to totals because of rounding.
[3] Includes additional taxes and penalties.
[4] Includes 1,098 target cases plus 120 related cases. These cases have cleared technical and procedural review in the Audit Division. Note that not all of these cases have been closed by the Audit Division.
[5] On the spot examinations.

Note: Seizures (cash and property), $30,800,000.

PROCEDURE USED TO ESTIMATE NUMBER OF RETURNS FROM NTP TARGETS THAT COULD BE EXAMINED (CLOSED BY AUDIT DIVISION) WITH 75 REVENUE AGENT MAN-YEARS [1]

In detail, the estimate of approximately 500 Audit examinations of returns from NTP targets that could be made with 75 revenue agent man-years is obtained as follows:

[1] It is assumed that practically all of the direct time applied to the Narcotics Traffickers Program would be devoted to target cases.

Step 1. 56.25=75 multiplied by 0.75=direct man-years available for target case examinations.

Step 2. The 56.25 direct man-years translates to 14,175 direct man-days, as 14,175=56.25 multiplied by 252 man-days per man-year.

Step 3. 306 target cases can be examined by the Audit Division since 306=14,175 divided by 46.3 direct man-days applied to a target case.

The estimate of 46.3 direct man-days applied to a target case is obtained as follows: From fiscal year 1972 through the first six months of fiscal year 1975, we have, excluding time applied to work in process,

$$\frac{\text{direct man-days applied to target plus related cases}}{\text{number of target plus related cases examined}}=\frac{64.704}{1,396}=46.3$$

Step 4. The 306 target cases corresponds with the examination of 765 target returns, as 765=306 multiplied by an assumed 2.5 returns per target case. Note that these examinations have gone through the review process but have not been necessarily closed by the Audit Division.

Step 5. 502 returns from NTP targets could be closed by the Audit Division as 502=765 multiplied by 0.66 where 0.68=800 NTP cases closed by Audit Division in fiscal year 1972 through fiscal year 1974 divided by 1,218, the total number of target plus related cases examined through review not necessarily closed by the Audit Division during this same period.

News Release

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REMARKS BY
DONALD C. ALEXANDER
COMMISSIONER OF INTERNAL REVENUE
PREPARED FOR DELIVERY BEFORE
THE EXECUTIVE COMMITTEE OF THE TAX SECTION
NEW YORK STATE BAR ASSOCIATION
NEW YORK, N.Y., JUNE 10, 1975, 1:00 P.M. EDT

NOTE: This text is the basis of Commissioner Alexander's oral remarks. It should be used with the understanding that some material may be added or omitted during presentation.

THE ROLE OF THE INTERNAL REVENUE SERVICE IN THE LAW ENFORCEMENT COMMUNITY

This year, the first year after the Watergate-related disclosures, is the year for investigating the investigators. The interest of the media is apparent to anyone who watches television or reads newspapers, and Congressional committees with overlapping jurisdiction are inquiring into what the investigative agencies do, how they do it, and whether they should do it. The Internal Revenue Service has not gone unnoticed; thus far this year I have testified 13 times before various Congressional committees, and the 14th, 15th, and 16th appearances are already scheduled. Moreover, two television networks have devoted an hour each of prime time this Spring to examining the tax system and the papers have been full of articles about the IRS and how it conducts (or conducted) its business.

Now I can't say that all this is enjoyable, but I can say that much of it is healthy and necessary. Tax administration is too important to leave to the administrators alone. Of course, we would prefer to have a few less quarterbacks and at least a few rooters in the stands.

Well before this current interest in investigative agencies, the IRS was engaged in a basic reexamination of itself. I outlined much of this in a speech last August to the American Bar Association Section of Taxation. The reexamination involved determining what is the work of the IRS, what are the resources available to do this work, and what are the ways in which this work should be done.

We start with the basic proposition that the administration and enforcement of the tax laws of the United States is an undertaking of enormous proportions and the resources assigned to the IRS to accomplish its task are insufficient for this purpose unless the general public assists by believing in, and complying with, the tax system. Such belief and compliance by the public have been the case in the United States, and I surely hope and believe they will continue. Continuance, however, depends upon the public's belief in the basic fairness of the tax laws and in the basic fairness and efficiency of tax administration, and the public's confidence in and goodwill towards the tax administrator.

We then review the resources of the IRS. First, we find that the IRS has a vast store of confidential personal and financial information supplied to it voluntarily by millions of taxpayers. Second, the IRS has powers granted to no other investigative agency to secure the additional information necessary to administer and enforce the tax laws. Third, the IRS has powers to take property by levy or seizure, by preemptory action without advance judicial determination of its right to levy or seize. The IRS has the authority to terminate taxable years and make jeopardy assessments where it believes collection of the revenues would be otherwise endangered. Finally, the IRS has people -- over 15,000 revenue agents and over 2,500 special agents -- who are trained and skilled financial investigators. And its people are good.

It is hardly surprising, therefore, that those charged with the general responsibility for law enforcement or particular responsibility for the conduct of one or more of the wars in which law enforcement officers are periodically engaged, i.e., the war on organized crime or the war against narcotics traffickers, should seek to enlist the IRS, with its information, its powers, and its people, in their battalions. In the past IRS has been a willing recruit. We are now examining and being examined on, whether the IRS has been too willing.

The Narcotics Program is an excellent example. On June 17, 1971, the then President Nixon announced a "new, all-out offensive" upon drug abuse, "America's public enemy No. 1 . . ., In order to fight and defeat this enemy." The IRS was instructed to participate in this war and was given some additional money to enable it to do so. Under the direction of various Treasury officials, the IRS, with considerable reluctance on the part of some senior career people, proceeded to engage in the war. Among the weapons used were the powers of seizure, terminations of taxable years, and jeopardy assessments. Although a disproportionate amount of IRS Intelligence and Audit resources were assigned to this program and large assessments were made, collections were small. From the inception of the program in Fiscal Year 1971 through the close of Fiscal Year 1974, the Service expended approximately 53 million dollars on the program, but revenue collections were only 35 million dollars. It should not be necessary to point out that this ratio of costs to collection is quite the opposite of that of the general IRS program.

More significant than the question of mis-assignment of resources is the question of misuse of powers. Those engaged in wars are not inclined to delay the use of a weapon until the propriety of its use has been fully debated. The application of the powerful enforcement measures intended for extreme tax exigencies to the goal of attacking the perceived public enemy resulted, as might be expected, in some counteractions by the courts. Judge Clark of the Fifth Circuit Court of Appeals stated in Willits v. Richardson, "The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing -- not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use."

The IRS has already taken steps to apply the same standards to narcotics traffickers' cases as those applied generally. We are aware of our responsibility to see to it that those who deal in narcotics meet their tax obligations fully, and we intend to fulfill that responsibility. We cannot, however, use the tax laws as a means of effecting forfeitures.

The Narcotics Program is perhaps an extreme example of the use of IRS, its information, its people and its powers, as a tool -- or a weapon -- to achieve ends other than those of tax administration and tax enforcement. More basic and difficult questions arise in the relationship of IRS to the Federal strike forces against organized crime and to the general law enforcement community. One aspect of this question has been explored at some length in recent weeks -- the need of other law enforcement agencies for the assistance of skilled IRS agents in the fight against organized crime and political corruption. But there are other needs to be considered: the need of the IRS for public confidence, the need of the nation for an effective tax administration system, and the need of us all to limit invasions of our privacy. These needs impose competing pressures on the use of Internal Revenue's investigative powers and personnel, and on access to its records. They must all be weighed in determining the proper role of the IRS in non-tax criminal law enforcement.

Before turning to an evaluation of these needs, it is worth taking a moment to make clear what is not in issue. The issue is not whether organized crime figures should be called upon to meet their tax obligations and should be prosecuted if they engage in criminal violations of the tax laws; it is clear that they should be. The issue is not whether political corruption must be punished and deterred; it must. The issue is the extent to which the IRS can participate in these endeavors without rendering itself incapable of effectively carrying out its task of administering the tax system. A subsidiary issue is how, and whether, one can distinguish between the use of the tax system to investigate political corruption and the use of the tax system to investigate political opponents.

The need of the IRS for public confidence flows from the fact that ours is a self-assessment tax system, and the fact that IRS necessarily intrudes into the private financial affairs of every taxpayer. For the self-assessment system to be effective, Internal Revenue must have the complete confidence of the taxpaying public. In the words of Mr. Justice Jackson, concurring in United States v. Kahriger, 345 U.S. 22, 36 (1952): "The United States has a system of taxation by confession. That a people so numerous, scattered and individualistic annually assesses itself with a tax liability ... is a reassuring sign of the stability and vitality of our system of self government .... It will be a sad day for the revenues if the good will of the people toward their taxing system is frittered away in efforts to accomplish by taxation moral reforms that cannot be accomplished by direct legislation."

The allegations of recent months about activities of IRS employees assisting in the carrying out of general law enforcement programs, or other non-tax related activities, have created the risk if not the fact of impairing "the good will of the people toward their taxing system." Although "Operation Leprechaun", "IGRS" and the "Special Service Staff" may not be everyday terms to many members of the tax bar, they are constantly in the minds of the tax administrators these days.

The nation's need for an effective tax administration system requires no explanation. The effect that unrelated activities can have on that system is more subtle. The IRS has extraordinary powers to investigate taxpayers' affairs and ensure satisfaction of their tax liabilities. For example, by administrative summons the IRS can require an individual to produce his books, records, and other financial information. This power is not limited by the 5th Amendment privilege against self-incrimination when exercised in connection with a civil tax examination. To aid in collecting taxes when it appears that collection is in jeopardy, the IRS is empowered to terminate an individual's tax year, demand immediate payment of the tax, and to seize the taxpayer's property if such payment is not forthcoming.

Congress has given these powers to the Internal Revenue Service for the purpose of encouraging and enforcing compliance with the tax laws, and to permit effective collection of the revenues. The Service believes that these powers are necessary to the accomplishment of its Congressionally assigned duties, but it also believes that these powers must be used wisely and judiciously. If such powers are used in furtherance of other purposes, such as the enforcement of the criminal laws, their exercise becomes subject to the Constitutional safeguards which history has shown to be necessary for the protection of individual liberties. The use of Internal Revenue's powers in furtherance of these other purposes jeopardizes the availability of these powers for tax administration purposes, and also infringes on the individual rights we have come to take for granted.

This problem is exemplified in the Federal strike forces. Although the "team" concept may increase the forces brought to bear on the strike force targets, it also decreases the control and supervision that IRS managers can have over IRS employees assigned to the team.

The tendency towards "team" play can create special problems for IRS members. For example, we require our Special Agents to give the taxpayer Miranda-type warnings when they begin an investigation. We do not require these warnings when a Revenue Agent begins an examination. With both Revenue Agents and Special Agents on the Strike Force team as full-time representatives, there could be a temptation for the team manager -- who is not an IRS manager, to begin an investigation with the Revenue Agent, and without the Miranda-type warnings, although it is known from the beginning to the strike force members that they are engaging in a criminal investigation. One can question whether this is a desirable situation.

Although the Federal efforts to stem the flow of narcotics and combat violence, organized crime and political corruption are undeniably worthwhile goals to which we must all subscribe, we appear to be learning from the disclosures of IRS activities in the narcotics program, the Special Service Staff, and the so-called "Operation Leprechaun" that IRS participation in those efforts can lead to abuses if not confined to directly tax related matters.

And yet the IRS is being criticized vehemently in some quarters for undertaking to reexamine its practices and procedures in an attempt to prevent these abuses.

The reasons for this criticism seem to be varied: a desire on the part of a few IRS personnel to be engaged in a broad attack on criminal activity even though that criminal activity does not necessarily involve violations of the tax laws; a desire on the part of law-enforcement personnel in other agencies to be able to utilize IRS experts and enforcement techniques in their investigations. In some instances, this criticism seems to be based on failure to obtain and read the materials describing the actions that the IRS is taking.

In other instances, the basis for this criticism is even more difficult to understand. For example, the IRS has recently been criticized for engaging in a review of the use of confidential informants. It has been stated that the review renders the IRS useless in the investigatory field. However, other Federal law-enforcement agencies, as a matter of practice, require their investigators to disclose the identities of all confidential informants to their superiors. This fact is, of course, well known. For example, the former chief of the FBI's Miami Office was quoted last March in the Miami Herald to the effect that the FBI "wouldn't use an informant until two agents have evaluated a person and then a supervisor reviews this evaluation."

The invasion of privacy issue is probably the most serious aspect to be considered, when viewed from the standpoint of the immediate impact on taxpayers. The mere initiation of a criminal tax investigation can have a devastating impact on the taxpayer involved, as a result of third party contacts by IRS' Criminal Investigators. It certainly seems open to question whether the Service should subject an individual to a criminal tax investigation if there is no sufficient indication that the individual has likely engaged in a criminal violation of the tax laws. For example, although the mere existence of a "public knowledge" that a number of elected officials or judges in a particular area of the country are crooked may be an appropriate basis for a general investigation of those officials, it is a questionable basis for initiating a criminal tax investigation of all officials in the area. If the IRS becomes entangled in information gathering, confidential informants, and fishing expeditions relating to persons who are merely suspected of committing nontax-related crimes, public confidence in IRS as the civil tax administrator, with only ancillary criminal investigative powers, could be seriously damaged.

The Internal Revenue Service is fortunate to have dedicated, skilled employees, and the powers necessary to administer the tax laws effectively. If these people and these powers are diverted to objectives other than the administration of the tax system, they may well be utilized in an efficient, effective manner. But the cost to the tax system and to individual rights may be too high a price for Americans to pay.

To: Donald C. Alexander, Commissioner, Internal Revenue Service.

From: David R. Macdonald, Assistant Secretary (Enforcement, Operations and Tariff Affairs).

Subject: Narcotics trafficker program.

JUNE 9, 1975.

Recent quarterly reports on the progress of the Narcotics Trafficker Program indicate that there has been a substantial decline in the program's achievements during the first nine months of fiscal year 1975. When compared with fiscal year 1974, on an average monthly basis, there has been a 40% drop in the number of criminal investigations completed and a 47% decrease in cases recommended for prosecution. The results of efforts to enforce the civil provisions of the tax law have been even more disappointing. Again on an average monthly basis, the number of cases closed has declined 70% and recommended additional taxes and penalties have declined 74%. The average per case has also decreased. Collection activity has suffered; seizures have dropped from $8,100,000 in fiscal year 1974 to $1,800,000 for the first nine months of fiscal year 1975.

To our knowledge, the funds and manpower allocated to the program have not been cut. Therefore, at your convenience, we would appreciate having your analysis of what has been causing the program to lose its effectiveness and how it might be restored.

In view of the recent White House meetings on drug enforcement and the Vice-President's interest in attacking the problem through its financial aspects, I am certain that you will agree that this matter should be given a high priority.

JUNE 27, 1975.

Memorandum for: Stephen S. Gardner, Deputy Secretary.

Thru: Edward C. Schmults, Under Secretary.

From: David R. Macdonald, Assistant Secretary (Enforcement, Operations, and Tariff Affairs).

The attached memorandum has been prepared in response to Commissioner Alexander's memorandum of June 7 which notified you that the Commissioner has decided to eliminate the Narcotic Traffickers Program (NTP) and to use the resources budgeted for NTP for other compliance programs.

The attached table shows the effectiveness of NTP has been declining since 1973 and that during Fiscal Year 1975 the drop has been precipitous. Although the manpower expended has also been reduced, the reduction has not been commensurate with the decline in results. Consequently, NTP has become not only much less effective, but also inefficient.

The need for a vigorous anti-drug program is apparent, not only from the statements of various Federal and local police officials, but also from the trend in the drug seizures made by Customs which have been increasing. During a two week period in May, 1975, Customs reported 16 large seizures of cocaine, marihuana, heroin, and hashish with an estimated retail value of more than $20,000,000. Of course this only represents the tip of the iceberg.

By all indications, the drug traffic is flourishing and the traffickers are making large profits. Under Federal law, profits from illegal activities are as taxable as the profits of a grocery store or the salary of a typist. There should be no stigma attached to the enforcement of the tax laws just because such enforcement also hinders an illegal activity.

Although the Commissioner indicates that the tax liabilities of drug traffickers will be examined as part of the IRS general compliance programs, there is no reason to believe that the effort against drug dealers will rise from its current relatively low level. In fact if nothing is done to reverse the present trend the IRS effort will soon become almost invisible.

The success of a program like NTP depends heavily on top management support and emphasis. Field personnel, especially in the Audit and Intelligence Divisions, must put forth a special effort to identify and investigate the traffickers and their associates. Such cases are much more difficult and unpleasant to work than are those involving physicians and legitimate business people. Without encouragement from above, it is easy to overlook them.

The sentiment of this administration is to mount a program against drugs. The Domestic Council is currently studying the drug problem in an attempt to improve the Government's response to the drug threat. Furthermore, at least two Senate committees are holding hearings related to the traffic in narcotics. In

view of these circumstances, it is difficult to see how Treasury or IRS could de-emphasize or eliminate NTP.

In addition to clarifying some of the statistics the Commissioner has cited, the attached memorandum to the Commissioner points out how NTP has benefited the IRS and instructs him to develop a plan for a new, revitalized program.

Recommendation: That you sign the attached memorandum.

Attachment.

NTP ACCOMPLISHMENTS, COMPARISON BY FISCAL YEAR

	OS direction		IRS direction	
	Fiscal year 1972	Fiscal year 1973	Fiscal year 1974	Fiscal year 1975 (9 mo)
Cases selected (joint and audit)	791	831	421	[1] 146
Intelligence:				
Cases completed	143	503	663	298
Withdrawal recommendations	89	286	418	200
Prosecution recommendations	54	217	245	98
Ratio of prosecution recommendations to completed cases (percent)	35.7	43.1	37.0	32.9
Indictments	23	96	86	47
Audit:				
Target cases closed	112	479	577	218
Additional tax and penalty recommendations (millions)	$30.9	$41.6	$33.3	$8.5
All cases closed	689	2,419	2,030	452
Additional tax and penalty recommendations (millions)	$54.2	$94.4	$69.5	$13.3
Collections: Seizures (millions)	$8.5	$14.3	$8.1	$1.8

[1] Questionable; there no longer is a way to develop this figure.

Note: Target cases are major traffickers.

Memorandum for: Donald C. Alexander, Commissioner, Internal Revenue Service.
From: Stephen S. Gardner, Deputy Secretary.
Subject: Narcotics Trafficker Program.

While I concur in some of the thoughts expressed in your memorandum of June 7, I do not find myself in complete agreement with your conclusions. At a time when the nation and the Administration are becoming increasingly concerned about the narcotics traffic, it is difficult to understand how a major law enforcement agency can withdraw from the Federal effort to reverse a trend that threatens our society.

As your memorandum pointed out, our tax enforcement policies should be equitable and should enhance the Service's public image. The Narcotics Trafficker Program (NTP) is not inconsistent with those goals. In Fiscal Year 1974, the NTP audit examinations resulted in recommended additional assessments averaging $34,236 per case. As you know, this figure is many times the average for all of the individual returns examined by the Audit Division in FY 1974, and more than 100 times the average for the individual returns examined by office auditors. These comparisons appear to indicate that NTP is needed to help balance the tax enforcement program.

The identification and investigation of pockets of serious non-compliance is essential to the sound administration and enforcement of the tax laws in a democratic society. In such a society, each citizen is expected to bear a fair share of the tax burden. Those persons engaged in illegal activities, including narcotics trafficking, should also be expected to bear their fair shares. It is generally acknowledged that individuals involved in criminal activities do not report their illegally-earned income. This group has within it a proportionately greater number of individuals who fail to comply with the tax laws. For the most part, the tax returns of persons engaged in these illegal activities do not surface in the normal Audit selection processes. In fact, a high proportion of narcotics traffickers do not even file returns.

The cost authoritative information currently available concerning the public's attitude toward IRS enforcement policies appears to be that in the Report on Role of Sanctions in Tax Compliance, which was published by the IRS in 1968. The report contains the results of a survey conducted by National Opinion Research Center, University of Michigan, which clearly shows that the public wants people engaged in illegal occupations to pay their rightful taxes and expects the Government to discriminate in prosecuting and penalizing tax violators.

There is no indication that the public image of the IRS has suffered from its NTP activities. The attached clippings are representative of the favorable publicity the program has generated for the Service. The run of the mill tax cases against physicians, accountants, and farmers do not generate the same public interest.

Your memorandum also raised the issue of the cost effectiveness of NTP. While I believe that it would be unwise to judge a law enforcement program solely on the basis of a cost-benefit analysis that considers only the immediate, direct dollar benefits, it is worthwhile to measure those benefits and the cost. Your memorandum and its attachments cite a cost figure of $53 million to collect $35 million in revenue. Further analysis, however, indicates that the costs appears to be overstated by $32 million and that the collections may be understated by several million.

The $53 million figure includes Intelligence Division expenditures of $32 million. Since the mission of the Intelligence Division is to encourage voluntary compliance, its activities are not directly related to the assessment and collection of taxes. Tax collection is a civil matter. Therefore, the $53 million cost figure should be reduced to $21 million, which is less than the $30 million reported seized.

Although I realize that developing an estimate of actual NTP collections has been difficult since the Service does not ordinarily attempt to relate collections to specific audit programs, the $35 billion figure for collections through FY 1974 appears to be on the low side. The seizures alone almost equal that amount, and they do not include tens of millions in assessments made on the basis of regular NTP examinations. Part of the problem could be related to the fact, brought out in the attachment to your memorandum, that there is a difference of $74.5 million between the total assessments recommended by the Audit Division—$212.1 million—and the assessments reported received by the Collection Division—$143.6 million. Consequently, under the circumstances, it is difficult to place a great deal of confidence in the $53 million figure.

The benefits to the IRS from the Intelligence Division's NTP activities are clearly demonstrated by the publicity referred to above as well as by the much longer prison terms that courts have imposed on NTP tax evaders.

In view of the increase in the drug traffic, the tendency of drug dealers to evade taxes, and Treasury's commitment to the anti-narcotics effort, we cannot authorize the discontinuance of the NTP. We would prefer to see it revitalized and operated under the general supervision of someone on your staff who would have the necessary authority to properly coordinate the NTP activities of the Intelligence, Audit and Collection Divisions. This plan would also include the reestablishment of a central coordinating committee at the National Office level which would screen cases nominated for the program. Assistant Secretary Macdonald would designate someone on his staff to work with your staff in preparing a new departmental statement governing the operation of the program. In the meantime, please inform your field officials that NTP will be maintained and monitored as a separate program. I would appreciate it if the new plan is submitted to me for approval within 45 days.

Attachments.

MEMORANDUM

To: Mr. Eugene T. Rossides, Assistant Secretary for Enforcement and Operations.
From: Commissioner Thrower.
Subject: Proposed Narcotic Program—Fiscal Year 1972 Supplemental Request.

The President recently announced an all out effort to control the flow of narcotics traffic wherever it may affect American citizens. We fully endorse the concepts and the principals outlined in his proposal.

The Internal Revenue Service through its regular programs has already identified narcotics violators as a by-product of its war on the racketeer segments of society in this country. We welcome the opportunity to pursue this program further in a more definitive fashion by attacking the financial structure of the wholesaler. We believe this is one of the keys to eliminating the overall problem. However, I have reservations and am far from convinced that IRS is the vehicle to produce substantial impact in this area.

There is no question that IRS has always been fully committed and has always been a major contributor in terms of resources to those programs aimed at eliminating syndicated crime. When one considers the participation of all Federal agencies in the program, IRS now provides substantially more than 50% of the manpower committed to battle organized crime.

In recent years congressional legislation in the exempt organizations, as well as our continuing expansion of manpower commitments to strike force activities, have severely limited and in many cases hampered our efforts to deal with mainstream Service programs in the Audit and Intelligence activities. Our 1972 budget request indicates our willingness to participate in these special programs. However, even if the entire '72 budget request remains intact the impact of these various programs on the Service during the past few years will not be offset by one or even two years of uncut budgets.

The Service has gone as far as it can go in diverting manpower from our mainstream programs and we have already reached a dangerous compliance profile throughout the general population. Yet, no matter how one looks at it, a supplemental request must still result in manpower diversions of some kind. Newly recruited Special Agents and Revenue Agents need considerable time and training before they can assume a fully mature and productive role in the Service. Obviously, then, experienced manpower will be required to do the job in FY 72 and beyond.

Narcotics traffic is largely endemic to the major cities in our country. As in other special programs, this program will impact heavily in the large districts where there is little or no manpower available for further diversion. This will necessitate attracting needed personnel from other districts. We anticipate the need to offer temporary promotions, premium pay, and of course, per diem. Even with these inducements, we will probably have some difficulty in staffing properly to meet the challenge.

Due to our limited experience in the proposed program, we cannot forecast with any certainty upper and lower limits and resource requirements. We do believe, however, that our experience in all of our special programs requires that we proceed with caution, so that we may have adequate time to develop and implement a proper operating program.

The attached supplemental request is not a recommendation but reflects the cost of any given size program in multiples of 100 Special Agent manyears. I want to emphasize that the Service feels an obligation to resist manpower commitments until the supplemental request for replacement has been authorized by Congress. We further recommend that the established task force consisting of Service and Treasury officials convene as soon as possible in order to properly evaluate the short term and long term needs regarding IRS contributions in the overall program.

Attachment.

PLANNING ASSUMPTIONS FOR A NARCOTICS PROGRAM IN INTERNAL REVENUE SERVICE

1. Internal Revenue Service will examine or investigate those engaged in narcotics, who generally have insulated themselves against arrest on a narcotics charge. This will be primarily wholesalers and financiers in the upper echelons.

2. Only experienced agents are qualified to conduct these audits and investigations. In the initial year of a program, this would entail diverting manpower from mainstream programs.

3. Other enforcement agencies having knowledge of narcotics trade will identify and furnish rather detailed information on major narcotics figures.

4. After evaluating all available information on specific individual or individuals, the Service will make the decision whether investigation or audit is appropriate. Investigation or audit will not be mandatory merely because an individual is known or suspected of being engaged in narcotics.

5. In the racketeer area, an average 1 of every 4 criminal investigations initiated results in a prosecution recommendation. Civil tax liability is recommended on a high proportion of all investigations. It can be assumed that the results of narcotics investigations will be substantially the same as in other racketeer cases.

6. Due to lack of records, most investigations will focus on the "net worth" approach which requires more investigative time than other types of financial investigations.

7. Surveillance of individuals will be required to determine location of funds and other assets and types of expenditures.

CONCLUSION

Based on the above assumptions, we can reasonably expect an experienced special agent to submit one prosecution case per year. Further, we estimate that, on all cases under investigation (both prosecution and non-prosecution) Internal Revenue Agents will recommend $75,000 in additional tax and penalties.

BUDGET INCREASES—FISCAL YEAR 1972

For every 100 Special Agents assigned to the Narcotic Program, the Internal Revenue Service will require a supplemental appropriation of $7,200,000.

The cost of the increase required was computed as follows:

	Positions	Man-years	Amount
Special agent	100	100	
Revenue agent	100	100	
Other	71	71	
Total permanent	271	271	$2,988,000
Premium pay and overtime			784,000
Total personnel compensation			3,772,000
Personnel benefits			268,000
Operating travel			1,722,000
Training travel			631,000
Material and facilities			807,000
Total			7,200,000

For every 100 Special Agent man-years, support personnel of 100 Revenue Agent—66 field clerical—5 National Office manyears have been included.

One-time special costs for purchase of enforcement automobiles and two-way radio units for each enforcement vehicle have been included in the material and facilities costs.

Cost rates for staff expansion have been used for the hiring of personnel to be trained and eventually assume the duties of the personnel assigned to the Narcotic Program. Increased costs of premium pay for administratively uncontrollable overtime at the maximum rate of 25%, overtime pay for personnel other than Special Agents and travel costs for detail assignments have been included for the personnel involved.

The above cost is based on full-year employment, therefore no lapse for part year is shown.

If a decision is made to expand the Narcotic Program in the Internal Revenue Service, the required Office of Management and Budget schedules for a supplemental appropriation estimate will be provided.

MARCH 3, 1975.

Memorandum for: Deputy Secretary Gardner.
Through: Under Secretary Schmults.
From: David R. Macdonald. Assistant Secretary (Enforcement, Operations and Tariff Affairs), IRS Enforcement Policies.

In view of my responsibilities as the principal advisor to the Secretary on law enforcement matters, I think I am constrained to draw your attention to an undesirable situation which, in my opinion and that of the staff of my enforcement office, has been developing within the Internal Revenue Service.[1] During the past two years, as a by-product of the effort of the IRS to attain, "tax equality" and avoid a "storm trooper" mentality, there appears to have been a sharp falloff in criminal income tax prosecution efforts against individuals who earn their income illegally. This is evident from a number of events, which individually may not be conclusive but collectively point to a decisive change in the role of the IRS enforcement divisions, especially the Intelligence Division.

The clearest statement of the IRS's intent to alter its enforcement policies seems to be expressed in the press release of the Commissioner's speech before

[1] IRS has more trained criminal investigators than any other Treasury component. Customs has 572; Secret Service has 1,248; BATF has 1,542; and IRS has 2,650.

the American Bar Association's Convention in Honolulu last August (Attachment A). In that speech, Mr. Alexander emphasized the following points concerning IRS law enforcement policy:

1. Even prior to his association with the IRS (1973); he was concerned about the variety of responsibilities and goals that had been assigned to the IRS. Since becoming Commissioner, he has taken steps to redefine the mission of the IRS (pages 2 and 3).

2. The IRS's selective enforcement programs aimed at drug dealers and organized crime figures are an improper use of the tax laws (pages 5, 6, and 7).

3. He disagrees with the Service's long-standing policy to concentrate on criminal cases with "publicity potential" in order to achieve a deterrent effect by making an example of the offender (page 8).

The Commissioner's views on point (2) were also publicly reflected in a U.S. News & World Report interview (Attachment B, page 57) and a Wall Street Journal item (Attachment C). The same negative feelings toward the Narcotics Trafficker Program (NTP) were evident in the Commissioner's July 17, 1973, memorandum to then Deputy Secretary Simon (Attachment D). That memorandum, in effect, called for the end of NTP in order to permit local field officials to set their own enforcement priorities.

On January 22, the IRS sent a telex to all Regional Commissioners (Attachment E) ordering them to stop all information gathering activities. This very brief message literally prohibits agents from looking for tax violations. Except for investigations of violations that surface during a routine examination, an investigation can only be opened if specific allegations are received from another agency or from the public. If no return is filed and there is no complaint from others, there is little likelihood that anyone engaged in an illegal occupation will ever be bothered by the IRS. This new directive will greatly handicap the Service in its efforts to detect tax violations. IRS documents describing the programs referred to in the telex are attached (Attachment F).

In issuing the January 22 telex eliminating information gathering activities, the IRS appears to have ignored its statutory responsibility under Section 7601 of the Internal Revenue Code "to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed" (Attachment G).

I believe that we can all sympathize with Commissioner Alexander's desire to rid the IRS of the adverse image created by the publication of an alleged "enemies list." In addition, this is an era of investigations of the investigators, and it is certainly politic to attempt to tamp down Congressional inquiries which may be directed at investigative agencies. Nevertheless, we canot afford to overlook the potential revenue from the examination of those engaged in major criminal activities or, indeed, anyone else who might be identified as a substantial tax evader. Such an oversight would result in hundreds of millions of dollars in illegal income being left untaxed while the incomes of the law-abiding citizens, who generally file returns, are taxed.

The IRS's continuing dispute with the Department of Justice over the operation of the strike forces appears to be directly related to the Commissioner's fundamental and much publicized objection to the Organized Crime Program; it is difficult to support a program you have publicly repudiated. The IRS's unilateral decision to completely decentralize the management of the strike forces and to eliminate the Audit Division Strike Force representatives weakens the Strike Force Program and seems to violate the intent and the provisions of Executive Order 11306 (Attachment H). That order calls for maximum law enforcement efforts at every level of government and designates the Attorney General to coordinate and facilitate those efforts. The order directs each Federal department "within the limits of available funds" to furnish the Attorney General with "such reports, information, and assistance as he may request." For many years, the IRS has been given hundreds of man-years specifically for law enforcement activities aimed at organized crime. Obviously, the question of the 17 Audit Division Strike Force representatives and the coordination of law enforcement activities within the IRS and with Justice is not related to resource limitations; it is simply a question of who should set Federal law enforcement policy.

In order to provide some perspective on what has happened to law enforcement in the IRS during the last two years, it might be useful to compare some of

Commissioner Alexander's statements in Attachments A and B with those of former Commissioner Thrower (Attachment I) at the time the Manhattan Strike Force was launched in 1969. Commissioner Thrower recognized the insidious threat of organized crime—"preying upon all levels but most heavily upon the poor; corrupting government; bribing officials; polluting business; terrorizing all that would oppose it."

In contradiction to Commissioner Alexander's public statements, the IRS efforts against organized crime have been tax related and have resulted in an excellent return on investment. In many instances, these special enforcement programs have produced much more in additional assessments than the audit programs aimed at the general public. For example, in FY 1972, IRS Office Audit examined 1,071,984 individual and fiduciary returns, recommending $222,000,000 in additional taxes and penalties. This was less than the $255,000,000 recommended on the 5,894 returns examined by the Strike Force agents in that year.

The effect of the Commissioner's policies, policies formulated without consultation with the Office of the Secretary or the Department of Justice, has been detrimental to the effectiveness of law enforcement organizations in the IRS. While the decline in the strike force operations has not been precipitous, there was a noticeable decline even before the IRS announced the reorganization of its strike force structure. However, in the Narcotics Trafficker Program, which the Commissioner reorganized in 1973, there has been a sharp decline in activity and results (Attachment J). Even the statistics on the criminal investigations, which tend to reflect investigations that were completed in prior years, reflect the down turn. During the period the IRS has been operating this program without guidance from the Office of Law Enforcement, additional taxes and penalties recommended dropped from $94.4 million for FY 1973, to about $8.1 million for the first half of FY 1975. Even if termination assessments, which dropped 90% during that period, are disregarded, the decline is from $41.6 million to about $4.4 million. Seizures also fell from $14.3 million to $1.5 million. These figures seem to indicate that a decision has been made to terminate the Narcotics Trafficker Program.

On February 4, 1975, the IRS unilaterally took another step to eliminate the NTP, the Target Selection Committee was abolished, and the responsibility for monitoring the program was transferred to each of the Regional Commissioners. Apparently, coordination at the national level will be phased out.

We believe that the Narcotics Trafficker and Strike Force programs, which were created by Presidential mandate, must be supported by the Office of the Secretary and the IRS. In addition to being effective and productive, they provide equitable treatment for the taxpaying public. The IRS's experience clearly indicates that the incidence of tax violations is much higher among criminals that it is in almost any other group. A high percentage of them even fail to file tax returns. Without special programs, most of these persons would be overlooked, and IRS auditors would probably spend more time examining law-abiding citizens whose returns generally have nominal deficiencies.

For many years, Congress has advocated that the IRS give special attention to criminals. Attachment K is an excerpt from a report prepared by the Office of Planning and Research, IRS, in August 1961. The excerpt summarizes the early history of the Intelligence Division and its relation to organized crime. It emphasizes the Kefauver Committee's (1950–1951) dissatisfaction with the IRS's activities against racketeers—"the gangsters, mobsters, and gamblers are literally getting away with murder in their tax returns" (Attachment K, page 4). The Committee also found that the establishment of a special unit to "collect taxes from the criminal element" was a very useful and effective measure, that the IRS should work in close cooperation with the Department of Justice, and that the IRS should maintain "on a current and continuing basis a list of known gangsters, racketeers, gamblers, and criminals whose income tax returns should receive special attention by a squad of trained experts." (Attachment K, page 6). In 1969, during hearings on the Organized Crime Control Act of 1969, the IRS was again criticized for its lack of support of the OCD effort (Attachment L). Senator McClellan said, "Internal Revenue Service, Intelligence Division, participation in the organized crime drive—a key participation which at its height yielded a majority of the program's prosecutions—fell from 1963 to 1968 by 56 percent. No one actually dismantled it after Attorney General Kennedy left, but then no one took the trouble at that time to rebuild it either."

Attachment M consists of excerpts from a report recommending changes in the management and direction of the law enforcement function of the IRS. It was

prepared in 1969–1970 for the Deputy Commissioner of Internal Revenue by E. J. Vitkus, Assistant Regional Commissioner (Intelligence), and Rex D. Davis, then the Director, ATF Division. Both men were career IRS executives of recognized ability when they were selected to write the report. The report emphasizes the IRS's obligation to become "a full partner" in the Administration's fight against organized crime (Attachment M, page 12). It also recommended that the control of all IRS criminal law enforcement activities be centralized under a professional law enforcement official (Attachment M, page 23). Obviously, while such a recommendation goes far beyond Justice's request that Strike Force management be centralized, it certainly supports the Justice Department's position.

Finally, we would like to comment on the Commissioner's announced opposition to the Service's long-standing policy to concentrate on criminal cases with "publicity potential" in order to achieve a deterrent effect by making an example of the offender. In a comprehensive report on the *Role of Sanctions in Tax Compliance*, issued by a joint IRS, Treasury, and Justice study group in September 1968, the rationale of the Service's policy is clearly stated. It is summed up in the final sentence of Chapter 13, "Purposes of Punishment" (Attachment N):

> It is observed that each of the significant purposes of punishment—deterrence, consolation, condemnation, and clarification—require communication to the taxpaying public of actual impositions of punishment.

We believe that the facts which we have recited above clearly show that there is a need for the Office of the Secretary to initiate corrective action with respect to the management of the IRS's law enforcement function. The fact is, the criminal provisions of the Internal Revenue Code are on the books to be enforced against criminals, as well as other taxpayers, and if they are not so enforced by the Treasury Department, I am sure that the Justice Department will prevail in obtaining direct jurisdiction of an agency which will be charged with their enforcement.

The Commissioner has stressed his commitment to tax administration. There can be no quarrel with that. However, it should also be stressed that the collecting of taxes from those earning illegal income is just as much a part of tax administration as is the collecting of taxes from those earning legal income. Admittedly, it is more difficult; but, that is not a valid reason for failing to pursue this responsibility.

The Commissioner has pointed out that enforcement activities will be directed at the taxpaying public in general and will be shifted away from those engaged in organized criminal activity. The effect of this act is to give a distinct advantage to the criminal. He is on notice that no special efforts will be made by the Government to ascertain whether he has paid his proper taxes, although he has made special efforts to conceal the source as well as the amount of his income.

Another point that should be stressed is that the Commissioner is not one who emphasizes reliance on the more genteel civil procedures to collect taxes while disdaining the methods a cop would employ to enforce his laws. On the contrary, the Commissioner is on record (Attachment B, page 63) as stating that he is expanding the enforcement activities of IRS and would like more severity in punishment for those who cheat on their taxes. In that U.S. News & World Report interview, (Attachment B, page 56), he specifically mentions his feeling that a light sentence ("a slap on the wrist" as he puts it) is not sufficient where the tax offense is the only violation shown in the life of an otherwise very respectbale person. This is certainly the attitude of one who believes in prosecution and punishment and who has no intention of relying mainly on civil sanctions.

IRS has, at times, complained that it is often asked to investigate crimes under the jurisdiction of other agencies. This, however, is not what Justice is asking IRS agents to do. They are being asked to investigate violations of Title 26. It just so happens that violations of the income tax laws by those engaged in illegal activities are frequently related to violations of other Federal, state, or local laws.

Based on what has occurred in the past, we can anticipate criticism from Congress and the press if we stand idle while IRS, on its own, withdraws from the Federal Government's program directed against organized crime. Treasury will be hard put to explain why, especially in a period of hard times for the average working man whose dollars are being eaten up by inflation, we are sanctioning an IRS policy that picks on the little guy and lets the "big shot" racketeer "get off", as the average citizen would put it. That is the way it will be seen even though wrapped in a new package and labeled "Tax Administration."

OPTIONS

1. Take no action and permit the IRS law enforcement function to continue to be de-emphasized. While this may appear to be the easiest course to follow, it will turn the clock back at least 25 or 30 years in terms of the effectiveness and fairness of IRS law enforcement efforts. Such a course may also expose the Administration to the charge that it is doing less than it should in the fight against organized crime.

2. Counsel the Commissioner on the management of the IRS law enforcement activities and require him to follow pertinent Treasury and Administration policies and guidelines which call for wholehearted cooperation with Justice in the Strike Force Program and vigorous support of the NTP. This option would entail the following:

(*a*) Greater centralization of the IRS Strike Force effort.

(*b*) Restoring the Audit representatives to the Strike Force.

(*c*) Reaffirming the Acting Secretary's memorandum governing the establishment and operation of the Narcotics and Trafficker Program.

(*d*) Reinstituting IRS information gathering and joint compliance projects.

(*e*) Reinstituting the practice of submitting quarterly reports on IRS law enforcement activities.

(*f*) Clearance by the Office of the Secretary of any proposed change in IRS law enforcement policies.

3. Transfer the Intelligence Division and its functions to the Office of the Secretary. It could be operated as an independent bureau; it is comparable in size to the Secret Service.

4. Create a Treasury Criminal Investigation Service that would include the Intelligence Division as well as components of Customs; Bureau of Alcohol, Tobacco and Firearms; and Secret Service.

None of the apparent solutions are completely satisfactory. Option 1 would be retrogressive. Option 2 would not prevent the periodic reoccurrence of the basic problem which appears to stem from a large criminal law enforcement function being housed in an agency that is managed by persons who are primarily interested in the intricacies of civil tax law. While options 3 and 4 would put the IRS criminal law enforcement function in a specialized organization concerned solely with potential criminal violations of the law, the problem of securing the cooperation of the IRS Audit and Collection Divisions would still remain.

RECOMMENDATION

Option 2 should be given preference. It could be implemented almost immediately with very little, if any, additional expense and no strain on the IRS or other Treasury units. The results would be immediate.

Attachments.

[TELEX]

From William E. Williams, Deputy Commissioner, IRS Washington.

To all regional commissioner IRS, January 22, 1975.

Priority pending clarification of the definition of "tax-related information as it relates to IGRU, JCP and other similar information gathering activities conducted by any function of the service, all such activities shall be suspended immediately. Personnel currently assigned to these activities shall be reassigned to the regular examination and investigative duties for which the respective functions are responsible.

CHAPTER 78.—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter:

A. Examination and inspection.
B. General powers and duties.
C. Supervision of operations of certain manufacturers.
D. Possessions.

SUBCHAPTER A—EXAMINATION AND INSPECTION

1958 Amendment. Pub. L. 85–859, Title II, § 204(16), Sept. 2, 1958, 72 Stat. 1480, added item 7608, and redesignated former item 7608 as 7009.

1956 Amendment. Act July 18, 1956, c. 728, § 104(b), 70 Stat. 570, added item 7607, and redesignated former item 7607 as 7608.

§ 7601. Canvass of districts for taxable persons and objects

(a) General rule.—The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) Penalties.—

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

August 16, 1054, c. 736, 68A Stat. 901.

Historical Note

1939 Internal Revenue Code. Similar provisions to this section were contained in section 3600 of the 1939 Internal Revenue Code.

Deviation. Section 3600, I.R.C. 1939, was derived from R.S. § 3172, as amended by Act Aug. 27, 1894, c. 349, § 31, 28 Stat. 558, and reenacted without change.

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

SUBCHAPTER A—EXAMINATION AND INSPECTION

1970 amendment. Pub. L. 91–513. Title III, § 1102(g) (2), Oct. 27, 1970, 84 Stat. 1293, struck out "Bureau of Narcotics and" preceding "Bureau of Customs" in item 7607.

§ 7601. Canvass of districts for taxable persons and objects

1. Duty of Secretary

This section directing Secretary or delegate to cause Treasury Department officers or employees to proceed and inquire after all persons who may be liable to pay any internal revenue tax flatly imposes upon Secretary the duty to canvass and to inquire. Donaldson v. U.S., Fla. 1971, 91 S. Ct. 534, 400 U.S. 517, 27 L.Ed.2d 580.

This section imposes duty upon Secretary to canvass and to inquire concerning all persons who may be liable to pay any internal revenue tax. U.S. v. Berkowitz, D.C. Pa. 1973, 355 F.Supp. 897.

PRESIDENTIAL DOCUMENTS

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 11396

Providing for the coordination by the attorney general of Federal law enforcement and crime prevention programs

Whereas the problem of crime in America today presents the Nation with a major challenge calling for maximum law enforcement efforts at every level of Government;

Whereas coordination of all Federal criminal law enforcement activities and crime prevention programs is desirable in order to achieve more effective results;

Whereas the Federal Government has acknowledged the need to provide assistance to State and local law enforcement agencies in the development and administration of programs directed to the prevention and control of crime;

Whereas to provide such assistance the Congress has authorized various departments and agencies of the Federal Government to develop programs which may benefit State and local efforts directed at the prevention and control of crime, and the coordination of such programs is desirable to develop and administer them most effectively; and

Whereas the Attorney General, as the chief law officer of the Federal Government, is charged with the responsibility for all prosecutions for violations of the Federal criminal statutes and is authorized under the Law Enforcement Assistance Act of 1965 (79 Stat. 828) to cooperate with and assist State, local, or other public or private agencies in matters relating to law enforcement organization, techniques and practices, and the prevention and control of crime:

Now, therefore, by virtue of the authority vested in the President by the Constitution and laws of the United States, it is ordered as follows:

SECTION 1. The Attorney General is hereby designated to facilitate and coordinate (1) the criminal law enforcement activities and crime prevention programs of all Federal departments and agencies, and (2) the activities of such departments and agencies relating to the development and implementation of Federal programs which are designed, in whole or in substantial part, to assist State and local law enforcement agencies and crime prevention activities. The Attorney General may promulgate such rules and regulations and take such actions as he shall deem necessary or appropriate to carry out his functions under this Order.

SEC. 2. Each Federal department and agency is directed to cooperate with the Attorney General in the performance of his functions under this Order and shall, to the extent permitted by law and within the limits of available funds, furnish him such reports, information, and assistance as he may request.

LYNDON JOHNSON.

THE WHITE HOUSE, *February 7, 1968.*

[F.R. Doc. 68-1688; Filed, Feb. 7, 1968; 12:16 p.m.]

NTP ACCOMPLISHMENTS, COMPARISON BY FISCAL YEAR

	OS direction		IRS direction	
	Fiscal year 1972	Fiscal year 1973	Fiscal year 1974	Fiscal year 1975 6 mo
Cases selected (joint and audit)	791	831	421	99
Intelligence:				
Cases completed	143	503	663	201
Withdrawal recommendations	89	286	418	139
Prosecution recommendations	54	217	245	62
Ratio of prosecution recommendations to completed cases (percent)	35.7	43.1	37.0	30.8
Indictments	23	96	86	21
Audit:				
Target cases closed	112	479	577	159
Additional tax and penalty recommendations (millions)	$30.9	$41.6	$33.3	$4.4
All cases closed	689	2,419	2,030	341
Additional tax and penalty recommendations (millions)	$54.2	$94.4	$75.6	$8.4
Collections: Seizures (millions)	$8.5	$14.3	$8.1	$1.7

Note: Target cases are major traffickers.

EXCERPTS FROM SUPPLEMENTAL REPORT ON A CONTEMPORARY AND FUTURE VIEW OF THE CRIMINAL LAW ENFORCEMENT FUNCTION IN THE IRS, PREPARED BY: REX D. DAVIS AND E. J. VITKUS, FEBRUARY 12, 1970

A LAW ENFORCEMENT PROGRAM FOR THE SEVENTIES

The existence of crime, the talk about crime, the reports of crime, and the fear of crime have eroded the basic quality of life of many Americans.

In response to demands by American society, this and preceding administrations have committed themselves to abatement of the crime problem in the United States. Department of Justice Organized Crime Strike Forces, substantial increases in federal law enforcement personnel, additional anti-crime legislation, and creation of the Law Enforcement Assistance Administration offer tangible evidence of the commitment. In his State of the Union Address on January 22, 1970, President Nixon reiterated his stand against crime and pledged additional funds for law enforcement at a time when most programs were being cut. In other words, the American people are demanding an all-out war against crime and they are getting it.

Crime in America can be classified in many ways. The most popular view today is that crime is made up of crime in the streets (murder, rape, robbery, assault), white collar crime (embezzlement, kickbacks, corruption, price fixing, tax fraud), and organized crime (combinations to achieve unlawful purposes by legal means or lawful purposes by illegal means). The Internal Revenue Service is concerned with all of these categories of crime. As a result, the Service can not be insulated from social pressures for action against crime and from becoming a full partner in the administration's commitment.

There are several factors which are causing a change in the approach to law enforcement generally. A long line of restrictive Supreme Court decisions has forced law enforcement organizations to revise traditional investigative techniques. Civil unrest on the part of dissident groups in American society has added a new dimension of social and political sensitivity to otherwise routine cases. As organized and white collar crimes become more sophisticated their investigation requires more imaginative and time-consuming approaches. Finally, law enforcement organizations are becoming more professional as they receive additional training and resources in response to the public demand for an all-out fight against crime.

Obviously, all of these factors have a greater impact on state and local law enforcement organizations than they do on the better-trained, better-endowed federal law enforcement agencies. As the state and local organizations receive training and resources, there will be less and less difference between the quality of state and federal law enforcement. During the seventies, criminal law enforcement at all levels will be characterized by more subtle investigative techniques, increased sensitivity to the social implications of crime, greater cooperation between agencies and better quality prosecution cases.

Criminal Enforcement and Voluntary Compliance

To meet the long, uphill battle against crime in the seventies, the Internal Revenue Service must accept the responsibility for conducting a criminal law enforcement program for its own sake and without the necessity for invariably relating to the integrity of the self-assessment system.

A rather traditional view has been that every transaction of the Internal Revenue Service must be directly related to voluntary compliance. Those activities which are tangential have become organizational bastards in the minds of many managers, advisors and planners. As we examined the origin and consequences of this view, there emerged two overriding values. First, the Service has geared operations to make taxpayers technically competent to comply with the tax laws through education, public information and direct assistance. Second, the Service has been determined to maintain a high degree of voluntary compliance through its enforcement program. We might quarrel with the adequacy of taxpayer assistance and some priorities within the enforcement program, but all in all the Service has developed and maintained a tax system second to none in efficiency over the past two decades. However, efficiency is not equivalent to effectiveness particularly at a time of dramatic social changes. Our efficiency, which centers around the assessment and collection of quick and visible dollars, has become in our opinion an Achilles heel. It has in turn resulted in the subordination of those activities which are not measurable in favorable dollar terms. We fully appreciate the political and practical considerations which created this value system. There can be no question that these values had to exist as part of our evolutionary process. In the light of today's stresses and social changes, the system tends to be somewhat prehistoric and seriously hampers the Service's potential as a significant change agent.

As we mentally scanned various activities and recent developments, there was evidence of untold areas which were sacrificed for an immediate high dollar return. The following represent cogent past and/or present examples:

International Operations.
Pension Trust Examinations.
Exempt Organizations.
Wagering Tax Enforcement.
Intelligence Gathering.
Fraud Penalty Assessment and Litigation.
Taxpayer Assistance.
Organized Crime.
Audit Fraud Time.
Delinquency Checks.
Gun Control.

Each of the foregoing has serious social implications. The overall pattern also suggests that the Service has succeeded in skirting the real gut issues which could blow the myth of 97% voluntary compliance into oblivion.

What does this all mean and how does it relate to the criminal law enforcement function? In essence, we suggest that going for the quick and visible dollar has created a kind of mental complex which may have set back voluntary compliance and cast the criminal law enforcement function into a tertiary rank in the Compliance family and a sort of necessary evil in the Internal Revenue Service as a whole. What are the indicators of this complex?

We had already mentioned in our initial report the ambivalence which surrounded the OCD program for many years. We also spoke of general dissatisfactions among many criminal enforcement personnel. Furthermore, it was no secret that a number of top officials breathed a sigh of relief when the Supreme Court struck down the wagering tax laws. There has been less than enthusiastic response about IRS getting involved more deeply in gun control enforcement. The current Field Audit program insures that Intelligence will not be overburdened with referrals or that any serious attempts will ever be made to discover high cost fraud. There is the ironical and potentially scandalous fact that the Audit Division in the Manhattan District has devoted fewer actual man-days to fraud time than districts such as Greensboro and Nashville. There are restrictions on criminal law enforcement personnel which go beyond the requirements of law. There is more concern about statistical audit coverage than identifying and acting on hard core noncompliance.

There are also occurrence within the organization which so often reveal discomfort with criminal tax cases as reflected in the following excerpt from a recent National Office conference memorandum:

> There was a discussion of the Sears Roebuck case. A large case continual audit is done of Sears Roebuck with about a $2,000,000 a year pickup of additional tax. It was suggested that if we proceed with a criminal case Sears could stop us from doing this continual audit.

Finally there are frustrations among Audit personnel who want to get away from technical games and shifting of income between years. Although this latter point could be supported with reams of evidence, the following comment sums up one revenue agent's sense of frustration in not being able to examine the returns of a former public official:

> I surveyed the returns as I didn't have sufficient time to work the case. It would have taken three or four months to do it properly.

While these high income returns were being routinely surveyed each year since 1963, there was time available and a higher priority given to shifting income during the audit of many corporate returns in the same geographic area.

We have no quarrel with the need for reasonable audit coverage. Our position is that the present system has an adverse effect on the criminal law enforcement function with highly debatable influence on voluntary compliance. When Sears Roebuck or any other company is the subject of an annual pickup, often on the same technical issue over and over again, we have accomplished nothing to strengthen long-term compliance. If anything, we may be witnessing the deterioration of respect for Audit personnel and the enforcement system. It may well be an IRS-taxpayer version of "Games People Play".

These developments would not concern us for purposes of this report if they did not reduce the fraud consciousness of the Internal Revenue Service and divert resources from the discovery and vigorous investigation of well-insulated and

carefully thought out fraud schemes. The political contribution cases, most kickback cases, and far too many other cases involve situations which have gone on for years in spite of prior audits. The nationwide dearth of fraud referrals among GS–12 and GS–13 revenue agents adds to our conviction that sophisticated fraud is not being uncovered within the time and with the Audit techniques which are now applied to cases.

As one final point, we might look at the experience which occurred in Montreal, Canada, on October 6, 1969, and gain some insight into the nature of "voluntary" compliance. The Montreal police had gone out on strike. And that day one of the most civilized cities in the world found what it was like to be without police protection during one day and night. Before the ordeal known as "Black Tuesday" was over, two men were slain, 48 wounded or injured in rioting, 7 bank holdups (1/10 of all holdups for a full year) were committed along with 17 other robberies at gunpoint and 196 burglaries. More important for our purposes, hundreds of ordinarily disciplined and peace loving citizens went wild, smashing 1,000 plate glass windows in the heart of the city and looting stores. The losses and damages exceeded one million dollars.

The statistics alone are not too meaningful. It was the social and psychological phenomenon which gave the story its real horror. The resulting message was about the "thin blue line" that separates civilization from chaos and anarchy. There were riffraff out that night. But it was the behavior of ordinary people that caused the most perplexity and anxiety. Men and women of every kind and variety flocked into the street to abandon their inhibitions.

ORGANIZING FOR LAW ENFORCEMENT

Modern management theory holds that an organization should be structured to accomplish its objectives. For a law enforcement organization, this means the ability to detect, investigate and prosecute violators of the laws over which it has jurisdiction. Therefore, it becomes necessary to example the character of the crime problem in the United States with particular emphasis on those areas over which the Internal Revenue Service has responsibility.

The "local" crime problem in the United States is being viewed increasingly as an area or regional problem rather than the exclusive responsibility of any particular political subdivision. More and more, cities, counties and states are joining together in the regional approach to solution of crime. Considerable emphasis is placed on the regional planning approach to law enforcement in the Law Enforcement Assistance Act of 1968. Underlying this philosophy is a recognition that, in today's complicated society the highly mobile criminal does not respect political boundaries.

The same considerations exist in meeting the crime problem at the federal level. Many federal criminal statutes are constitutionally based on an interstate element. Militant organizations and civil disobedience groups operate on a national scale. Organized criminal groups generally operate over a regional area covering several political divisions. Wagering tax violations usually have interstate implications. The traffic in firearms generally extends between different states. Large scale tax fraud ordinarily has ramifications in more than one state and even international aspects. Illicit liquor violations may extend between states and sometimes between regions. Legal liquor violations frequently have national implications. In other words, a large part of the criminal activity investigated by the Internal Revenue Service is either interstate, national or international in scope.

Centralization v. Decentralization

If we were less than clear on this issue in our original report, it was not deliberate. Our definition and concepts were necessarily a bit obscure due to the focus of the overall organizational study. An added dilemma was the practical realization that criminal law enforcement would not determine the ultimate shape of the Service. In other words, if the final structure was a two tier organization, there was little value in a three tier perspective for criminal enforcement activities. Conversely, there were no compelling reasons to rule out a three tier alternative if a newly designed three tier structure overcame the fragmentation which exists in the current 58 district alignment.

We should perhaps begin a reexamination of the centralization vs. decentralization question with the following categorical statement. We do not favor nor to our knowledge do any other responsible criminal enforcement officials favor a structure which directly or indirectly resembles the F.B.I. Since our initial

charter called for an examination of alternatives, we attempted to use the extremes (Alternatives I am VI) as points of references for the advantages and disadvantages and as a means to avoid reflecting our personal preference.

We believe that the most effective way in which the Internal Revenue Service can respond to criminal activity is through a greater geographic centralization of law enforcement operations. This approach would eliminate many of the problems associated with internal jurisdictional boundaries, provide flexibility in the allocation of resources and permit a rapid response to critical crime problems.

The Service can also more effectively organize for the seventies through centralization or merger of its criminal enforcement function under distinct leadership at the Assistant Commissioner level. This would provide an independent forum for establishing criminal enforcement priorities which are now obscured in the compliance monolith and permit improved utilization of manpower, equipment and other resources. It would facilitate cross-training and broaden career opportunities. A unified command would also inevitably lead to increased emphasis on collection and dissemination of the type of intelligence which is becoming the life blood of successful law enforcement organizations. Most important, however, would be the direct and indirect benefits which would flow from having a fully supported and distinguishable criminal enforcement function with a well-defined mission common to all its members.

Next, the effective organization of the criminal enforcement function should include both a centralization and a decentralization of authority. The National Office official responsible for law enforcement should have sufficient authority to assist in the formulation of Service policy, to represent the Service on law enforcement matters and evaluate the effectiveness of field operations. The official responsible for regional field operations should have sufficient authority to make operational decisions, represent the Service in regional law enforcement matters and allocate resources within his jurisdictional area.

In many areas Service tax policy is inextricably interwoven with the criminal enforcement function. As a result the function must remain responsive to the overall Service policy and objectives. In other words, while we do not believe the Internal Revenue Service dog should ignore its law enforcement tail, neither do we believe that the tail should wag the dog.

We frankly believe that the proposed criminal law enforcement design, with some greater freedom, higher priority and an integrated organizational structure could add greatly to a more socially oriented Internal Revenue Service. This doesn't mean throwing the book and all controls away or ignoring developments which occurred in Newark and New York. However, these recent developments demonstrate two salient facts. First, a highly decentralized criminal law enforcement organization offers no guarantee of integrity or operational effectiveness. Second, we perhaps have already relied too much on controls, paper work, chain of command, and legalistic niceties which steal untold time away from managerial and supervisory personnel. If a supervisor lacks the time or the sense of responsibility to get involved with case and personnel management, the key link is broken. Furthermore, our current structure seriously dilutes direct responsibility for overall criminal law enforcement activities. This condition leaves us vulnerable to breakdowns and often helpless to nail down the cause.

Summary

The foregoing organizational concepts offer a positive response to the changing needs of criminal enforcement and meet such conditions as outlined below which now impair the effectiveness of our enforcement efforts:

A Chief, Intelligence with three working special agents is an anachronism in a modern well-managed organization. In fact the condition reminds us of the popular musical, "Call Me Madam", which appeared on Broadway some years ago. The Control Group may recall that the play featured a woman ambassador to the Grand Duchy of Liechtenstein with its population of 15,700. International politics may force us to have ambassadors to Liechtenstein and state politics may force us to maintain Chiefs, Intelligence in South Dakota but the absurdity is difficult to ignore in any study of organization.

The criminal law enforcement function of the early 1950's cannot effectively carry out the criminal law enforcement function of the socially unbalanced 1970's.

There is too much evidence of highly routine criminal cases being worked expeditiously in some areas while major noncompliance problems collect cobwebs due to lack of resources in other areas. This condition has far more to do

with the fundamental difficulty in and organizational barriers to short-term shifts of manpower rather than in long-term allocation of resources.

The Southeast Region recently shifted seven special agents to the Birmingham District to cope with a politically hot and corrupt practice. Although the realignment was accomplished due to the fine cooperation of all districts, the negotiation process required days instead of hours to accomplish.

The present structure does not adequately mesh the Service's total criminal law enforcement function.

The system now forces far too many decisions to the highest levels of the Service and relieves the criminal law enforcement officials from true accountability for their actions and effectiveness. Too often National Office decision making is regarded at the field level as lack of confidence and poor substitute for holding top field officials accountable. Society and the federal courts are making criminal law enforcement a goldfish bowl. As a consequence no field manager (if given more latitude) could long survive bad judgment nor find it desirable to step far outside Service policies.

Interstate crime, subsidiary operations, international transactions, and a highly mobile society have outdistanced the Service's present structure of criminal law enforcement. Our highly decentralized organization fragments and obstructs an aggressive and effective response to well insulated fraud and other criminal transactions.

The Service seems to have no alternative except to plan for the worst in today's times. Since society is demanding and getting an unprecedented emphasis on law enforcement, we can ill afford to remain aloof and detached from social trends.

If the Internal Revenue Service is to offer a serious challenge to much of the younger generation, the challenge will not lie in fast audits and technical games. The criminal law enforcement function is far more likely to appeal to a large segment of the new generation. White collar crimes, organized crime, police corruption, gun control, illicit alcohol, numbers and other gambling operations among low economic levels, and other criminal enforcement activities have significance. Each of these areas have strong social implications, bear on the quality of life in the United States and rank high in the value system of this nation's well-educated youth.

The increasing pressures, sensitivity and importance of the criminal law enforcement function demand some form of full-time representation at the Assistant Commissioner level.

We can add very little more to an examination of centralization vs. decentralization. Suffice it to say that many dissatisfactions can be detected in the present way of doing things. Our view is that most are legitimate complaints of well motivated people who seek to do a better job. If what they are saying cuts no ice in the final decision-making, the structure will not disintegrate. They will continue to work and make the best of things. Thus our fear is not the physical departure of people. Our greater concern is the gradual decay of their spirit and creative processes.

D. IRS AND DEA POLICY

DEPARTMENT OF JUSTICE-INTERNAL REVENUE SERVICE GUIDELINES REGARDING COOPERATION IN JOINT INVESTIGATIONS

January 8, 1976.

I. General Purposes and Objectives

Department of Justice—The Attorney General is designated to facilitate and coordinate the criminal law enforcement activities of the federal government. In accordance with that responsibility, the Internal Revenue Service has consistently cooperated with the Department of Justice in criminal investigations and prosecutions involving civil or criminal tax consequences. The Attorney General has determined that priority must be given to the investigation and prosecution of organized criminal activity, corruption in government, narcotics trafficking, and all forms of white-collar crime. Such crimes can be efficiently and effectively investigated and prosecuted by Department of Justice attorneys and IRS agents working together in a spirit of cooperation toward the same goal—the vigorous and impartial enforcement of the law. Such cooperation is often essential to detect and to prosecute those persons involved in such activity.

Internal Revenue Service—The mission of the Internal Revenue Service is the fair and effective administration and enforcement of the tax laws of the United States. This process must be carried on in a way which most effectively utilizes the resources of the Internal Revenue Service and which does not imperil its reputation for fair and impartial administration of those laws. An important part of this responsibility for tax administration is the vigorous enforcement of the criminal sanctions within its jurisdiction. To encourage compliance with the tax laws, the criminal enforcement program should be equitably applied and characterized by broad occupational and geographical coverage. The Department of Justice shall continue to assist in the achievement of this mission by prosecuting those criminal tax cases referred to it by the Internal Revenue Service which the Department of Justice determines in the exercise of its discretion are appropriate for prosecution.

As part of the tax law enforcement responsibility of the Internal Revenue Service, special agents and revenue agents, possessing a special expertise in the investigation of crimes with financial aspects, will cooperate with United States attorneys and Department of Justice attorneys in developing cases concerning tax violations which are within the enforcement jurisdiction of the Service.

This cooperation, which shall be consistent with the compliance objectives of the Internal Revenue Service, entails the commitment of intelligence and audit manpower to the investigation and prosecution of tax offenses related to organized criminal activities, corruption in government, narcotics trafficking, and white-collar crime.

II. Operational and Control Aspects of Investigations With U.S. Attorneys and Department of Justice Attorneys

A. Supervision of IRS Agents

The investigative activities of IRS agents working on a joint investigation with the Department of Justice will be coordinated by the United States attorney or Department of Justice attorney in charge of the case. IRS is to participate in the planning and contribute to group strategy and operations through investigations conducted in its specialized area of responsibility. IRS agents will be assigned by IRS supervisors and the IRS will retain complete control over its own operations.

B. Selection of Cases for Investigation

Consistent with its compliance goals and criteria, the Internal Revenue Service will cooperate fully with United States attorneys and Department of Justice attorneys in criminal tax investigations where there exists potenial criminal or civil tax violations.

In selecting cases for investigation and possible prosecution, DOJ and IRS will:

(1) Recognize that appropriate priority be given to investigations involving organized crime, major narcotics trafficking; public corruption and white-collar crimes;

(2) Consider the limitations upon their resources including the availability of personnel; and

(3) Recognize the IRS's policy of a balanced program of tax enforcement and administration.

C. Conduct of Investigations

The Internal Revenue Service and the Department of Justice recognize that it is frequently impossible to determine at the outset of an investigation what types of charges, suitable for prosecution, will result from the investigation. Consequently, no premature determination regarding the eventual potential of cases under investigation shall be made by either the IRS or the Department of Justice.

During the course of an investigation, it may be concluded that it is not reasonable to continue to develop either a civil or criminal tax case. If this occurs the IRS will normally withdraw its personnel from the case. In the event that an individual case presents difficulties or disagreements respecting withdrawal of IRS personnel from any particular case, the difficulties or disagreements shall be referred to the Coordinating Committee. In resolving such difficulties or disagreements the Coordinating Committee shall consider, among other things, the effect of such withdrawal upon the development of the case and the comparative manpower needs and total enforcement resources of both IRS and DOJ.

D. Participation in Strike Forces

The Internal Revenue Service shall assign an intelligence agent to each Strike Force to act as Strike Force representative who will coordinate Strike Force objectives with the district or districts in the cases under investigation. It will also designate for each Strike Force an IRS audit group manager to act, on an as needed basis, as policy and program adviser to the Strike Force. The Strike Force representative will remain under the supervision and control of IRS supervisors. However, their participation in Strike Force investigations will be coordinated by the Strike Force attorney who will also assist in the formulation of enforcement policies and the selection of cases for potential investigation. However, final authority concerning taxpayers to be investigated by IRS will be vested in IRS. IRS Strike Force representatives will patricipate with representatives of other agencies in the analysis and evaluation of organized crime activities, and IRS will be provided with all relevant information pertaining to potential criminal or civil tax cases. Disagreements concerning commencement of particular investigations may be referred to the Coordinating Committee.

E. Prosecuting a Case Involving Tax and Non-Tax Offenses

In situations in which a criminal tax case and a non-tax criminal case involving the same taxpayer, or arising out of the same set of circumstances, are referred to the Department of Justice for prosecution, the Service and the Department of Justice will make every effort to coordinate the prosecution for both the tax and non-tax criminal cases. This coordination will manifest itself in obtaining, whenever possible, simultaneous indictments and the prosecution of both types of cases with equal vigor. For example, in any situation in which an attorney of the Department of Justice or an United States Attorney agree to accept a plea, every effort will be made to insure that any such plea accepted shall involve a plea of guilty, other than a plea of *nolo contendere*, to at least one tax offense.

III. Exchange of Information

A. The Department of Justice, including the Federal Bureau of Investigation, shall supply IRS with any information that the Department obtains concerning possible tax violations.

B. To the extent permitted by applicable law and regulations, the IRS shall supply the Department of Justice with any information, obtained during a tax investigation, relating to the possible commission of non-tax crimes. Normally IRS will not further develop such information except with appropriate supervisory review and where further development is necessary and this can only be accomplished by IRS personnel.

IV. Coordinating Committee

A six man committee is hereby established to monitor the application of these guidelines. IRS shall designate the following as members of the Committee: (a) the Commissioner or Deputy Commissioner; (b) the Chief Counsel or Deputy Chief Counsel; and (c) the Assistant Commissioner (Compliance) or Director, Intelligence Division. The Department of Justice shall designate the following as members of the Committee: (a) the Deputy Attorney General or an Associate Deputy Attorney General; (b) Assistant Attorney General for the Criminal Division or the Deputy Assistant Attorney General for the Criminal Division; (c) Assistant Attorney General for the Tax Division.

The Committee, which is authorized to receive and consider communications concerning the implementation of these guidelines and to discuss and negotiate their application to particular cases, is to serve as a focal point for the discussion of the nature and extent of each agency's participation in cooperative investigative efforts and for the resolution of any other disagreements with respect to criminal investigations, indictments or prosecutions.

The Committee shall have no authority to meet and transact business unless at least two of the three members of each agency's membership are in attendance.

Dated: January 8, 1976.

HAROLD R. TYLER, JR.,
Deputy Attorney General, Department of Justice.
DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNAL REVENUE SERVICE AND THE DRUG ENFORCEMENT ADMINISTRATION

July 27, 1976.

The following is an excerpt from the President's message to the Congress dated April 27, 1976: "I am directing the Secretary of the Treasury to work with the Commissioner of the Internal Revenue, in consultation with the Attorney General and Administrator of the Drug Abuse Enforcement Administration, to develop a tax enforcement program aimed at high-level drug trafficking. We know that many of the biggest drug leaders do not pay income taxes on the enormous profit they make on this criminal activity. I am confident that a responsible program can be designed which will promote effective enforcement of the tax laws against these individuals who are currently violating these laws with impunity."

In order to carry out the President's program aimed at high-level drug trafficking and to promote effective enforcement of the tax laws against those individuals who are violating these laws with impunity, the Internal Revenue Service (IRS) and the Drug Enforcement Administration (DEA) have agreed to the following:

I.—Primary liaison between IRS and DEA will be maintained at the National Office level of IRS, and at the Headquarters level of DEA. The Assistant Administrator, Office of Intelligence, DEA, and the Assistant Commissioner (Compliance), IRS, are designated Senior Coordinating Officials responsible for implementing the provisions of this Memorandum of Understanding and are responsible for monitoring the progress of the program within their respective agencies.

II.—The responsibility for the investigation of substantive narcotics violations will remain with DEA. The responsibility of IRS is to conduct appropriate civil examinations and criminal investigations of high-level drug leaders and financiers who IRS determines to have violated the internal revenue laws using its established standards.

To assist IRS in identifying high-level drug leaders and financiers, DEA will provide IRS information about individuals identified by DEA as Class I violators.

III.—IRS will furnish information involving substantive narcotics violations either direct to DEA or to the Assistant Attorney General, Criminal Division, Department of Justice, in accordance with the disclosure laws and regulations. DEA will furnish to IRS, on a continuing basis, financial information and documents obtained by DEA relevant to the possibility of tax violations by all individuals involved in narcotics trafficking, regardless of their level of involvement. However, only those individuals who meet DEA Class I criteria will be considered for inclusion in this program.

The exchange of information between DEA and IRS will be subject to all procedures established under, and will be accounted for in accordance with the Privacy Act of 1974.

IV.—The primary responsibility for gathering information relating to and the identification of major narcotics leaders remains with DEA. DEA will furnish periodically to the IRS, National Office, an updated list of selected Class I violators together with information relating to the individual's involvement in narcotics and whatever financial information DEA may have for IRS to determine the individual's compliance with the tax laws. The IRS, National Office, will distribute this information to the appropriate IRS regional offices for further evaluation and dissemination to the IRS district offices. The IRS district offices will supplement the information by contacting the local DEA office and by independently developing additional tax-related information in accordance with normal IRS procedures.

V.—DEA Class I violators are generally given investigative priority by DEA. Therefore, to avoid compromising DEA investigations and endangering DEA personnel and cooperating individuals, IRS will ordinarily honor DEA requests to temporarily suspend or limit specific IRS investigative acts involving such cases. For example, IRS will ordinarily honor a DEA request to temporarily suspend any IRS activity which would expose or hinder the activities of DEA undercover personnel; however, other IRS investigative and examination activities related to the case would proceed. All such requests from DEA Regional Directors should be in writing and should state the specific activities to be temporarily limited and the period of time for which the suspension is requested.

VI.—Appendix One is a list of IRS district offices and posts of duty cross referenced to DEA offices having jurisdictional responsibility within the district.

The Chief, Intelligence Divisions, IRS, in each of the districts designated, is the responsible official for implementing an effective liaison program with all DEA offices located within the IRS district.

VII.—The statutory authority of IRS is clearly limited to those matters falling within the purview of the Internal Revenue Code. Appropriate IRS officials at the district level shall make the final determination as to which cases shall be subject to either an audit examination or a criminal investigation. The investigation and prosecution of substantive narcotic violations by DEA will generally take precedence over the investigation and prosecution of tax violations. However, in those instances where the tax investigations have either been completed or substantially completed, DEA and IRS will cooperate in attempting to secure simultaneous indictments.

VIII.—Jeopardy assessments and terminations of taxable years, which are measures provided in the Internal Revenue Code to protect the tax revenues when collection is believed to be in doubt, will be made only in accordance with the provisions of the Code, as interpreted by the U.S. Supreme Court. Appendix Two contains the text of Sections 6851 and 6861 of the Internal Revenue Code and the Syllabus of the recent decision of the U.S. Supreme Court in *Laing* v. *United States*, which relate to jeopardy assessments and terminations of taxable years. The IRS will assist the DEA in a program to inform DEA field personnel of the Judicial and proposed legislative limitations of the Internal Revenue Service's Jeopardy and Termination Assessment powers to minimize any friction that might result if DEA agents' expectations as to the use of these powers are frustrated by such limitations.

IX.—To further an understanding of the jurisdictional responsibilities of DEA and IRS, personnel of the respective agencies are authorized to participate in training programs conducted by the other agency. Such participation shall be limited to the exchange of qualified instructors to participate on a temporary basis as guest lecturers. This cross-training can best be coordinated and accomplished at the district level.

X.—IRS personnel are not authorized to participate in arrests, raids and similar activities with DEA personnel.

XI.—In emergency situations where the safety of DEA or IRS personnel is in jeopardy, all necessary assistance will be rendered without delay by personnel of the other agency.

XII.—Central Tactical (CENTAC) Units are created by DEA to direct investigative activities at key individuals who, under varied positions of power in drug trafficking organizations, are insulated from normal investigative efforts. CENTAC Units are conspiracy oriented and are specially designed to investigate drug networks that cut across local, state, regional, national, and international borders. Each unit has direct control of the investigation as it develops. They are highly mobile, having authority to pursue an investigation wherever it may lead. The CENTAC Unit collects documents, organizes and corroborates testimony and other evidence to be presented to grand juries sitting in judicial districts where violations have occurred.

With the approval of both Senior Coordinating Officials, IRS may detail, on a temporary basis, IRS personnel to provide specialized assistance to CENTAC Units. IRS personnel will at all times remain under the direct control and supervision of IRS management and their duties in this liaison capacity shall be limited to review and evaluating tax-related information obtained by DEA CENTAC Units.

XIII.—Tax-related books, records and other documents seized by DEA personnel as a result of the execution and return of search and arrest warrants may be examined by IRS personnel to determine whether the individuals involved had complied with the internal revenue laws.

XIV.—IRS and DEA personnel will not discourage potential sources of information from furnishing information to the other agency; and will not compete for informants or information. This cooperation should be made known to potential sources of information in order to discourage informants from "agency shopping."

XV.—The debriefing of informants by DEA personnel will include an inquiry about financial information and potential tax violations. If the informant appears knowledgeable about these matters, DEA personnel will, if appropriate, encourage the informant to meet directly with IRS personnel. If the informant declines, DEA personnel will debrief the informant of any financial information and information relating to potential tax violations, and will transmit such in-

formation to IRS in accordance with DEA procedures. When it appears that an IRS informant is knowledgeable concerning potential narcotics violations, IRS will encourage the informant to meet directly with DEA personnel. If the informant declines, IRS personnel will debrief the informant of the information relating to potential narcotics violations and will transmit such information either direct to DEA or to the Assistant Attorney General, Criminal Division, Department of Justice, in accordance with the discolsure laws and regulations. IRS will be responsible for evaluating and, where appropriate, making payment for financial information concerning potential tax violations; and DEA will be responsible for evaluating and, where appropriate, making payment for information relating to potential narcotics violations IRS and DEA will coordinate to the extent necessary to prevent duplicate or excessive payments for the same information.

XVI.—DEA shall furnish IRS with strategic information and studies relating to the domestic and international flow of funds used in narcotics trafficking. To the extent this strategic information, unrelated to tax matters, is further developed by IRS, the additional information will be furnished to DEA. DEA and IRS Senior Coordinating Officials may authorize joint studies that would benefit both agencies.

Date: July 27, 1976.

PETER BENSINGER,
Administrator, Drug Enforcement Administration.
DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

APPENDIX I—DISCLOSURE AND EXCHANGE OF INFORMATION

.01 The disclosure of tax information from Internal Revenue Service files will be governed by Sections 6103 and 7213 of the Internal Revenue Code of 1954, 18 U.S.C. 1905 and Treasury Regulations Sections 301.6103(a)–1(f) and (g).

.02 Disclosures initiated by the Internal Revenue Service concerning information related to tax returns or obtained in the course of tax investigations, but involving nontax Federal violations, must be made as follows: the Service will notify the Assistant Attorney General, Criminal Division, that the Service has obtained information concerning the possible violation of Federal narcotics statutes. If the Assistant Attorney General submits a request for the information, under the provisions of 26 CFR 301.6103(a)–1(g), disclosure of information specifically concerning the violation will be authorized.

.03 Facts or information, relating to the commission of nontax Federal criminal acts or violations of nontax Federal criminal laws, not directly or indirectly related to a tax return or a tax investigation, may be disclosed by IRS employees directly to DEA in emergency situations or through their supervisors when circumstances permit.

.04 Disclosure requests initiated by the DEA concerning matters under investigation by that agency, as distinct from matters under investigation by Department of Justice attorneys and within their jurisdiction, must be in accordance with the provisions of 26 CFR 301.6103(a)–1(f) and be signed by the Attorney General. Requests for access by Department of Justice attorneys for use in matters under that agency's consideration involving narcotics violations must be in compliance with 26 CFR 301.6103(a)–1(g). Such request should be in writing and addressed to the Commissioner of Internal Revenue, Washington, D.C. 20224, with a copy addressed to the District Director or Service Center Director having custody of the information. Such applications must show:

(1) the name and address of the person or entity of concern;
(2) the kind of tax involved;
(3) the taxable period covered;
(4) the reason why inspection is desired, which must include the manner in which the information will be used: and
(5) in the case of requests made pursuant to 26 CFR 301.6103(a)–1(f), the name and the official designation of the person by whom the inspection is to be made.

The application must specify the authority for the request and should indicate whether inspection or copies of the tax information is desired.

If applicable, the application should also request that Service officials who conducted investigations concerning the named taxpayer be permitted to discuss

the details of their investigation with authorized representatives of the Department of Justice.

Any documents furnished in response to a DEA request must be returned to the office furnishing them after they have served the purpose for which they were requested.

Any questions concerning applications made on behalf of DEA should be directed to the Director, Disclosure Operations Division at 964–3908, 4263, and 4847.

APPENDIX II—INTERNAL REVENUE CODE SECTION 6851. TERMINATION OF TAXABLE YEAR

(a) Income Tax in Jeopardy.—(1) In general.—If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(2) Corporation in liquidation—If the Secretary or his delegate finds that the collection of the income tax of a corporation for the current or the preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) Reopening of Taxable Period.—Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonresident alien the taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

(c) Citizens.—In the case of a citizen of the United States or of a possession of the United States about to depart from the United States, the Secretary or his delegate may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(d) Departure of Alien.—Subject to such exceptions as may, by regulations, be prescribed by the Secretary or his delegate—

(1) No alien shall depart from the United States unless he first procures from the Secretary or his delegate a certificate that he has complied with all the obligations imposed upon him by the income tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if, in the case of an alien about to depart from

the United States, the Secretary or his delegate determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) Furnishing of Bond Where Taxable Year Is Closed by the Secretary or His Delegate—Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the Secretary or his delegate, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income or excess profits taxes for prior years.

SECTION 6861. JEOPARDY ASSESSMENTS OF INCOME, ESTATE, AND GIFT TAXES

(a) Authority for Making—If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213(a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) Deficiency Letters—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212(a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) Amount Assessable Before Decision of Tax Court—The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 6212(c) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Secretary or his delegate may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Secretary or his delegate shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) Amount Assessable After Decision of Tax Court—If the jeopardy assessment is made after the decision of the Tax Court is rendered, such asssessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) Expiration of Right to Assess—A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) Collection of Unpaid Amounts—When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863(b) shall be collected as part of the tax upon notice and demand from the Secretary or his delegate, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary or his delegate.

(g) Abatement if Jeopardy Does not Exist—The Secretary or his delegate may abate the jopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be susnended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Principal Field Offices DATE: 12/11/75
(U.S. Customs Service/Drug Enforcement Administration)

FROM : Commissioner of Customs/Acting Administrator,
Drug Enforcement Administration

SUBJECT: Memorandum of Understanding Between U.S. Customs Service/Drug Enforcement Administration

As the Commissioner of Customs and the Acting Administrator, Drug Enforcement Administration, we wish to assure all personnel of both agencies that this Memorandum of Understanding was signed in good faith by both parties and it is our intention to insure that the relationships between our agencies are conducted according to these operational guidelines in both a coordinated and professional manner.

It is of the utmost importance that the U.S. Customs Service and the U.S. Drug Enforcement Administration work together in an atmosphere of harmony and efficiency in combating the illegal importation and trafficking in illicit drugs. It is essential that each agency complement and support the other in fulfilling their respective obligations.

The attached policy guidelines have been established between the Drug Enforcement Administration and the U.S. Customs Service for the purpose of clarifying the respective operations of each agency in regard to drug related enforcement activities. It is anticipated that the guidance established in this agreement will promote and insure that the inter-agency relationships are in the best interests of the United States and will result in effective and efficient law enforcement.

A copy of this memorandum and the attached Memorandum of Understanding is being sent directly to all field offices of both agencies so that all personnel will be immediately aware of the agreed upon operational guidelines. We expect all principal field offices to insure that meetings are arranged at the earliest date between U.S. Customs Service and Drug Enforcement Administration counterparts at the various managerial and working levels to develop the closest possible working relationships within these operating guidelines.

Attachment

Vernon D. Acree
Commissioner of Customs

Henry S. Dogin
Acting Administrator
Drug Enforcement Administration

5010-110

MEMORANDUM OF UNDERSTANDING

Between

The Customs Service and the Drug Enforcement Administration on Operating Guidelines

The purpose of this memorandum is to emphasize and clarify the roles and the need for cooperation between the respective agencies. Under the broad guidelines of Reorganization Plan No. 2, the Drug Enforcement Administration has been assigned the primary responsibility for "....intelligence, investigative and law enforcement functions....which relate to the suppression of illicit traffic in narcotics, dangerous drugs or marihuana...." Under the plan and delegations, Customs retains and continues to perform those functions "....to the extent that they relate to searches and seizures of illicit narcotics, dangerous drugs, marihuana or to the apprehension or detention of persons in connection therewith at regular inspection locations at ports-of-entry or anywhere along the land or water borders of the United States..." However, Customs is required to turn over to DEA "any illicit narcotics, dangerous drugs, marihuana or related evidence seized and any person apprehended or detained...."

Both agencies have vital roles to perform within the Federal drug enforcement program. Customs, as part of its overall responsibility for interdicting the smuggling of contraband, retains the full responsibility for searching, detecting, seizing smuggled narcotics, and arresting suspected smugglers of any contraband. DEA has the full responsibility for any narcotic-related follow-up investigation as well as for providing Customs with information related to narcotics interdiction. Clearly, for the Federal effort to accomplish its enforcement goals related to reducing narcotics trafficking, both agencies must cooperate and provide appropriate mutual assistance in performing their respective functions. It is mutually agreed that an employee who willfully violates the intent and conditions of this agreement will be subject to firm disciplinary action.

To implement the above, the Commissioner of Customs and the Administrator of the Drug Enforcement Administration jointly approve the following guidelines for dealing with specific operational problems.

1) Operational Roles of Customs and DEA

- Customs is the agency with primary responsibility for interdiction of all contraband, including all drugs at the land, sea, and air borders of the United States.

- DEA is the agency with primary responsibility for investigation and intelligence gathering related to drug smuggling and trafficking.

- The Drug Enforcement Administration will notify the U.S. Customs Service of information from its narcotic investigations which

indicates that a smuggling attempt is anticipated at or between an established port-of-entry as soon as possible after the information is received. Such information may result in a cooperative joint interdiction effort but shall in no case result in uncoordinated unilateral action.

- Within the limitations of its resources, Customs will cooperate when requested to support DEA operations and ongoing investigations, including interception of aircraft suspected of drug smuggling and convoys.

- For purposes of this agreement an ongoing investigation includes only those cases in which information indicates a seizure and/or arrest should not occur at the initial point of contact in the United States, but should continue as a convoy to the final delivery point. The mere fact that a suspect or vehicle is known to DEA does not constitute an ongoing investigations.

2) Law Enforcement Coordination

- Whenever Customs has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in drug smuggling or trafficking, DEA will be the first agency contacted by Customs. DEA will then have primary responsibility for the coordination of all investigative efforts.

- Whenever DEA has information on any person, aircraft, vessel, etc., that is involved in or suspected of being involved in the smuggling of contraband, Customs will be the first agency contacted by DEA. Customs will then have primary responsibility for interdiction if a seizure or arrest is to occur at the initial point of contact in the United States except in those cases under the control of DEA.

3) Placing of Transponders on Aircraft and Transponder Alerts

- Transponders will not be utilized by Customs in drugs related activity without prior advice to DEA of the aircraft's identity and suspects involved. If DEA has an ongoing investigation, DEA will make the tactical decision as to the course of action to be taken.

- Both agencies will expeditiously advise each other of all transponders placed on aircraft, and immediately upon recieving signals therefrom.

- Customs will normally respond to all specially coded transponder alerts crossing the border. DEA will be given immediate notification whenever Customs responds to a drug-related transponder alert.

4) Combined Seizures of Narcotics and Other General Contraband

- Where both narcotics and general contraband are seized in the same case, the Customs Office of Investigations is to be notified and they will coordinate with DEA on a joint investigation.

- Investigative efforts will be dependent upon the magnitude of the violations and/or the value of the general merchandise seized.

5) Violations to be Reported to the U.S. Attorney

- DEA case reports will include any customs reports related to the drug violation. Customs will furnish their reports to DEA in an expeditious manner. DEA will present the violations to the concerned prosecutor for determination of charges.

6) International and Domestic Drug Intelligence Gathering, Coordination

- DEA is the agency with primary responsibility for gathering intelligence on drug smuggling and trafficking, including air trafficking.

- Customs has primary responsibility for intelligence gathering of smuggling activities and also a supportive role to DEA in drug smuggling and trafficking. Nothing in this agreement precludes Customs from gathering information from the air and marine community related to the smuggling of contraband. Customs will continue to maintain liaison and gather information from foreign Customs services on all smuggling activities.

- Customs will expeditiously furnish all drug-related information to DEA. DEA will expeditiously furnish drug smuggling intelligence to Customs. Unless immediate action is required, such drug smuggling intelligence collected will not be subjected to enforcement action prior to coordination between Customs and DEA.

- DEA and Customs will refrain from offering or lending support to any derogatory remarks regarding the other agency. When dealing with other law enforcement agencies, Federal, state and local officials should not be mislead as to DEA and Customs respective responsibilities.

- Neither Customs nor DEA will discourage potential sources of information from working for the other agency. The promising of rewards to informants for intelligence shall not be competitively used to increase the price of information and knowingly encourage the source of information to "Agency Shop."

- Under no circumstances will Customs officers employ a participating informant for drug-related matters unless prior agreement and concurrence is obtained from DEA. Both agencies recognize that the identity of an informant may have to be revealed in court and that the informant may have to testify.

- In those drug smuggling cases involving a DEA confidential source, Customs will be promptly notified of the role of the informants so that the safety of the cooperating individual is not jeopardized. Customs officers will not attempt to debrief DEA informants.

- None of the foregoing is intended to limit total resource utilization of DEA and Customs law enforcement capabilities, but rather to insure coordination, elimination of duplication of effort, and prevention of counter-productive or potentially dangerous enforcement activities.

- At the field level, Customs and DEA offices will identify specific persons or organizational units for the purpose of information referral and to coordinate enforcement matters.

7) Procedures to be Followed When DEA has Information that an Aircraft, Vehicle, Vessel, Person, etc., will Transit the Border Carrying Narcotics

- For criminal case development purposes, DEA may request that such persons or conveyances be permitted to enter the United States without enforcement intervention at that time. These requests will be made by DEA supervisory agents at the ARD level or above to District Directors or their designated representative. Such requests will be rare and made only when DEA intends to exploit investigations of major traffickers.

- Customs officers will participate in the enforcement actions until the initial seizure and arrest. The number of Customs personnel and equipment needed will be decided by the Customs supervisor with input from the DEA Case Agent, subject to the limitations of available Customs resources, not to exceed the number recommended by the DEA Case Agent.

- On drug-related joint enforcement actions, no press releases will be made by Customs or DEA without the concurrence of each other.

8) Drug Seizure Procedures

- Customs responsibility for interdiction of contraband, including illegal drugs, remains unchanged. Using every enforcement aid and technique available to them, Customs officers will continue to search for illicit drugs. Each time any drugs are discovered, they will be

seized and the nearest DEA office will be immediately notified unless otherwise locally agreed upon. Questioning of arrested violators will be limited to obtaining personal history and seizure information for Customs forms. Further questioning is the responsibility of DEA. Chain of custody forms or receipts are required for transfers of all seized items.

- Customs will take every step possible to preserve all evidentiary material and not remove suspected drugs from original containers when such action compromises evidentiary and investigative potential.

- In those instances where DEA will not accept custody of detained persons or seizure of drugs due to U.S. Attorney prosecutive policy, DEA will notify local enforcement authorities for prosecutive consideration. Otherwise DEA will request Customs to notify these authorities. When local enforcement authority declines, Customs will proceed to assess administrative and civil penalties, as appropriate. Otherwise, administrative and civil penalties should be held in abeyance until local prosecution is completed.

9) Convoy Operations After Customs Seizures

- In those instances where DEA decides to convoy the contraband seized by Customs to the ultimate consignee, Customs personnel will fully cooperate, and will withhold publicity. All seized vehicles or conveyances will be included in a chain of custody receipt.

- The weighing of the contraband may be waived when the method of concealment makes it impractical. At the termination of the convoy, an accurate weight will be supplied by DEA to the originating district director, and the chain of custody will be annotated with the correct weight. Customs officers will not normally participate in this type of convoy operation.

- At the termination of this type convoy operation, involved vehicle or conveyance shall be released to the custody of the nearest district director of Customs.

10) Disposition of Vehicles, Vessels, Aircraft and Seizures in Joint Enforcement

- All vehicles, vessels, and aircraft involved in joint smuggling cases will be seized and forfeited by Customs. Final disposition of the conveyance will be determined by a joint Headquarters review board comprised of Customs and DEA personnel. Guidelines governing disposition will be developed.

- Upon prior DEA request in writing, Customs will not administratively dispose of seized aircraft or other conveyances until it is no longer

required for evidence by the courts or termination of DEA investigation.

11) Referral to Other Agencies (Chain of Custody and Laboratory Sampling)

- Customs will continue, in the case of seized heroin and cocaine, weighing two ounces or more, to take samples not to exceed 7 grams. However, the Customs laboratory will not perform the quantitative and qualitative analysis until completion of the prosecutive action, except for special contingencies.

12) DEA Access to Customs Personnel and Controlled Areas

- Designated Customs areas are not normally accessible to others. Access to Customs controlled areas and Customs personnel on an as needed basis will be obtained from the officer-in-charge of the Customs facility in each instance. Customs will honor such requests, provided that DEA personnel in no way interfere in examination and inspection processes.

13) Procedures When Discovery of Drugs is Made Before Actual Violators Have Been Identified and Goods or Conveyances are Still in Customs Custody

- When Customs officers discover the presence of concealed drugs in imported goods, and the goods or conveyances are still under Customs custody or control, and they have not been claimed by a consignee or reached their ultimate destination, Customs shall maintain control of the drugs, but DEA will be notified immediately. Customs officers will cooperate with DEA and be guided by DEA's tactical decisions regarding investigative development, arrest and seizure.

14) Any representation made to Federal, state or local prosecutors for mitigation of sentence or other consideration on behalf of a defendant who has cooperated in narcotic cases or investigations will be made by DEA. DEA will bring to the attention of the appropriate prosecutor cooperation by a narcotic defendant who has assisted Customs.

There are existing DEA/Customs agreements not covered in this document that pertain to cross-designation of DEA agents, mail parcel drug interdiction and other matters. DEA and Customs mutually agree to review each of these and amend where appropriate for consistency with the cooperative intent of this agreement.

No guidelines are all encompassing and definitive for all occasions. Therefore, the appropriate field management of both agencies are

directed to establish communication with their respective counterparts to better coordinate their respective operations. Similar cooperation and harmonious working relationships should be implemented at all subordinate levels. It must be recognized that good faith as well as mutual respect for the statutory responsibilities of our agencies and for the employees are the cornerstones upon which full cooperation must be established. To this end, Customs and DEA personnel must take the appropriate affirmative actions to minimize conflict and develop a combined program which adequately serves the interests of the United States of America and its citizenry.

Henry S. Dogin
Acting Administrator
Druge Enforcement Administration

Vernon D. Acree
Commissioner
U.S. Customs Service

Part 3—Internal Revenue Code and Drug Traffickers

THE ANTI-INJUNCTION ACT AND SUITS TO ENJOIN WAGERING TAX ASSESSMENTS

I. INTRODUCTION

Congress often employs its taking power to regulate conduct considered undesirable.[1] Regulation by taxation is in some respects more advantageous than other more traditional forms of regulation such as criminal statutes or licensing requirements. Often, individuals engaged in the taxed activity—for example, accepting wagers—must register with the local district director of the Internal Revenue Service[2] (IRS), thereby admitting their involvement in conduct that may be made illegal under either federal or state criminal codes.[3] In addition, such individuals usually must maintain comprehensive records of their taxable activities[4] and file periodic returns.[5] Fulfilling these requirements may also expose them to potential criminal liability by providing law enforcement officials with additional evidence of the illegal conduct.[6] Of course, few individuals comply with these requirements.[7] Although the Internal Revenue Code

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[1] *See, e.g.*, Int. Rev. Code of 1954, § 4401 (tax on accepting wagers); *id.* § 4461 (tax on coin-operated gaming devices, such as slot machines); *id.* § 5811 (tax on transfers of machine guns and other firearms).

[2] *See, e.g., id.* § 4412 (persons in business of accepting wagers must register with officer in charge of local IRS district); *id.* § 5802 (same requirement with respect to importers, manufacturers and sellers of firearms). The definition of "firearms" includes only those types of weapons that one would normally associate with criminal activities—sawed off shotguns, machine guns, silencers, bombs, grenades, or any concealable weapon. *Id.* § 5845.

[3] In every state except Nevada, gambling is broadly proscribed. Marchetti v. United States, 390 U.S. 39, 44-46 & n.5 (1968). There are also federal laws designed to control gambling. *See, e.g.*, 18 U.S.C. § 1084 (1970) (criminal sanction for interstate transmission of wagering information); *id.* § 1953 (sanctions for interstate transportation of wagering paraphernalia).

[4] *See, e.g.*, Int. Rev. Code of 1954, § 4403 (persons liable for wagering tax must keep daily records of all wagers); *id.* § 5842 (records must be kept of all firearms transactions).

[5] *See, e.g.*, Treas. Reg. § 44.6011(a)-1(a) (1959) (IRS form 730 must be submitted each month by those liable for payment of wagering taxes). Recently, the Internal Revenue Service revised form 730 to comply with changes made by Act of Oct. 29, 1974, Pub. L. No. 93-499, § 3, 88 Stat. 1550, *adding* Int. Rev. Code of 1954, § 4424. The instructions on the form were revised to explain the new law's prohibition against disclosure by employees of the Treasury Department of wagering tax information to state law enforcement officials. *See* 1975 Int. Rev. Bull. No. 7, at 21.

[6] Since December 1, 1974, this is no longer true with respect to wagering tax registrations and returns. *See* Int. Rev. Code of 1954, § 4424 (no Treasury Department employee may disclose any return, registration, or other information filed pursuant to the wagering tax statutes to any state or federal law enforcement agency). *See generally* note 32 *infra*.

[7] It has been estimated that organized gambling receives between $7 billion and $50 billion a year in bets. R. Knudten, Crime in a Complex Society: An Introduction to Criminology 190 (1970). Until 1975, the excise tax on wagering was 10 percent of the amount risked by the bettor. Int. Rev. Code of 1954, § 4401(a), *as amended*, Act of Oct. 29, 1974, Pub. L. No. 93-499, § 3(a), 88 Stat. 1550 (lowering tax to two percent). Thus, if everyone paid the tax due, the tax revenue from gambling for the years before 1975 should have been at least $700 million per year. However, in fiscal 1974, the IRS collected a mere $645,100 in wagering excise taxes. Treas. Bull., Nov. 1974, at 12. Therefore, it would appear that less than one percent of the potential wagering tax revenue is collected.

(Code) provides criminal sanctions for failure to register[8] or to file tax returns,[9] the application of these provisions to those engaged in wagering activities has been declared unconstitutional by the Supreme Court.[10] The Court did not, however, hold that civil assessment and enforcement of the tax was impermissible.[11] Consequently, the IRS has concentrated its enforcement efforts on the collection of wagering taxes. In doing so, the IRS often bases its calculations of wagering tax liability on estimates and projections lacking any substantial factual foundation.[12] A taxpayer attempting to challenge the accurateness of his tax liability assessed under such circumstances has the burden of overcoming the presumption of correctness accorded all IRS assessments.[13] However, some taxpayers have asserted that meeting this burden of proof requires a taxpayer to incriminate himself.[14] Thus, taxpayers faced with large wagering tax assessments—pursuant to which the Government may seize virtually everything a taxpayer owns[15]—have attempted to enjoin the assessments altogether.

The Anti-Injunction Act[16] (Act), section 7421(a) of the Code, proscribes all suits to enjoin the assessment or collection of any tax. However, in *Enochs v. Williams Packing & Navigation Co.*,[17] the Supreme Court held that, if the traditional prerequisites to equitable jurisdiction are met, a

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[8] Int. Rev. Code of 1954, § 7201 (maximum penalty of $10,000 fine or five years' imprisonment or both for willful attempt to evade taxes in any manner).

[9] *Id.* § 7203 (in addition to other penalties, maximum fine of $10,000 or one year imprisonment or both for failure to file return).

[10] Grosso v. United States, 390 U.S. 62 (1968); Marchetti v. United States, 390 U.S. 39 (1968). For further discussion of these cases see note 32 *infra*.

[11] Marchetti v. United States, 390 U.S. 39, 61 (1968).

[12] *See* note 37 and accompanying text *infra*.

[13] Commissioner v. Hansen, 360 U.S. 446, 468 (1959); United States v. Anderson, 269 U.S. 422, 443 (1926). If, in a refund suit, the taxpayer argues not that he owes no tax but only that the assessment is excessive, he must also assume the burden of proving the correct amount owed. Helvering v. Taylor, 293 U.S. 507, 514 (1935). However, in a prepayment suit in the Tax Court, once the taxpayer has successfully demonstrated the invalidity of the Commissioner's assessment, an additional hearing in which the taxpayer does not have the burden of proof must be held to determine the correct amount due. *Id.* at 515-16. For discussion of the various avenues through which a tax assessment can be challenged see notes 39-42 and accompanying text *infra*. Because a taxpayer may not challenge the assessment of excise taxes—such as wagering taxes—in the Tax Court, wagering taxpayers may only recover excessive assessments through refund suits. *See* note 39 *infra*. Therefore, wagering taxpayers must assume the burden of proving either that the assessment is totally invalid or that it is excessive; if excessive, the taxpayer must show the proper amount owed.

[14] *See, e.g.*, Lucia v. United States, 474 F.2d 565, 576 (5th Cir. 1973) (en banc); Cole v. Cardoza, 441 F.2d 1337, 1339 (6th Cir. 1971). The self-incrimination argument has, however, been rejected by the courts. *See* notes 46-48 and accompanying text *infra*.

[15] *See, e.g.*, Iannelli v. Long, 333 F. Supp. 407, 409 (W.D. Pa. 1971), *rev'd*, 487 F.2d 317 (3d Cir.), *cert. denied*, 414 U.S. 1040 (1973) (threatened seizure). It should be noted that summary seizure of property to collect taxes is constitutionally permissible. *See* Fuentes v. Shevin, 407 U.S. 67, 91-92 (1972).

[16] The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." Int. Rev. Code of 1954, § 7421(a).

[17] 370 U.S. 1 (1962).

taxpayer can enjoin the assessment of a tax when it is apparent that the Government could not ultimately prevail in a refund suit to recover the tax after it has been collected.[18] Recently, a conflict among circuit courts has developed concerning the circumstances that are sufficient to come within the *Williams Packing* exception to the Act.[19]

This Note will examine the wagering tax system and suits to enjoin wagering tax assessments. It will demonstrate that courts faced with suits to enjoin wagering tax assessments have given the *Williams Packing* "Government cannot ultimately prevail" test two different, although overlapping, readings. Several courts have held that, if the taxpayer can show that the IRS' assessment was not a good faith effort at revenue collection, he is entitled to an injunction because, under the circumstances, the Government could not ultimately prevail.[20] Others have held that a taxpayer is entitled to an injunction only if he can demonstrate that, even if the law and facts are viewed in the manner most favorable to the Government, there is no possibility that the Government could ultimately prevail.[21] This Note will conclude that the latter reading of *Williams Packing* is more consonant with the purpose of the Anti-Injunction Act and the wagering tax system and that, consequently, those courts that have read a requirement of good faith into the *Williams Packing* test have applied an erroneous standard.

II. The Wagering Tax System and Methods of Collection

The wagering tax system,[22] part of the miscellaneous excise tax provisions of the Code, imposes upon a person a two percent excise tax on the total of all wagers he accepts.[23] The tax is based on the amount risked by the bettor,[24] and the person liable for the tax is the one receiving the wager.[25] Those persons engaged in the business of accepting wagers must keep daily records of all betting activities[26] and must make these records available for inspection by revenue agents at any time.[27] In addition, all persons required to pay the wagering tax must register with the district director of the IRS[28] and must pay a yearly occupational tax of $500.[29]

[18] *Id.* at 6-7.

[19] *Compare* James v. United States, 74-1 U.S. Tax Cas. ¶ 16,142 (W.D. Ky. 1974), *aff'd per curiam*, 75-1 U.S. Tax Cas. ¶ 16,179 (6th Cir. Feb. 12, 1975), *petition for cert. filed*, 43 U.S.L.W. 3501 (U.S. Mar. 8, 1975) (No. 74-1129), *with* Lucia v. United States, 474 F.2d 565 (5th Cir. 1973) (en banc).

[20] *See* notes 69-83 and accompanying text *infra*.

[21] *See* notes 84-94 and accompanying text *infra*.

[22] Int. Rev. Code of 1954, §§ 4401-24.

[23] *Id.* § 4401(a).

[24] *Id.* § 4401(b).

[25] *Id.* § 4401(c). Forms of gambling licensed or conducted by a state are exempted from collection or payment of the tax. *Id.* § 4402. *See also id.* § 4421 (the definition of the terms "wager" and "lottery" effectively exempt all church bingo games and other lotteries run by charities).

[26] *Id.* § 4403.

[27] *Id.* § 4423.

[28] *Id.* § 4412.

[29] *Id.* § 4411.

From 1968 to 1974, civil tax assessments were the exclusive means of enforcing the wagering tax laws. Although the 1974 nondisclosure provisions of section 4424[30] may have cured the self-incrimination problems found fatal to criminal enforcement of the wagering tax laws in *Marchetti v. United States*[31] and *Grosso v. United States*,[32] civil assessment will probably remain an often used method of discouraging violations of gambling laws.[33]

The IRS' method of wagering tax assessment and collection can be swift and harsh. The Code authorizes the Secretary or his delegate immediately to assess and to demand payment of any wagering tax if its collection is determined to be jeopardized by delay,[34] whether or not the time for filing a return has expired. Because wagering taxes are normally only owed by persons suspected of criminal activities—persons who are likely to hide their assets[35]—collection will almost always be jeopardized by delay. Consequently, as a practical matter, wagering taxes can be assessed

[30] Act of Oct. 29, 1974, Pub. L. No. 93-499, § 3, 88 Stat. 1550, *adding* Int. Rev. Code of 1954, § 4424.

[31] 390 U.S. 39 (1968).

[32] 390 U.S. 62 (1968). Until *Marchetti* and *Grosso* were decided, district IRS officers were required to keep available for public inspection lists of all persons who had paid the occupational tax on wagering. Act of Aug. 16, 1954, ch. 61, § 6107, 68A Stat. 756 (formerly Int. Rev. Code of 1954, § 6107), *repealed*, Act of Oct. 22, 1968, Pub. L. No. 90-618, § 203(a), 82 Stat. 1235. A certified copy of the list was to be furnished to any prosecuting officer who applied for it. *Id.* Although the Court in *Marchetti* recognized that Congress intended the wagering tax scheme to aid the prosecution of criminal anti-gambling laws, 390 U.S. at 58-59, it held that the listing requirement exposed those persons paying the occupational tax to such a serious hazard of criminal liability for violating state or federal gambling laws that a federal criminal prosecution for failure to register for and pay the tax violated the fifth amendment's privilege against self-incrimination. *Id.* at 54.

On the same day that *Marchetti* was decided, the Court held in *Grosso* that a criminal prosecution for failure to file a wagering tax return likewise violated the fifth amendment. 390 U.S. at 66-67. Although the IRS was not required by statute to divulge to prosecutors the names of those filing returns, it routinely did so. *Id.*

The 1968 repeal of the listing requirement, *see* Act of Oct. 22, 1968, Pub. L. No. 90-618, § 203(a), 82 Stat. 1235, may have sufficiently dealt with the Court's objections in *Marchetti*, but it may not have cured the constitutional defects of informal disclosure found significant in *Grosso*. To remove these lingering doubts and to "remove any constitutional problems regarding the enforcement of the wagering taxes," H.R. Rep. No. 93-1401, 93d Cong., 2d Sess. 6 (1974) (conference report), Congress enacted section 4424. Act of Oct. 29, 1974, Pub. L. No. 93-499, § 3, 88 Stat. 1550, *adding* Int. Rev. Code of 1954, § 4424. This section prohibits Treasury Department disclosure of any information filed pursuant to the wagering taxes to any person other than federal officials charged with criminal enforcement of the wagering tax laws. *Id.* §§ 4424(a), (b).

[33] The mere existence of a nondisclosure provision will not necessarily convince those engaged in illegal activity to keep daily records or to file wagering tax returns. Moreover, even when criminal prosecution is possible, the Government may choose civil litigation because of the lesser burden of proof. Also, a criminal prosecution for violating gambling laws will not bar a civil assessment for unpaid taxes. Finally, it should be noted that vigorous enforcement of civil tax assessments can be an effective deterrent. *See, e.g.*, Lucia v. United States, 474 F.2d 565 (5th Cir. 1973) (en banc) (assessment of $2,653,640); James v. United States, 74-1 U.S. Tax Cas. ¶ 16,142 (W.D. Ky. 1974), *aff'd per curiam*, 75-1 U.S. Tax Cas. ¶ 16,179 (6th Cir. Feb. 12, 1975), *petition for cert. filed*, 43 U.S.L.W. 3501 (U.S. Mar. 8, 1975) (No. 74-1129) (assessment of $929,000).

[34] Int. Rev. Code of 1954, § 6862(a).

[35] *See* Marchetti v. United States, 390 U.S. at 47.

and collected at any time. Upon receiving notice of tax due and demand for payment, the taxpayer must pay the tax at once; upon the taxpayer's failure or refusal to pay, the IRS may immediately begin to collect by levy and distraint against his property.[36]

The assessments themselves often appear arbitrary and unsupported by any substantial factual foundation. It is not unusual for the Government to assess a taxpayer for four or five years' back taxes in an amount based solely on an extrapolation of a few days' betting slips seized in a raid.[37] Considering the magnitude of the sums that may be involved[38] and the suddenness with which tax liability may be assessed and assets levied upon, it is not surprising that many individuals subject to such methods of tax collection seek judicial relief.

The Code provides two basic avenues for challenging one's tax liability.[39] For all types of tax, the taxpayer may pay the tax and then sue for a

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[36] Int. Rev. Code of 1954, § 6331(a); *see* Treas. Reg. § 301.6862-1 (1967).

[37] *See, e.g.*, Lucia v. United States, 474 F.2d 565, 574 (5th Cir. 1973) (en banc) (tax for over four years calculated from one day's betting slips); Mitchell v. Commissioner, 416 F.2d 101 (7th Cir. 1969) (tax for four years based on four days' records); Pizzarello v. United States, 408 F.2d 579, 583 (2d Cir.), *cert. denied*, 396 U.S. 986 (1968) (tax for five years based on betting slips for three days).

[38] *See* note 33 *supra*.

[39] The vast majority of taxpayers simply file income tax returns and pay the tax owed with no further collection procedure required. *See* B. Bittker & L. Stone, Federal Income Estate and Gift Taxation 932-33 (4th ed. 1972). If, however, the IRS believes that a taxpayer owes additional tax, or has failed to pay the entire tax due, it will determine that a deficiency exists. *Id.* at 913-14. The IRS then informs the taxpayer of the deficiency by mailing to him a preliminary notice. *Id.* at 914. Upon receipt of this notice, the taxpayer has 30 days to either pay the tax or request a conference with the district director, reviewable by the regional director, in which an effort will be made to resolve the case. M. Garbis & R. Fromme, Procedures in Federal Tax Controversies, Administrative & Trial Practice 15-17 (1968). If no settlement is reached within the administrative review framework, the IRS is required to send the taxpayer a statutory notice of deficiency by secured mail. Int. Rev. Code of 1954, § 6212(a). For a 90-day period following the mailing of this notice, the IRS may not attempt to collect the deficiency, *id.* § 6213(a); hence, the letter is known as a "90-day letter." After receipt of this letter, the taxpayer may contest liability in either of two alternative forums. Within the same 90 days that the IRS may not attempt to collect the deficiency, the taxpayer may file a petition with the Tax Court for a prepayment redetermination of the deficiency. *Id.* Alternatively, he may pay the alleged deficiency and file a claim for a refund either in a federal district court or in the Court of Claims. 28 U.S.C. § 1346 (1970). However, he must give the district director six months to administratively redetermine the deficiency before suing for a refund. Int. Rev. Code of 1954, § 6532(a)(1). With either method of judicial review, the court's decision is reviewable by a federal court of appeals and ultimately by the Supreme Court.

The Code grants the IRS special powers and procedures if there is reason to believe that the collection of the revenue would otherwise be jeopardized by delay. *Id.* §§ 6861 (jeopardy assessment), 6331(a) (distraint). Under these procedures, the IRS does not have to wait the normal 90 days before beginning assessment, levy and seizure of the taxpayer's property. However, the IRS must still provide the taxpayer with notice of the deficiency within 60 days of the jeopardy assessment, *id.* § 6861(b), and allow the taxpayer to petition the Tax Court for a redetermination. *Id.* § 6861(c). In addition, although a taxpayer's assets may be seized, the IRS is prohibited from actually disposing of them during the time in which the taxpayer may petition the Tax Court or during the pendency of Tax Court proceedings. *Id.* § 6863(b)(3). However, if the IRS determines that a taxpayer intends to leave the country without paying his taxes or that he intends to conceal himself or his property in order to avoid payment of his taxes, the Code provides that his taxable year may be immediately

refund either in the Court of Claims or in a federal district court.[40] For income, estate, or gift tax assessments, the Code also provides a prepayment mode of review by way of a suit in the Tax Court.[41] Because wagering taxes are excise taxes, this latter form of prepayment review—especially established by Congress to mitigate the substantial hardship of forcing the taxpayer always to pay first and to litigate later[42]—is not available to a person challenging a wagering tax assessment. Plaintiffs have argued in several wagering tax cases that this unavailability of prepayment judicial review in the Tax Court is a denial of procedural due process. Although the argument would seem to have some merit to it, it has been rejected by every court that has considered the issue.[43]

In addition to the position that the lack of prepayment judicial review

terminated. The IRS must provide the taxpayer with notice of the termination, but it may demand payment of the tax which is then immediately due and payable. *Id.* § 6851(a). Actual collection of the tax is enforced through the levy and distraint power provided in the Code. *Id.* § 6331(a).

For wagering taxpayers, the procedures are more truncated. Generally, the Tax Court's jurisdiction is limited to those cases involving deficiencies in payments of taxes imposed by subtitles A and B of the Code—income, estate and gift taxes. *Id.* § 6213(a). Because the wagering tax is an excise tax, imposed under subtitle D, the Tax Court is not available to wagering taxpayers. Thus, there is no method of prepayment review provided wagering taxpayers. In addition, the jeopardy and taxable year termination provisions applicable to income, estate and gift taxes are combined for the purpose of collecting excise taxes. Thus, wagering taxes—upon a determination that their collection will be jeopardized by delay—may be assessed and collected at any time. *Id.* § 6862.

[40] 28 U.S.C. § 1346 (1970).

[41] Int. Rev. Code of 1954, §§ 6212-13.

[42] *See* H.R. Rep. No. 179, 68th Cong., 1st Sess. 7 (1924), *reprinted in* 1939-2 Cum. Bull. 246-47. That the Tax Court—formerly the Board of Tax Appeals—was established to mitigate the harshness of paying the tax before seeking judicial review is commonly accepted by the courts. *See, e.g.*, Flora v. United States, 362 U.S. 145, 158 (1960); Rambo v. United States, 492 F.2d 1060, 1064 (6th Cir.), *petition for cert. filed*, 43 U.S.L.W. 3115 (U.S. July 10, 1974) (No. 73-2005).

[43] *E.g.*, Trent v. United States, 442 F.2d 405, 406 (6th Cir. 1971); Hamilton v. United States, 309 F. Supp. 468, 471 (S.D.N.Y. 1969), *aff'd per curiam*, 429 F.2d 427 (2d Cir. 1970), *cert. denied*, 401 U.S. 913 (1971); *cf.* Phillips v. Commissioner, 283 U.S. 589, 597-99 (1931) (income tax case).

The taxpayer can most forcefully support his position by basing his argument on a similar due process issue that will soon be resolved by the Supreme Court. The controversy concerns the propriety of the Commissioner's termination of a taxpayer's taxable year under section 6851(a), *see* note 39 *supra*, without issuing a notice of deficiency pursuant to Int. Rev. Code of 1954, § 6212. If such a procedure is proper, one of the jurisdictional prerequisites to prepayment review in the Tax Court—receipt of a deficiency notice—would be lacking, *id.* §§ 6213-14, and the Anti-Injunction Act would bar prepayment review by means of a suit to enjoin the assessment and collection of the tax.

The Court must determine whether such procedures are authorized by the Code and, if authorized, whether they constitute a deprivation of property without due process. *See* Laing v. United States, 496 F.2d 853, 854 (2d Cir. 1974), *decision pending*, 43 U.S.L.W. 3424 (U.S. Jan. 21, 1975) (No. 73-1808) (deficiency notice not required); Hall v. United States, 493 F.2d 1211, 1212 (6th Cir. 1974), *decision pending*, 43 U.S.L.W. 3424 (U.S. Jan. 21, 1975) (No. 74-75) (deficiency notice required).

If the taxpayers prevail in these suits on constitutional grounds, then perhaps denying wagering taxpayers any form of prepayment review is also inconsistent with the due process clause of the fifth amendment. *But see* Phillips v. Commissioner, *supra* at 596-97; Preble v. United States, 376 F. Supp. 1369, 1372 (D. Mass. 1974). However, it should be noted that, although Tax Court prepayment review is normally available to income taxpayers, the Tax Court has always been closed to wagering taxpayers. *See* note 39 *supra*.

presents constitutional difficulties, taxpayers challenging wagering tax assessments have asserted that the alternative method of challenge—a refund suit—is inadequate. This contention has been based on several lines of reasoning—all of which have proved to be generally unpersuasive to the courts. In a refund suit, the burden of proof is on the taxpayer either to demonstrate the invalidity of the assessment if he argues that he owes no tax or to show the amount he actually owes if he argues that the IRS' assessment is excessive.[44] In some wagering tax situations, the taxpayer claims that no tax is owed because he is not in the wagering business.[45] In others, the taxpayer alleges that the amount of tax assessed is excessive.[46] However, as soon as he attempts to demonstrate the proper amount of tax owed, he will admit that he is engaged in illegal gambling. This hazard of self-incrimination, it is argued, forces the taxpayer to make the constitutionally impermissible choice of paying what amounts to a fine in the guise of a tax or incriminating himself.[47] Therefore, the whole wagering tax system is alleged to be unconstitutional because forcing the taxpayer to challenge an assessment by means of a refund suit does not sufficiently protect the taxpayer's rights. However, to date the courts have remained universally unpersuaded by this argument.[48]

Another possible justification advanced for finding the refund procedure inadequate is the "full-payment" rule of *Flora v. United States*.[49] The Supreme Court in *Flora* held that prepayment in full of the assessed income tax is a prerequisite to seeking a refund.[50] Taxpayers faced with a

[44] Helvering v. Taylor, 293 U.S. 507, 514 (1935); 10 J. Mertens, Federal Income Taxation § 58A.35 (rev. ed. 1965).

[45] *E.g.*, Mersel v. United States, 420 F.2d 516, 519-20 (5th Cir. 1970).

[46] *E.g.*, White v. Cardoza, 368 F. Supp. 1397, 1399 (E.D. Mich. 1973); Iannelli v. Long, 333 F. Supp. 407, 410 (W.D. Pa. 1971), *rev'd*, 487 F.2d 317 (3d Cir.), *cert. denied*, 414 U.S. 1040 (1973).

[47] *See, e.g.*, Lucia v. United States, 474 F.2d 565, 576 (5th Cir. 1973) (en banc); Collins v. Daly, 437 F.2d 736, 738-39 (7th Cir. 1971). It seems clear that this self-incrimination argument is an attempt to extend the rationale of *Marchetti* and *Grosso* to civil assessments. In 1971, the Supreme Court appeared conducive to such types of arguments when it held that forfeiture proceedings pursuant to section 7302 of the Code—which provides for the forfeiture of all property used to willfully evade the tax laws—were sufficiently analogous to a criminal penalty as to be a constitutionally unacceptable method of enforcing wagering tax violations. United States v. United States Coin & Currency, 401 U.S. 715, 722 (1971). However, the Court again stated that taxation of unlawful activities such as gambling was not unconstitutional. It objected only to the method of collecting the tax. *Id.* at 717.

[48] *E.g.*, Iannelli v. Long, 487 F.2d 317, 318 (3d Cir.), *cert. denied*, 414 U.S. 1040 (1973); Cole v. Cardoza, 441 F.2d 1337, 1339-41 (6th Cir. 1971); Collins v. Daly, 437 F.2d 736, 738-39 (7th Cir. 1971). If the constitutional argument were to be accepted, the addition of section 4424 to the Code would not entirely eliminate the self-incrimination hazard. Although the IRS may no longer make available to state or federal law enforcement officials information contained in wagering tax returns, the opinion and record of a refund suit in which the taxpayer admits to having taken bets, although not as many as the Government alleges, continues to be available to the public. Consequently, in order to establish the excessiveness of the assessment, the taxpayer still faces the danger of incriminating himself. Several courts have asserted, however, that this danger is mitigated by the fact that the taxpayer may file suit for a refund and then ask for a continuance until the statute of limitations runs on the criminal liability. *See* Iannelli v. Long, *supra* at 318; White v. United States, 363 F. Supp. 31, 36 (N.D. Ill. 1973).

[49] 362 U.S. 145 (1960).

[50] *Id.* at 146.

substantial wagering tax liability have argued that their inability to pay the full amount as required by the full-payment rule effectively denies them any form of judicial review.[51] This argument seems to be insubstantial, however, because the *Flora* Court specifically excepted excise taxes from the operation of the full-payment rule. The taxpayer need only pay the excise tax on one wagering transaction and then sue for a refund.[52]

With no prepayment review available in the Tax Court and with the hazards of self-incrimination present in refund suits, taxpayers liable for wagering taxes have sought to enjoin the assessment and collection of the tax altogether. Such suits for injunctive relief have run squarely into the proscription of the Anti-Injunction Act, which provides that no suit for the purpose of restraining the assessment or collection of any tax may be maintained in any court by any person.[53] Despite the absolute character of this statutory prohibition, several courts have indicated that the collection of wagering taxes may be enjoined in certain circumstances. The remainder of this Note will examine these cases and the application of the Anti-Injunction Act to wagering tax assessments and collection.

III. The Anti-Injunction Act as It Applies to Wagering Tax Assessments and Collection

The Anti-Injunction Act has been in force for over a century[54] and, in that time, has been the subject of considerable controversy in the courts.

[51] *See, e.g.,* Cole v. Cardoza, 441 F.2d 1337, 1339, 1342 (6th Cir. 1971); Bowers v. United States, 423 F.2d 1207, 1208 (5th Cir. 1970).

[52] Flora v. United States, 362 U.S. at 171 n.37. Paying the tax on one transaction and suing for a refund is not, however, without hazards. *See* Higginbotham v. United States, 75-1 U.S. Tax Cas. ¶ 16,177 (S.D.W. Va. Dec. 21, 1974) (plaintiff, suing for refund of $293.50 paid on one wagering transaction, forced to pay additional $48,388.92 on counterclaim for additional tax); Thomas v. United States, 74-2 U.S. Tax Cas. ¶ 16,170 (N.D. Tex. Nov. 12, 1974) (suit for refund dismissed after plaintiff refused to answer Government interrogatories on fifth amendment self-incrimination ground).

There is, it would seem, a more substantial argument that the refund procedure is inadequate, although it does not appear to have been made in any of the cases. Except within narrowly prescribed limits, once a taxpayer has petitioned the Tax Court for review, the power of the Commissioner to continue collection of the tax is stayed. Int. Rev. Code of 1954, § 6213(a). On the other hand, paying the tax on one wagering transaction and suing for a refund in district court or the Court of Claims does not stay the Commissoner's power of collection, *id.* § 7422; nor may collection be enjoined. *Id.* § 7421(a). However, the taxpayer is often seeking relief because the continued collection of the wagering tax will force him into bankruptcy. *See, e.g.,* Lucia v. United States, 474 F.2d 565, 577 (5th Cir. 1973) (en banc). Thus, the absence of a stay provision when the taxpayer pays the tax on only one transaction would seem to make the refund procedure inadequate. Indeed, there does not seem to be any way of preventing the IRS from continuing to collect the remainder of the tax alleged to be owed even after the taxpayer has prevailed in his refund suit on one transaction; instead, the taxpayer would have to bring repeated suits for refund. *See* Flora v. United States, 362 U.S. at 193 & n.16 (Whittaker, J., dissenting).

In addition, because the taxpayer is required to give the Commissioner six months to redetermine his tax before suing for a refund, Int. Rev. Code of 1954, § 6532(a)(1), there is a substantial delay involved that is not present with the Tax Court procedure. In the case of a taxpayer who has had all his assets attached and who is being forced into bankruptcy to pay a tax that he argues was arbitrarily assessed and is excessive in amount, a six-month delay may involve substantial hardship.

[53] *See* note 16 *supra*.

[54] The original Anti-Injunction Act was part of the first attempt at income taxation made

The Supreme Court's interpretation of the Act has ranged from a literal construction permitting no exceptions[55] to a construction that permits suits for injunctive relief to be brought in numerous situations.[56] As a result, the cases cannot be reconciled. In 1962, the Court, in *Enochs v. Williams Packing & Navigation Co.*,[57] attempted to resolve the confusion by setting forth an interpretation of the Act that it has subsequently stated was intended to be definitive.[58] Nevertheless, the lower courts have disagreed as to both the effect of *Williams Packing* on previous decisions[59] and the correct application of the *Williams Packing* test.[60]

A. *The* Williams Packing *Exception to the Anti-Injunction Act*

In *Williams Packing*, the Court held that a litigant seeking to enjoin the assessment or collection of a tax and thereby to avoid the bar of section 7421(a) must show (1) that it is apparent, under the most liberal view of the law and the facts, that the Government cannot ultimately establish its claim[61] and (2) that equity jurisdiction otherwise exists.[62] The Court expressly held that hardship to the taxpayer was not, by itself, a sufficient abrogating circumstance.[63] The Court was careful to restrict the operation of its newly formulated exception to the Anti-Injunction Act to those instances in which it was truly obvious that the Government could not possibly win:

> We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit. Only if it is then apparent that, under the most liberal view of the law and the facts,

during the Civil War. Revenue Act of 1867, ch. 169, § 10, 14 Stat. 475. It has remained in force, largely unchanged, through various codifications until the present day.

[55] Snyder v. Marks, 109 U.S. 189, 193 (1883).

[56] *See, e.g.*, Allen v. Regents of the Univ. Sys., 304 U.S. 439 (1938) (the statute does not prohibit suit to enjoin collection of tax alleged to burden unconstitutionally a governmental activity of the state); Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932) (Act does not apply if collection of the tax would destroy the taxpayer's business); Hill v. Wallace, 259 U.S. 44 (1922) (Act does not prevent suit for injunction if collection of tax would ruin the Chicago Board of Trade).

[57] 370 U.S. 1 (1962).

[58] Bob Jones Univ. v. Simon, 416 U.S. 725, 742 (1974).

[59] In Lucia v. United States, 474 F.2d 565 (5th Cir. 1973) (en banc), the court discussed both *Williams Packing* and Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932), as if the two cases collectively set forth the circumstances that must be shown to exist to circumvent the statute. Lucia v. United States, *supra* at 573. Other courts have confined their inquiry to a consideration of *Williams Packing*, apparently considering it to be the only relevant test. *E.g.*, Trent v. United States, 442 F.2d 405, 406 (6th Cir. 1971); Pizzarello v. United States, 408 F.2d 579, 582-83 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969).

[60] *Compare* James v. United States, 74-1 U.S. Tax Cas. ¶ 16,142 (W.D. Ky. 1974), *aff'd per curiam*, 75-1 U.S. Tax Cas. ¶ 16,179 (6th Cir. Feb. 12, 1975), *petition for cert. filed*, 43 U.S.L.W. 3501 (U.S. Mar. 8, 1975) (No. 74-1129) (assessment will not be enjoined unless the Government cannot possibly prevail under any circumstances), *with* Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969) (assessment will be enjoined if arbitrary, capricious and excessive).

[61] 370 U.S. at 7.

[62] *Id.* at 6.

[63] "[S]uch a suit [to enjoin an assessment] may not be entertained merely because collection would cause an irreparable injury, such as the ruination of the taxpayer's enterprise." *Id.*

the United States cannot establish its claim, may the suit for an injunction be maintained.[64]

That is, considering the evidence on hand, a court should indulge in every possible presumption in favor of the Government's position.

Initially, it may be noted that this test seems an inappropriate method of determining when to apply section 7421(a). When equity jurisdiction is otherwise present, the test requires the litigant to establish that the Government could not possibly win if he paid the tax and sued for a refund. Such a test, which goes to the merits of the case, should have no bearing on the determination whether a particular jurisdictional statute is applicable. That the statute is jurisdictional, and not merely remedial, was clear to the Court: "The object of § 7421(a) is to withdraw jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes."[65] Whether a court has jurisdiction to entertain a lawsuit should not turn on what it perceives the ultimate outcome on the merits would be if the action were fully litigated.[66] The test would be more appropriate in the summary judgment context, in which the parties could substantiate their claims through affidavits.[67] This unsuitableness of the *Williams Packing* test has probably caused some of the disagreement concerning the proper scope of section 7421(a). However, the Supreme Court has recently reaffirmed its holding in *Williams Packing*, perhaps even broadening its reading of section 7421(a).[68] Consequently, because it appears unlikely that the Court will abandon *Williams Packing*, this Note's analysis of the Anti-Injunction Act as it applies to wagering tax assessments will be restricted to a consideration of section 7421(a) as interpreted in that case.

B. *Conflicting Readings of the* Williams Packing *Test*

1. The "Good Faith" Standard

After setting forth its test for the application of the Anti-Injunction Act, the Court in *Williams Packing* added that requiring "more than good faith on the part of the Government would unduly interfere" with the collection of the revenue.[69] Several courts have seized upon this language as the

[64] *Id.* at 7. The "under the most liberal view of the law and facts" formulation of *Williams Packing* was recently reaffirmed by the Supreme Court in rejecting a suit for an injunction to prevent the revocation of a taxpayer's tax-exempt status. Bob Jones Univ. v. Simon, 416 U.S. 725, 740 (1974).

[65] Enochs v. Williams Packing & Navigation Co., 370 U.S. at 5.

[66] *See* Bell v. Hood, 327 U.S. 678, 682 (1946); Gunther, The Subtle Vices of the "Passive Virtues"—A Comment on Principle and Expediency in Judicial Review, 64 Colum. L. Rev. 1, 13 (1964). *But see* Land v. Dollar, 330 U.S. 731, 735 (1947).

[67] Fed. R. Civ. P. 56.

[68] Alexander v. "Americans United" Inc., 416 U.S. 752 (1974); Bob Jones Univ. v. Simon, 416 U.S. 725, 742-46 (1974). Decisions in the lower federal courts since *Bob Jones* and *"Americans United"* have tended to adopt a very strict reading of the Anti-Injunction Act and the *Williams Packing* test. *See, e.g.*, Cattle Feeders Tax Comm. v. Shultz, 504 F.2d 462 (10th Cir. 1974); Lewis v. Sandler, 498 F.2d 395 (4th Cir. 1974).

[69] 370 U.S. at 7-8. This "good faith" formulation of the scope of the Anti-Injunction Act was repeated in Bob Jones Univ. v. Simon, 416 U.S. 725, 740 (1974). It was, however, clearly dictum.

proper standard for applying the "Government cannot ultimately prevail" test of *Williams Packing*. Accordingly, they have indicated that injunctions would be proper when the assessments were so arbitrary, capricious and excessive as to show a lack of good faith on the part of the assessing authority such that the Government could not ultimately prevail in a refund suit.[70] Several other courts that appear to have applied a "good faith" gloss to the "Government cannot ultimately prevail" test have concluded that the assessments in question were bona fide and so dismissed the suits.[71]

The two most significant cases that have placed a good faith gloss on the *Williams Packing* test are *Pizzarello v. United States*[72] and *Lucia v. United States*.[73] The cases are significant because they appear to be the only instances in which a litigant has successfully persuaded a court that a wagering tax assessment ought to be enjoined. In both cases the assessments were very large[74] and were made only after criminal convictions—in *Lucia* for failure to file wagering tax returns[75] and in *Pizzarello* for failure to register and pay the occupational tax[76]—were overturned in light of *Marchetti* and *Grosso*.

In *Pizzarello*, the amount of tax liability was calculated from an extrapolation of three days' wagering receipts—as evidenced by betting slips seized in a raid—over five years.[77] However, there was no evidence that Pizzarello had been involved in gambling for five years or that the three-day average represented his average daily business for the other 1,575

Elsewhere in the opinion, the Court seemed to be applying a "certainty of success on the merits" standard. *Id.* at 747-49; *see* notes 84-94 and accompanying text *infra*.

[70] *See* Sherman v. Nash, 488 F.2d 1081, 1084 (3d Cir. 1973) (IRS does not have "complete license to act arbitrarily and in bad faith and for other than the purpose of preserving the revenue"); Lucia v. United States, 474 F.2d 565, 573 (5th Cir. 1973) (en banc); Pizzarello v. United States, 408 F.2d 579, 584-86 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969). In neither of the latter two cases did the court actually state that it felt the Government's assessment showed an absence of good faith. However, in calling the assessments "arbitrary, capricious and without factual foundation," both courts appear to have felt that the assessments in question were not bona fide efforts at revenue collection.

[71] Iannelli v. Long, 487 F.2d 317, 318 (3d Cir.), *cert. denied*, 414 U.S. 1040 (1973) (Anti-Injunction Act "presupposes a bona fide attempt of the government to collect revenue"); Collins v. Daly, 437 F.2d 736, 738 (7th Cir. 1971) (section 7421(a) does not apply when "it is so obvious that the tax cannot be ultimately sustained that any effort to collect it calls into question the government's good faith"); Fiore v. Secretary of Treasury, 74-2 U.S. Tax Cas. ¶ 16,150 (E.D.N.Y. 1974); Pizzarello v. United States, 285 F. Supp. 147, 151 (S.D.N.Y. 1968), *rev'd*, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969) (Government cannot ultimately prevail requirement "amounts to a showing of bad faith on the part of the government"). *See also* Shapiro v. Secretary of State, 499 F.2d 527, 535 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3446 (U.S. Feb. 18, 1975) (No. 74-744) (good faith standard applied to determine whether jeopardy assessment of income taxes should be enjoined).

[72] 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969).

[73] 474 F.2d 565 (5th Cir. 1973) (en banc).

[74] *Id.* at 568 (assessment of $2,653,640); Pizzarello v. United States, 408 F.2d at 580 (assessment of $282,440.70).

[75] 447 F.2d 912, 913-16 (5th Cir. 1971), *rev'd on rehearing*, 474 F.2d 565.

[76] *See* 408 F.2d at 581-82.

[77] *Id.* at 583.

days he was alleged to have been in the wagering business.[78] Also, the court held that the assessment was based on illegally seized evidence[79] and, thus, was completely invalid.[80] The *Lucia* assessment was calculated by extrapolating receipts evidenced by one day's betting slips over a period of four years and eight months.[81] The court followed *Pizzarello*, holding the assessment to be "arbitrary, capricious and without factual foundation."[82] The Government's figures were not a realistic projection but were "merely derived, Mandrake-like, from a filament of evidence and subjected to a sleight-of-hand computation."[83]

2. The "Most Liberal View of the Law and Facts" Standard

Given the circumstances of *Pizzarello* and *Lucia*, it is understandable that the courts, without stating so directly, suspected that the Government's efforts at tax collection were not good faith attempts to ensure collection of the revenue. However, several courts have apparently held that the Government's motives are not at issue in a case involving the propriety of enjoining collection of a tax. In *James v. United States*,[84] the Sixth Circuit recently dismissed a suit seeking injunctive relief from a wagering tax assessment. The case was virtually indistinguishable from *Lucia* and *Pizzarello* in all essential factual aspects, but the court declined to follow these earlier decisions.[85]

In *James*, the rather substantial[86] assessment covered a period of four years and was based on wiretap evidence obtained over two days.[87] As did Pizzarello, James argued that the evidence was illegally seized and that this fact, along with the unwarranted use of two days' receipts to support

[78] *Id.*

[79] *Id.* at 585.

[80] *Id.* at 586. There is presently a conflict in the circuits as to whether evidence that is obtained pursuant to an illegal search and seizure should be suppressed in a civil tax proceeding so that assessments based on such evidence may be enjoined. *Compare* Zamaroni v. Philpott, 346 F.2d 365, 366 (7th Cir. 1965) (court refused to enjoin wagering tax assessment that taxpayer alleged was based on illegally seized evidence), *with* Pizzarello v. United States, 408 F.2d at 586 (assessment, based on illegally seized evidence, is invalid and may be enjoined if basis for equitable jurisdiction is established). The Tax Court has recently extended the fourth amendment's exclusionary rule to civil tax assessments. Efrain T. Suarez, 58 T.C. 792, 806 (1972). However, at least one member of the *Suarez* court felt that an assessment based on illegally seized evidence was not presumptively arbitrary, capricious, excessive, or invalid. *Id.* at 817 (Tannenwald, J., concurring). Of course, the Tax Court is not available to wagering taxpayers. *See* text accompanying note 39 *supra*. *See generally* Note, Internal Revenue Service Use of Electronic Surveillance Information in the Enforcement of the Wagering Taxes, 55 B.U.L. Rev. 387 (1975).

[81] 474 F.2d at 574.

[82] *Id.* at 573.

[83] *Id.* at 575.

[84] 74-1 U.S. Tax Cas. ¶ 16,142 (W.D. Ky. 1974), *aff'd per curiam*, 75-1 U.S. Tax Cas. ¶ 16,179 (6th Cir. Feb. 12, 1975), *petition for cert. filed*, 43 U.S.L.W. 3501 (U.S. Mar. 8, 1975) (No. 74-1129).

[85] *Id.* In declining to follow *Lucia* and *Pizzarello*, the Sixth Circuit appears to have impliedly rejected a strong argument by the petitioner that the Government lacked good faith by making an assessment that was arbitrary and capricious. *See* Reply Brief for Appellant at 3-9.

[86] 74-1 U.S. Tax Cas. at 84,501 ($929,600).

[87] *Id.* at 84,503.

an assessment covering four years, rendered the assessment "arbitrary, capricious and without factual foundation."[88] In one respect, however, *James* is arguably distinguishable from at least *Pizzarello*. Although Pizzarello's criminal conviction was overturned, James actually had pleaded guilty to one count of conspiracy to violate the gambling laws.[89] The court seemed to feel that this prior successful criminal prosecution was important evidence that James was involved in gambling operations, despite strenuous arguments that James' guilty plea was not admissible in the civil suit.[90] However, James' prior guilty plea, if admissible, did not in any way indicate that he had been involved in gambling during the entire period for which tax liability had been determined; nor did it help to establish the factual validity of the calculations.

Apparently, the *James* court reached a result contrary to that reached in *Lucia* and *Pizzarello* because it applied a different standard in evaluating the plaintiff's argument that the challenged assessment came within the "Government cannot ultimately prevail" half of the *Williams Packing* test.[91] The court's formulation of the *Williams Packing* test was that, unless, "under the most liberal view of the law and the facts" based on information available at the time of the suit, it is clear that the Government cannot ultimately prevail, the assessment cannot be enjoined.[92] A similarly strict standard has been applied in several other cases in which litigants sought to enjoin wagering tax assessments.[93] Thus, it appears that the courts have applied two varying standards in evaluating the first half of the *Williams Packing* test: the "good faith" standard of *Lucia* and *Pizzarello* and the more stringent "under the most liberal view of the law and facts" standard of *James*.[94]

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[88] *Id.*

[89] *Id.*

[90] *See* Brief for Appellant at 6-10. James' argument was based on the Supreme Court decision in North Carolina v. Alford, 400 U.S. 25 (1970), which held that a plea of guilty induced by a desire to avoid the hazards of trial—in Alford's case, the risk of the death penalty—and accompanied by repeated claims of innocence was essentially equivalent to a plea of nolo contendere. *Id.* at 37. James' plea of guilty to one count of conspiracy was made with express reference to *Alford* and was coupled with protestations of innocence. Consequently, James argued that it was equivalent to a plea of nolo contendere. Normally, a plea of nolo contendere is not admissible in another proceeding as an aid to prove guilt or liability. United States v. Graham, 325 F.2d 922, 928 (6th Cir. 1963). *See also* Fed. R. Evidence 410 (not effective until Aug. 1, 1975). Thus, it was argued, James' guilty plea under the *Alford* rationale was not admissible in the civil tax assessment proceeding.

[91] James v. United States, 74-1 U.S. Tax Cas. at 84,503.

[92] *Id.*

[93] Trent v. United States, 442 F.2d 405, 406 (6th Cir. 1971) (per curiam); Cole v. Cardoza, 441 F.2d 1337, 1341 (6th Cir. 1971); Mastro v. United States, 75-1 U.S. Tax Cas. ¶ 16,182 (D. Conn. Jan. 30, 1975) (to meet *Williams Packing* test taxpayer must show "certainty of success on the merits"); Lancoon v. Department of Treasury, 74-2 U.S. Tax Cas. ¶ 16,151 (S.D.N.Y. 1974) (taxpayer must show Government "cannot possibly win"); White v. United States, 363 F. Supp. 31, 34 (N.D. Ill. 1973) (taxpayer must show that "under no circumstances could the government prevail"); McAlister v. Cohen, 308 F. Supp. 517, 521 (S.D.W. Va. 1970), *aff'd per curiam*, 436 F.2d 422 (4th Cir. 1971) (same).

[94] The more stringent *James* standard would seem to be difficult to meet. In none of the cases cited as using a *James*-type standard was the taxpayer successful in having the tax enjoined. *See* cases cited note 93 *supra*. However, an income tax assessment was enjoined under a strict reading of *Williams Packing* when it was shown that the Government failed to

C. *The Proper Application of the* Williams Packing *Test*

When determining which reading of the *Williams Packing* test is more persuasive, several factors must be considered. Initially, one must examine the purpose of the Anti-Injunction Act and its relation to the various interests at stake—the efficient collection of the revenue and the protection of taxpayers from arbitrary action of the Internal Revenue Service. In *Williams Packing*, the Supreme Court stated:

> The manifest purpose of § 7421 (a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund.[95]

Thus, the Government's unhindered collection of the revenue appears to be the paramount interest protected by the Anti-Injunction Act.[96] Of course, as the Court in *Williams Packing* stated, "if it is clear that under no circumstance could the Government ultimately prevail, the central purpose of the Act is inapplicable."[97] This proposition seems almost self-evident: if the Government cannot win under any view, there is no reason to protect it from prerefund suit litigation. However, the Court made it clear that it intended to restrict the operation of its test to those instances in which it was readily apparent that the Government had absolutely no chance of emerging victorious.[98]

In the normal suit, the taxpayer will argue that the facts do not support the Government's calculations. However, under the most liberal view of the facts, even if the tax for five years were calculated from one day's betting slips, it would seem that the Government could possibly win and

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follow the formal steps necessary to comply with the jeopardy assessment provisions of sections 6851(a) and 6861(a) of the Code. United States v. Bonaguro, 294 F. Supp. 750, 753-54 (E.D.N.Y. 1968), *aff'd sub nom.* United States v. Dono, 428 F.2d 204 (2d Cir.), *cert. denied*, 400 U.S. 829 (1970). Similarly, the court in White v. Cardoza, 368 F. Supp. 1397 (E.D. Mich. 1973), although refusing to enjoin the assessment at that time, held that, if the plaintiff could demonstrate that the Government failed to comply with the assessment provisions of sections 6862(a) and 6331(a), then a wagering tax assessment could be enjoined under a strict reading of *Williams Packing*. *Id.* at 1398-99. The significance of this decision is open to question, however; it has never been cited or followed. In addition, the ratio decidendi was probably that an assessment may be enjoined if the taxpayer can demonstrate that the assessing authority clearly acted outside the scope of his authority. In such a case, it would seem obvious that the Government could not ultimately prevail. In none of the other recent cases in which a taxpayer sought to enjoin a wagering tax assessment was it alleged that the IRS officials involved had acted outside the scope of their statutory authority. Rather, the taxpayer in each case argued that the factual base of the assessment was so tenuous that the Government could not ultimately establish its validity. Whether the assessing official acted outside the scope of his authority is a question of law and may be appropriately determined in a suit for an injunction. Whether the assessment is excessive or arbitrary is a question of fact and may be more appropriately left to the normal channels of administrative review and refund litigation.

[95] 370 U.S. at 7.

[96] *See* Bob Jones Univ. v. Simon, 416 U.S. 725, 736-37 (1974). The unencumbered collection of the revenue was also a substantial factor in the Supreme Court's decision that a jurisdictional prerequisite to a refund suit was full payment of the tax. *See* Flora v. United States, 362 U.S. at 175-76.

[97] 370 U.S. at 7.

[98] *See* text accompanying note 64 *supra*.

that, therefore, an injunction should be denied.[99] Similarly, with the present conflict in the circuits concerning the applicability of the exclusionary rule of the fourth amendment to civil tax assessments,[100] whether an assessment based on illegally seized evidence should be enjoined would vary with the circuit. In those circuits that have extended the exclusionary rule to civil tax proceedings, even under the most liberal view of the law for that circuit, the assessment may be enjoined. However, in a circuit that either has not extended the rule to civil tax proceedings or has not yet considered the question, under the view of the law most favorable to the Government's position, the assessment should not be enjoined.

Competing with the Government's interest in unhampered revenue collection is the taxpayer's interest in freedom from arbitrary actions of the IRS. Those courts that have applied a "good faith" standard[101] in evaluating suits for injunctions appear to have given great weight to the interest of the taxpayer. These courts have held that the taxpayer is entitled to an evidentiary hearing on the question whether the assessment is so arbitrary, excessive and lacking in factual foundation as to justify the conclusion that it was not a bona fide effort at collection of the revenue.[102] Such a hearing must be based on the evidence available at the time of the suit,[103] and the burden of proof is on the taxpayer to establish the Government's lack of good faith.[104] However, it is not clear from *Williams Packing* that the Supreme Court ever intended that a hearing be held every time a taxpayer seeks to enjoin the assessment of a tax; in fact, for several reasons, it may be argued that an evidentiary hearing is inappropriate.

First, a litigant desiring to challenge an action taken by some governmental agency is usually required to exhaust his administrative remedies, especially if he is seeking equitable relief.[105] Any time a court allows a taxpayer to enjoin an assessment, it allows him to circumvent the prescribed methods of administrative review.[106] Consequently, the whole procedure of permitting taxpayers to collaterally attack the amount of

[99] Such a method of calculation is not per se unreasonable and therefore invalid as a matter of law. Hamilton v. United States, 309 F. Supp. 468, 472 (S.D.N.Y. 1969), *aff'd per curiam*, 429 F.2d 427 (2d Cir. 1970), *cert. denied*, 401 U.S. 913 (1971). Several courts have noted that extrapolation of evidence is necessary because of the taxpayer's failure to keep daily records. *E.g.*, Mitchell v. Commissioner, 416 F.2d 101, 102-03 (7th Cir. 1969); Hamilton v. United States, *supra* at 473. *But see* Lucia v. United States, 474 F.2d at 575 n.42; Pizzarello v. United States, 408 F.2d at 584.

[100] *See* note 80 *supra*.

[101] *See* text accompanying notes 69-83 *supra*.

[102] Shapiro v. Secretary of State, 499 F.2d 527, 534 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3446 (U.S. Feb. 18, 1975) (No. 74-744); Lucia v. United States, 474 F.2d at 574-75.

[103] *See* text accompanying note 64 *supra*.

[104] *See* United States v. Calamaro, 354 U.S. 351, 358 (1957) (the principal interest of the United States is presumed to be the collection of revenue and not the punishment of gamblers).

[105] Weinberger v. Bentax Pharmaceuticals, Inc., 412 U.S. 645, 653-54 (1973); McKart v. United States, 395 U.S. 185, 194 (1969); Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41, 50-51 & n.9 (1938).

[106] The refund procedures are set forth at Int. Rev. Code of 1954, §§ 6532(a)(1), 7422(a).

their assessments prior to administrative redetermination is of questionable propriety. Second, the Supreme Court in *Williams Packing* stated that one of the purposes of the Anti-Injunction Act was to protect the Commissioner from prerefund suit litigation.[107] Thus, to whatever extent the courts hold evidentiary hearings on the merits of taxpayers' allegations, they undermine one of the purposes of the Act. Third, it is not yet clear how great a showing a taxpayer must make under the "good faith" standard in order to establish that the Government cannot ultimately prevail.[108] Consequently, applying a good faith gloss to the *Williams Packing* test involves the courts in a premature determination of the strength of the IRS' assessment when, for example, a court must decide whether an extrapolation of a few days' evidence into several years of tax liability is warranted under the circumstances. However, judicial evaluation of the Government's assessment procedure runs contrary to the *Williams Packing* command that the facts must be examined in the manner most favorable to the Government's position.[109]

Finally, there is the issue that only a few courts appear to have considered—the question whether the taxpayer is any more protected from arbitrary IRS action if he is allowed an evidentiary hearing and perhaps an injunction than he would be in a suit for a refund. If he is not, or if the degree of enhanced protection is insignificant, there seems to be no compelling reason to carve any further exceptions out of the Anti-Injunction Act.[110] If the taxpayer is equally protected in a refund suit, he has an adequate remedy at law and so fails to satisfy the jurisdictional requirements for equitable relief—the second half of the *Williams Packing* test.[111]

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[107] 370 U.S. at 7-8.

[108] *Compare* Fiore v. Secretary of Treasury, 74-2 U.S. Tax Cas. ¶ 16,150 (E.D.N.Y. 1974) (under good faith standard, four months' tax calculated from one day's betting slips is valid), *and* Hamilton v. United States, 309 F. Supp. 468, 470 (S.D.N.Y. 1969), *aff'd per curiam*, 429 F.2d 427 (2d Cir. 1970), *cert. denied*, 401 U.S. 913 (1971) (four years' tax based on three days' betting slips is valid under good faith test because taxpayer admitted being in the gambling business), *with* Lucia v. United States, 474 F.2d at 574 (four and a half year assessment based on one day's betting slips is arbitrary and capricious and may be enjoined).

[109] *See* text accompanying note 64 *supra*. Two courts, in applying a good faith reading of *Williams Packing*, appear to have overlooked this point altogether. In deciding whether to dismiss suits under the Anti-Injunction Act, the courts construed the factual allegations of the pleadings most strongly in favor of the plaintiff because the Government, as defendant, had moved for the dismissal. Shapiro v. Secretary of State, 499 F.2d 527, 533 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3446 (U.S. Feb. 18, 1975) (No. 74-744); Willits v. Richardson, 497 F.2d 240, 244-45 (5th Cir. 1974). Although the normal practice is to construe the factual allegations most strongly against the movant, the Supreme Court in *Williams Packing* has clearly established a contrary rule when the Government's motion is based on the Anti-Injunction Act.

[110] For the discussion that follows, it will be assumed that there is no constitutional infirmity in denying the wagering taxpayer any form of prepayment judicial review as long as he has access to postpayment review by way of a refund suit. *See* note 43 *supra*.

[111] Several courts have held that, even if the taxpayer can establish that the Government cannot ultimately prevail, the refund suit is a sufficiently adequate remedy at law and so have denied injunctions. *E.g.*, Zamaroni v. Philpott, 346 F.2d 365, 366 (7th Cir. 1965); Lancoon v. Department of Treasury, 74-2 U.S. Tax Cas. ¶ 16,151 (S.D.N.Y. 1974); Dolan v. United States, 74-1 U.S. Tax Cas. ¶ 16,122 (N.D. Ga. 1973).

A comparison of the cases that have favored injunctions of arbitrary assessments with the cases in which taxpayers have successfully sued for refunds because the assessments lacked any substantial factual underpinnings indicates that injunctive relief is, for the most part, of little benefit to wagering taxpayers. Because the full-payment rule of *Flora v. United States*[112] does not apply to excise taxes, the burden of paying first and then litigating is minimal. Thus, the wagering taxpayer cannot persuasively argue that collection of the tax will force him into bankruptcy[113] before he is able to litigate the validity of the assessment.[114]

In certain situations, a refund suit affords the taxpayer even greater protection than does a suit for an injunction. Under *Williams Packing*, doubtful legal issues must be resolved in favor of the Government. Therefore, a circuit that has yet to consider the question should not apply the fourth amendment exclusionary rule[115] to a suit to enjoin a civil tax assessment. However, in a refund suit *Williams Packing* is irrelevant, and a court properly could consider whether illegally seized evidence should be excluded in certain civil cases.[116]

Moreover, the self-incrimination implications of a refund suit are no more serious than those involved in suits for injunctive relief. Because the burden of proof in a refund suit is on the taxpayer to establish the correct amount of tax owed, some have urged that the taxpayer's fifth amendment privilege against self-incrimination is infringed upon.[117] However, when the taxpayer seeks equitable relief, he has an equal burden of proof in demonstrating that the assessment is excessive.[118] If the taxpayer can carry the burden of proof in a suit for an injunction despite the hazards of self-incrimination, he can carry it in a refund suit.[119] Several courts apparently recognized this fact and, when refusing to enjoin wagering

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[112] 362 U.S. 145 (1960); *see* text accompanying notes 49-52 *supra*.

[113] The argument that collection of the tax will force the taxpayer into bankruptcy or ruin him financially has been made in several of the cases. *E.g.*, Lucia v. United States, 474 F.2d at 577; White v. Cardoza, 368 F. Supp. 1397, 1400-01 (E.D. Mich. 1973); Pizzarello v. United States, 285 F. Supp. 147, 153 (S.D.N.Y. 1968), *rev'd*, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969).

[114] *But see* note 52 *supra*. Because there is no stay provision to prevent the Commissioner from continuing to collect the tax alleged to be owed while the taxpayer sues for a refund on one transaction, the refund procedure may be inadequate. However, this argument does not appear to have ever been made in a wagering tax case. This may well be because the Government has been willing to stay collection when the taxpayer files suit for a refund and then counterclaim in the refund suit for the total tax alleged to be due. *E.g.*, Higginbotham v. United States, 75-1 U.S. Tax Cas. ¶ 16,177 (S.D.W. Va. Dec. 21, 1974); Thomas v. United States, 74-2 U.S. Tax Cas. ¶ 16,170 (N.D. Tex. Nov. 12, 1974); Florio v. United States, 74-1 U.S. Tax Cas. ¶ 16,145 (N.D.W. Va. 1974).

[115] *See* note 80 *supra*.

[116] *See* Janis v. United States, 73-1 U.S. Tax Cas. ¶ 16,083 (C.D. Cal. 1973), *aff'd mem.*, No. 73-2226 (9th Cir. July 22, 1974), *cert. granted*, 43 U.S.L.W. 3645 (U.S. June 10, 1975) (No. 74-958).

[117] *See* text accompanying notes 46-48 *supra*.

[118] *See* Lucia v. United States, 474 F.2d at 575-76.

[119] *Id.* at 576; Dolan v. United States, 74-1 U.S. Tax Cas. ¶ 16,122, at 84,437 (N.D. Ga. 1973).

assessments, declared that the proper place to test the strength of the Commissioner's case is in a refund suit.[120]

It may also be urged that the time delay in obtaining a refund is crucial, and that, therefore, an injunction offers greater protection to the taxpayer.[121] Such an argument is insubstantial. For example, in *Pizzarello*, the taxpayer was deprived of a substantial sum of money for four years while seeking an injunction.[122] In contrast, one wagering taxpayer paid the tax—less than $5,000—on a few wagering transactions and then successfully sued for a refund; the total assessment was in excess of $80,000.[123] Although it took him five years to recover his money, the hardship to this taxpayer was significantly less than that in *Pizzarello*. In at least some circumstances, therefore, the additional delay and inconvenience of a refund suit will be minimal or nonexistent.

Thus, courts ought not to assume without a strong showing that an injunction protects the taxpayer to any greater extent than does a refund suit. However, in certain narrow situations such an assumption might be warranted. If the assessing official acted outside the scope of his authority, so that even under the most liberal view of the law and facts the Government could not ultimately prevail, a court might be justified in issuing an injunction. In such a case, a taxpayer would have to demonstrate only that the Commissioner failed to comply with the statutory assessing requirements.[124] Similarly, in a circuit that has already ruled that the fourth amendment exclusionary rule applies in civil proceedings, an assessment based on illegally seized evidence should be enjoined. In either case, the taxpayer would be protected from the hazards of self-incrimination because the entire assessment would be attacked as invalid.

Of course, the Government could assert that the taxpayer's legal remedy—a refund suit—is adequate. As in a suit for an injunction, a refund suit would entail no self-incrimination problems because the entire assessment would be attacked on the ground that the IRS had exceeded its authority. However, the taxpayer might argue that, in these circumstances, the delay involved in a refund suit would be significantly greater than that in a suit for an injunction. A suit for an injunction would be decided solely on the question of law, and, although a refund suit would be similarly restricted, it could not be brought until the IRS had actually assessed and collected the tax. Perhaps more substantial is the claim that, unless the legal question were resolved in a suit for an injunction, the IRS could force the taxpayer to bring a number of refund

[120] *See* Zamaroni v. Philpott, 346 F.2d 365, 366 (7th Cir. 1965); Campbell v. Guetersloh, 287 F.2d 878, 881 (5th Cir. 1961).

[121] Such an argument, by itself, does not render the refund suit an inadequate legal remedy. *See* Bob Jones Univ. v. Simon, 416 U.S. 725, 747 (1974).

[122] The Government held $125,882 of Pizzarello's money; the assessment itself was in excess of $280,000. 408 F.2d at 586-87.

[123] Janis v. United States, 73-1 U.S. Tax Cas. ¶ 16,083 (C.D. Cal. 1973), *aff'd mem.*, No. 73-2226 (9th Cir. July 22, 1974), *cert. granted*, 43 U.S.L.W. 3645 (U.S. June 10, 1975) (No. 74-958).

[124] White v. Cardoza, 368 F. Supp. 1397, 1398-99 (E.D. Mich. 1973).

suits simply by assessing wagering taxes on each separate transaction. Finally, the taxpayer might argue that his legal remedy is inadequate because, if he must bring a refund suit, he will be deprived of the use of his money for an indeterminate period of time.

As noted earlier, arguments such as these have generally been unpersuasive in suits to enjoin the collection of taxes. However, these contentions take on added significance as grounds for equitable intervention when the sole dispute is one of law. Whether the case involves the statutory assessment procedures or the facial validity of an assessment based on illegally seized evidence, the court will determine whether the Government has acted outside the law. If it has, its interest in unhampered revenue collection becomes less substantial. At the same time, the taxpayer's interest in freedom from arbitrary IRS action becomes more appealing. Just as the first element of the *Williams Packing* test—whether the Government might ultimately prevail—must be construed in light of these competing interests,[125] the second element—the existence of independent grounds for equitable jurisdiction—should be examined with these interests in mind. When the legitimacy of the Government's interest is suspect and the taxpayer's interest is endangered, a court would be justified in liberally construing the *Williams Packing* requirement of independent grounds of equitable jurisdiction.

IV. Conclusion

The Anti-Injunction Act appears to bar all suits seeking injunctions to restrain the assessment or collection of any tax. However, the Supreme Court in *Enochs v. Williams Packing & Navigation Co.* held that in certain narrow instances an injunction against tax assessment may be justified. In *Williams Packing,* the Court set forth a two-prong test to determine whether an injunction should be allowed: (1) it must be shown that, even under the most liberal view of the law and the facts of the case, the Government could not ultimately prevail in a refund suit and (2) equitable jurisdiction must otherwise exist. These two factors should be evaluated on the basis of the two competing interests at stake—the unhindered collection of the revenue by the Government and the protection of taxpayers from arbitrary IRS action.

The circuits have split in formulating standards for determining whether the Government cannot ultimately prevail. Some courts have held that, when an assessment was not made by the IRS in "good faith," the first half of the *Williams Packing* test is satisfied. This is an inappropriate standard because the issue of good faith turns on factual questions, which the Supreme Court stated should always be resolved in favor of the Government. Instead of a "good faith" standard, this half of the test should be limited to narrow questions of law, such as whether the IRS

[125] *See* text accompanying notes 95-98 *supra.*

operated within its statutory framework or whether the exclusionary rule has been violated.

When an analysis of the first half of the *Williams Packing* test indicates that the Government could not ultimately prevail even if the law were viewed most favorably toward its position, the Government's interest in unhampered collection of the revenue becomes minimal. At the same time, the taxpayer's interest in being protected from arbitrary IRS action becomes compelling. In such circumstances, a court should resolve all doubts concerning the existence of equitable jurisdiction in favor of the taxpayer and should then enjoin the assessment.

ARTHUR H. FERRIS

CRIMINAL DEFENDANTS AND ABUSE OF JEOPARDY TAX PROCEDURES

Barry Tarlow*

INTRODUCTION

Federal and California taxing agencies can exercise awesome statutory authority to summarily assess and collect taxes if they conclude that collection of the taxes is endangered.[1] This extraordinary authority is necessary to ensure that suspected criminals who may flee or dispose of their assets pay their share of taxes. If exercised fairly and for a legitimate revenue-raising purpose, this power would not raise constitutional problems.[2] However, re-

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[1] Under the Internal Revenue Code (hereinafter referred to in text as the Code), the District Director may immediately assess a deficiency if he "believes that the assessment or collection of a deficiency . . . will be jeopardized by delay" (INT. REV. CODE OF 1954, § 6861), or terminate the taxable year of a taxpayer if he "finds that [the] taxpayer designs . . . to do any . . . act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay . . . ." INT. REV. CODE OF 1954, § 6851. For an analysis of the source of authority under which the District Director assesses a tax after termination of the taxable year see Meyers, *Termination of Taxable Year: Procedures in Jeopardy*, 26 TAX. L. REV. 829, 830-33 (1971) [hereinafter cited as Meyers]. In California the Franchise Tax Board is authorized to assess a deficiency immediately if it "finds [that collection] . . . will be jeopardized in whole or in part by delay . . . ." CAL. REV. & TAX. CODE § 18641 (West 1970). The California Revenue and Taxation Code (hereinafter referred to in text as the California Code) authorizes termination of the taxpayer's taxable year where the tax jeopardized is for the current period. *Id.* § 18642.

[2] Summary seizure of property for collection of federal income taxes was approved by the Supreme Court in Phillips v. Commissioner, 283 U.S. 589 (1931).

cent cases indicate a disconcerting pattern of abuse. Taxing agencies are immediately notified of arrests for gambling or narcotics violations when funds are seized.[3] With little or no investigation into the defendant's financial background,[4] the agencies conclude that taxes from unreported illegal income are endangered unless an assessment is made immediately. An income which yields a tax equal to or exceeding the amount seized is estimated,[5] and liens and levies are imposed on the property.

For a discussion of the *post*-seizure remedies required by the due process clause see Note, *Termination of the Taxable Year: The Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184 (1974).

[3] Close cooperation between the IRS and law enforcement agencies is described in Silver, *Terminating the Taxpayer's Taxable Year: How IRS Uses It Against Narcotics Suspects*, 40 J. TAX. 110 (1974). Silver cites an Internal Revenue Service Manual Supplement (dated Nov. 10, 1971) which sets out the procedures of the IRS Narcotics Project. Officers of this special division are instructed to "disrupt the distribution of narcotics through the enforcement of all available tax statutes . . . . [M]aximum use . . . [is to be] made of jeopardy, quick, and transferree assessments, and termination of taxable periods." *Id.* at 110. *See also, Taxing Tactic, The IRS Swiftly Grabs Drug Suspects' Assets In Crackdown Effort*, Wall Street Journal, Apr. 10, 1974, at 1, col. 1 (West Coast ed.).

It is common for law enforcement agents to notify both the IRS and the California Franchise Tax Board when cash is seized pursuant to a gambling or narcotics arrest, and for summary assessments to issue within hours. *See* affidavits from ten attorneys, United States v. Marshall, No. CR 74-227, (C.D. Cal., May 13, 1974), *appeal docketed*, No. 2070, 9th Cir., June 7, 1974).

[4] Failure of the taxing agencies to make even colorably accurate estimates of the defendant's true income has resulted in injunctions, orders to return funds, or remands to determine whether an injunction should issue. *See, e.g.*, Lucia v. United States, 474 F.2d 565, 575 (5th Cir. 1973) (taxpayer entitled to a hearing to determine if jeopardy assessment was "arbitrary, capricious and without factual foundation" because Government estimated gross receipts for a betting season from one day's wagering slips; remanded for possible injunction); Pizzarello v. United States, 408 F.2d 579, 584 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969) (income over five year period was estimated from gambling receipts from three days, although Government could not establish that Pizzarello had operated as a gambler for five years, or that the slips were typical of his income in that period; remanded for possible injunction); Rinieri v. Scanlon, 254 F. Supp. 469, 474 (S.D.N.Y. 1966) (Government presented no evidence that the taxpayer had earned his money in United States; injunction granted).

[5] The court in Clark v. Campbell, 501 F.2d 108 (5th Cir. 1974), *petition for cert. filed*, 43 U.S.L.W. 3433 (U.S. Dec. 9, 1974), noted that a summary assessment against Clark exceeded the amount seized at the time of his arrest, in conformity with a pattern indicative of arbitrary assessments. The *Clark* court sarcastically observed:

> The cat got out of the bag in Rinieri v. Scanlon, 254 F. Supp. 469 (S.D.N.Y. 1966) . . . .
>
> Q: To be very blunt about it, isn't it a fact that you were just merely told to write a report that would come out with an income tax of approximately $247,500 so that the government would have a basis of seizing this money, isn't that the blunt fact? . . . .
>
> A: [IRS agent] Yes.

501 F.2d at 117 n.28. In United States v. Rubio, 404 F.2d 678 (7th Cir. 1968), *cert. denied*, 394 U.S. 993 (1969), $2,796 was seized from a suspect during a narcotics arrest, and a deficiency in that precise amount was assessed upon a

The punitive motive behind these assessments has been condemned by courts in a number of civil cases.[6] One criminal court[7] ordered the Internal Revenue Service[8] to return seized assets to a defendant, finding that the IRS had acted in "evident excess of statutory authority" after it admitted that it had failed to determine whether the defendant was delinquent in the payment of his taxes and had not even conducted a minimal investigation into his business affairs.[9] The involuntary return filed by the IRS for the defendant was inconsistent with data available to the IRS, and it imposed penalties which were unsupported by the facts.[10]

Seizure of a defendant's assets by revenue authorities may severely impair his ability to defend himself and impinge on several constitutional protections.[11] Section I of this Article describes the summary assessment and collection procedures, the traditional administrative and judicial relief from such assessment and collection, and the inadequacy of these remedies. Section II analyzes the particular problems of criminal defendants whose as-

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termination of the taxable year. *See also* Aguilar v. United States, 501 F.2d 127 (5th Cir. 1974); Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974).

[6] *See, e.g.*, Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974). Because the taxpayer gambled for a living and was "kept" by a narcotics suspect, her property was seized pursuant to a termination of the taxable year. The court observed that:

> The IRS has been given broad power to take possession of the property of citizens by summary means that ignore many basic tenets of pre-seizure due process in order to prevent the loss of tax revenues. Courts cannot allow these expedients to be turned on citizens suspected of wrongdoing—not as tax collection devices but as summary punishment to supplement or complement regular criminal procedures. The fact that they are cloaked in the garb of a tax collection and applied only by the Narcotics Project to those believed to be engaged in or associated with the narcotics trade must not bootstrap judicial approval of such use.

Id. at 246.

[7] United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub nom.* United States v. Dono, 428 F.2d 204 (2d Cir. 1969), *cert. denied*, 400 U.S. 829 (1970).

[8] Internal Revenue Service will be hereinafter referred to in text as IRS.

[9] 294 F. Supp. at 754. The court reasoned that,

> [t]he inference is—in short—that . . . [the IRS] had not acted under the statute to protect the revenue interest and collect a tax that seemed to be in jeopardy, but had made a merely colorable use of the statutory forms at the suggestion of another agency of government in accordance with a pattern of conduct that is not strange to the courts.

Id. at 753-54.

[10] *Id.* at 754. The computations were based on the assumption that the defendant was unmarried, and a single exemption was allowed. Yet the IRS agent testified that the defendant's income was estimated on the assumption that he was married and had two children, and notification of the assessment was served on the defendant by leaving it with his wife. A 25% penalty was added for attempting to jeopardize the collection of the tax (INT. REV. CODE OF 1954, § 6658), but no facts were presented supporting this conclusion.

[11] *See* notes 125-39 & accompanying text *infra*.

sets have been seized, and section III considers the possibility of ensuring speedier recovery of these assets through motions in the criminal case.

I. Summary Assessment Procedures and Remedies

A. *Procedures*

Summary collection procedures constitute a radical departure from normal methods of assessment and collection. Typically, in federal taxation, the collection process is initiated by receipt of the taxpayer's annual return.[12] If the IRS determines that additional tax is due, it is required to send the taxpayer a notice of deficiency,[13] and cannot assess or collect the tax for 90 days.[14] During these 90 days the taxpayer may stay collection by petitioning the Tax Court to redetermine the deficiency.[15] If the taxpayer does not petition the Tax Court, the IRS may assess the additional tax. From the moment of assessment, a federal tax lien applies to all of the taxpayer's real and personal property.[16] If the taxpayer still refuses to pay the tax, the IRS may send a "notice and demand" letter, wait ten days, and then levy upon the taxpayer's property.[17]

The California assessment and collection procedure resembles the federal practice. If the Franchise Tax Board determines that the taxpayer's return underestimates the tax due, a notice of proposed deficiency is mailed.[18] The taxpayer must file a written protest with the Board within 60 days or the assessment becomes final.[19] If the taxpayer files this protest, the Board must grant a hearing.[20] The taxpayer must appeal an adverse Board decision within 30 days to the Board of Equalization,[21] and then petition for a redetermination of that higher forum's decision.[22] The assessment then becomes final, and the tax must be paid ten days after the mailing of a notice and demand letter.[23]

Summary assessment procedures, in contrast, prevent the taxpayer from litigating the validity of the assessment before collec-

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12 Int. Rev. Code of 1954, § 6011.
13 *Id.* §§ 6212(a), 6213(a).
14 *Id.* § 6213(a).
15 *Id.*
16 *Id.* §§ 6321, 6322.
17 *Id.* § 6331(a).
18 Cal. Rev. & Tax. Code § 18583 (West 1970). The Board has four years in which to act. *Id.* § 18586.
19 *Id.* §§ 18590 & 18591.
20 *Id.* § 18592.
21 *Id.* § 18593.
22 *Id.* § 18596.
23 *Id.* § 18597.

tion. The two federal summary assessment procedures are jeopardy assessment[24] and termination of the taxable year.[25] The jeopardy assessment procedure applies only when the tax in question is due and payable.[26] The District Director is authorized to assess the tax immediately[27] if he "believes" that assessment or collection would be "jeopardized by delay."[28] The District Director's determination of jeopardy is presumptively correct and nonreviewable;[29] payment is due the moment the assessment is made. No prior notice is required,[30] and the 90 day ban on collection is inapplicable.[31] A tax lien arises with the assessment,[32] and the IRS may levy upon the taxpayer's property without the formality of ten days notice.[33] Within 60 days of the assessment, the IRS must send a deficiency notice, which entitles the taxpayer to Tax Court review of the assessment,[34] but the liens and levies remain in force, and the taxpayer is denied the use of his property.[35] One

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24 INT. REV. CODE OF 1954, § 6861(a).

25 *Id.* § 6851(a). Termination of the taxable year may hereinafter be referred to in text as termination assessment.

26 Section 6861 applies only to a "deficiency" as defined in section 6211. Section 6211 defines a "deficiency" as,

> the amount by which the tax imposed . . . exceeds . . .
>
> (1) the sum of
>
> (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus
>
> (B) the amounts previously assessed (or collected without assessment) as a deficiency . . . .

INT. REV. CODE OF 1954 § 6211(a). For an analysis of whether a "deficiency" may exist before the tax is due and payable see Meyers, *supra* note 1, at 833-43. Even if a "deficiency" may exist before the tax is due and payable, section 6861 cannot be used to assess the "deficiency" until the taxpayer's taxable year has been terminated under section 6851. Taxes are due and payable four and one half months after the end of the taxable year. INT. REV. CODE OF 1954, § 6072(a).

27 INT. REV. CODE OF 1954, § 6861(a).

28 *Id.*

29 Transport Mfg. & Equip. Co. v. Trainor, 382 F.2d 793 (8th Cir. 1967). *See* Note, *Jeopardy Assessment: The Sovereign's Stranglehold*, 55 GEO. L.J. 701, 702 n.13 (1967). *See also* Kaminsky, *Administrative Law and Judicial Review of Jeopardy Assessments Under the Internal Revenue Code*, 14 TAX. L. REV. 545, 556-60 (1959) (contending that the Secretary's "belief" should be reviewable under principles of administrative law as a nondiscretionary act, since the Director is mandated to bring a jeopardy assessment once he forms a "belief").

Although a reviewing court is precluded from considering the soundness of the District Director's decision, it can determine whether he had facts from which to form a "belief." United States v. Bonaguro, 294 F. Supp. 750, 753 (E.D.N.Y. 1968). *See* Odell, *Assessments: What Are They—Ordinary? Immediate? Jeopardy?*, N.Y.U. 31ST INST. ON FED. TAX. 1495, 1509 (1973).

30 Yanicelli v. Nash, 354 F. Supp. 143 (D.N.J. 1973).

31 INT. REV. CODE OF 1954, § 6861(a).

32 *Id.* §§ 6321, 6322.

33 *Id.* § 6331(a).

34 *Id.* § 6861(b).

court has noted that "[t]here is little doubt but what a jeopardy assessment is a statutory label for the sovereign's stranglehold on a taxpayer's assets."[36]

The termination of taxable year procedure applies before the tax in question is due and payable. The District Director is authorized to terminate a taxable period and demand immediate payment of the tax for the terminated period (and of any unpaid tax for the preceding taxable year) upon "finding" that the taxpayer intends to flee, conceal his property, or "do any other act tending to prejudice" collection of the tax.[37] The termination of the taxable year provision does not contain authority to assess a tax.[38] The source of the District Director's authority to assess this tax is under consideration by the Supreme Court.[39] If the District Director's authority is derived from the jeopardy assessment provisions, the procedures and remedies for terminations of the taxable year are identical to those for jeopardy assessments. If authority is derived elsewhere, as is assumed in this Article, not only may the taxpayer be deprived of his property by immediate levy, but the IRS is not required to send the deficiency notice which entitles him to Tax Court review *after* the levy.[40] The IRS power to terminate the taxable year has been characterized as "summary in nature and awesome in effect."[41] Assessments against persons suspected of illegal activities are generally made under this more stringent provision.[42]

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[35] Although the IRS may immediately seize the taxpayer's property, it may not sell it during the time in which the taxpayer may petition the Tax Court for a redetermination, or while Tax Court proceedings are pending. *Id.* § 6863 (b)(3)(A). To the taxpayer, the freezing of his assets may be as disastrous as their sale. As one court has noted, "by summarily immobilizing his assets the financial disaster may overcome the taxpayer. Thus the taxpayer may become 'indigent' overnight." Clark v. Campbell, 501 F.2d 108, 122-23 (5th Cir. 1974). The criminal defendant is exposed to particularly severe hardships, since he is deprived of funds necessary for the defense of the criminal prosecution.

[36] Homan Mfg. Co. v. Long, 242 F.2d 645, 651 (7th Cir. 1957).

[37] INT. REV. CODE OF 1954, § 6851(a)(1).

[38] The IRS admitted in Rinieri v. Scanlon, 254 F. Supp. 469, 474 (S.D.N.Y. 1966), that section 6851 does not contain its own assessment authority.

[39] Hall v. United States, 493 F.2d 1211 (6th Cir.), *cert. granted*, 95 S. Ct. 40 (1974); Laing v. United States, 496 F.2d 853 (2d Cir.), *cert. granted*, 95 S. Ct. 39 (1974).

[40] The IRS contends that assessment authority for termination assessments is derived from section 6201. *See, e.g.*, Irving v. Gray, 479 F.2d 20 (2d Cir. 1973). Section 6201 does not require the IRS to send the taxpayer a notice of deficiency before or after assessment. For comparison with section 6861 jeopardy assessments, it will be assumed in this Article that terminations of the taxable year are followed by assessment under section 6201.

[41] Clark v. Campbell, 501 F.2d 108, 122 (5th Cir. 1974).

[42] One court noted the "Service's recent pattern of its willingness to utilize § 6851 in conjunction with . . . narcotics enforcement activities." *Id.* at 115. Virtually all reported cases involving assessments arising out of arrests

California law contains comparable jeopardy assessment[43] and termination of taxable year[44] provisions. All summary assessments are undertaken as jeopardy assessments,[45] but every assessment of taxes for the current period is preceded by a termination of the taxable year.[46] The assessment is "immediately due and payable,"[47] and collection may begin at once unless the taxpayer petitions for reassessment within ten days of receiving notice and posts a bond.[48] The taxpayer's property may be encumbered by liens and levies comparable to those in federal tax practice.[49]

B. *Remedies*

The judicial and administrative remedies available to a taxpayer subjected to summary assessment are inadequate because they are both costly and time-consuming. In those rare situations where a taxpayer has assets which were not levied upon by the revenue agency, it may not be economical to incur the expense required to retain an attorney to contest the validity of the assessment. These remedies are of little use to criminal defendants whose assets have been seized.

1. Posting Bond

Under federal law, levy and sale can be stayed if the taxpayer posts a bond equal to the assessment.[50] In California, a stay may be obtained by both filing a petition for reassessment and posting bond "in such amount as the Franchise Tax Board shall deem necessary," not to exceed twice the amount of the assessment.[51] This remedy is "illusory" when, as in most cases, the taxing agency has tied up all of the taxpayer's assets. Since bonding companies will not underwrite the bond without adequate security, the taxpayer is denied the use of commercial sureties.[52]

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and the seizure of funds indicate that section 6851 (termination assessment) rather than section 6861 (jeopardy assessment) was used.

43 CAL. REV. & TAX. CODE § 18641 (West 1970).

44 *Id.* § 18642.

45 *Id.* § 18641. Assessment "of a tax or a deficiency for any year, current or past . . . ." is authorized.

46 *Id.* § 18642.

47 *Id.* § 18643, *as amended*, (West Supp. 1975).

48 *Id.* § 18643.

49 Collection may be either by a tax warrant which has the force and effect of a writ of execution (*Id.* § 18906) or by an order to withhold. CAL. REV. & TAX. CODE §§ 18817-19 (West Supp. 1975). For lien provisions see *id.* §§ 18881-82.

50 INT. REV. CODE OF 1954, §§ 6863(a), 6851(c).

51 CAL. REV. & TAX. CODE § 18643 (West 1970), *as amended*, (West Supp. 1975).

52 The bonding procedure has been condemned as a "mere mockery" of a remedy. Kimmel v. Tomlinson, 151 F. Supp. 901, 902 (S.D. Fla. 1957). *See*

2. Abatement of the Assessment

Upon request of the federal taxpayer, the District Director may abate a jeopardy assessment if he believes that the assessment is excessive,[53] or finds that jeopardy does not in fact exist.[54] The decision to abate is wholly discretionary, and the taxpayer carries the difficult burden of persuading the Director that his assessment was erroneous.[55] This approach is an exercise in futility if the assessment was made in bad faith, and is hardly a satisfactory substitute for judicial review.[56] However, even such limited protection is not available to taxpayers whose taxable years have been terminated.[57] The California taxpayer is entitled to a conference with the Franchise Tax Board at which arguments for reassessment can be presented.[58]

3. Tax Court Redetermination

Within 90 days of receiving a notice of deficiency,[59] the federal taxpayer may petition the Tax Court for review of a jeopardy assessment.[60] Although filing of the petition prevents a sale of the taxpayer's property pending Tax Court review,[61] the Tax Court may take more than two years to reach a decision.[62] Tax Court review is limited to redetermination of the amount due; the initial finding of jeopardy may not be challenged.[63] As with abatement,[64]

Gould, *Jeopardy Assessments When They May Be Levied and What to Do about Them*, N.Y.U. 18TH INST. ON FED. TAX. 937, 944-45 (1960) [hereinafter cited as Gould]. The IRS is apparently reluctant to permit friends of the taxpayer to post bond. However, one court found that the District Director had abused his discretion by refusing to accept two sureties with unencumbered property valued at twice the tax assessment in lieu of the bond under section 6863(a). Yoke v. Mazzello, 202 F.2d 508 (4th Cir. 1953).

53 INT. REV. CODE OF 1954, § 6861(c).

54 *Id.* § 6861(g).

55 *See* Darnell v. Tomlinson, 220 F.2d 894 (5th Cir. 1955); Note, *Termination of the Taxable Year: The Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184, 193-94 (1974).

56 There is no right to a formal hearing under federal law, and the IRS's refusal to abate is unreviewable in court. Schreck v. United States, 301 F. Supp. 1265, 1280 (D. Md. 1969). *See also* Gould, *supra* note 52, at 145-46.

57 Provision for abatement is within the jeopardy assessment provisions. INT. REV. CODE OF 1954, § 6861(e). *See* notes 38-40 & accompanying text *supra*.

58 Unless the taxpayer appeals from an adverse decision by the Board within 30 days its determination becomes final. CAL. REV. & TAX. CODE § 18645 (West 1970).

59 *See* text accompanying note 34 *supra*.

60 INT. REV. CODE OF 1954, § 6213(a).

61 *See* note 35 *supra*.

62 L. KEIR & D. ARGUE, TAX COURT PRACTICE 35 (4th ed. 1970).

63 INT. REV. CODE OF 1954, § 6861(c).

64 *See* note 56 & accompanying text *supra*.

this remedy is denied to a taxpayer whose taxable year has been terminated.[65]

4. Suit for Refund

An alternative statutory remedy for federal taxpayers is a suit for refund. However, before such a suit may be initiated, the taxpayer must pay the full assessment,[66] file a claim for refund with the IRS, and wait six months, unless the claim is denied earlier.[67] Taxpayers whose taxable years have been terminated cannot file a claim for refund before the end of the normal taxable year.[68]

The full payment requirement often renders a suit for refund impossible. If the IRS assesses a deficiency which exceeds the assets seized, the taxpayer must pay the additional amount before he can bring the suit. Assuming the taxpayer has additional assets which the IRS did not discover, these can be exhausted in defending the criminal case. It is doubtful that a taxpayer in this situation would decide to deposit additional sums with the IRS to obtain the right to file for a refund. The IRS may also thwart a refund suit by levying upon property without applying it to the tax liability.[69] For example, if the property is subject to forfeiture,[70] the IRS may refuse to credit it against the tax liability.[71] Not only can the IRS determine when the taxpayer will have access to the district court, but it can effectively preclude district court review.

Equally burdensome obstacles face the taxpayer seeking judicial review of a California assessment. He may stay collection only by posting a bond[72] and requesting a hearing before the Franchise Tax Board.[73] If the Tax Board's resolution is unfavorable, the

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65 *See* notes 38-40 & accompanying text *supra*.

66 Flora v. United States, 362 U.S. 145 (1960).

67 INT. REV. CODE OF 1954, § 6532(a).

68 *See* Irving v. Gray, 344 F. Supp. 567 (S.D.N.Y. 1972), *aff'd*, 479 F.2d 20 (2d Cir. 1973).

69 Schreck v. United States, 301 F. Supp. 1265, 1281 (D. Md. 1969).

70 Funds, devices, and "carriers" are subject to forfeiture by the Government if used in conjunction with certain crimes. *See, e.g.*, 15 U.S.C. § 1177 (1970) (forfeiture of gambling devices), 49 U.S.C. § 782 (1970) (forfeiture of carriers transporting contraband).

71 After reviewing these possibilities, the court in Schreck v. United States, 301 F. Supp. 1265 (D. Md. 1969), concluded:

> In essence, the Government asks this Court to hold that Congress has constitutionally authorized the IRS to seize and sell all of a person's property and has also provided that that person has no right to institute *any* court proceedings, for perhaps longer than three years, in which to litigate the validity of the underlying assessment and the seizure . . . .

Id. at 1281 (emphasis original) (footnote omitted).

72 *See* note 48 & accompanying text *supra*.

73 The petition for reassessment must be filed with the Franchise Tax Board within sixty days of notice of the jeopardy assessment. CAL. REV. & TAX. CODE § 18644 (West Supp. 1975).

taxpayer may appeal to the State Board of Equalization.[74] Only after exhausting all administrative remedies[75] and paying the tax[76] may the taxpayer sue for a refund in the Superior Court.[77]

5. Injunctive Relief

Injunctions prohibiting the collection of improper summary assessments would avoid much of the expense and delay of statutory review. However, the taxpayer must overcome strict prohibitions against injunctions and the reluctance of courts to interfere through extraordinary procedures with the collection of taxes.[78]

Internal Revenue Code section 7421(a) provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court . . . ." There are two relevant exceptions to this prohibition. The first is statutory. Section 6213(a) authorizes injunctive relief for a taxpayer who was not sent the required notice of deficiency. This avenue of attack is available to a jeopardy assessment taxpayer who was not sent a notice of deficiency within 60 days after the assessment.[79] Since the termination assessment taxpayer is not entitled to a notice of deficiency,[80]

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74 If the Franchise Tax Board rules against the taxpayer, he may file a petition for rehearing within 30 days. *Id.* § 18596. The decision on rehearing may be appealed within 30 days to the Board of Equalization. *Id.* §§ 18645, 18646.

75 Horack v. Franchise Tax Bd., 18 Cal. App. 3d 363, 368-69, 95 Cal. Rptr. 717, 720 (4th Dist. 1971).

76 California law does not specify whether the taxpayer faces a state equivalent of the federal doctrine of full payment. For a discussion of the doctrine see Flora v. United States, 362 U.S. 145, 146-47 (1960). California courts do not have the dual jurisdiction that prompted the prior payment rule in federal tax law. Section 19082 of the California Code makes "payment of the tax" a prerequisite to a refund suit in superior court, but does not state that the payment must cover the entire assessment. Section 19092 seems to envision cases in which less than the actual assessment is paid before suit. "If judgment is rendered against the Franchise Tax Board, the amount thereof shall first be credited against any taxes . . . and the remainder refunded to the taxpayer . . . ." CAL. REV. & TAX. CODE § 19092 (West 1970). The court in Union Bank & Trust Co. v. McClogan, 84 Cal. App. 2d 208, 213, 190 P.2d 42, 45 (1948), apparently permitted a refund suit with only partial payment, but the facts are ambiguous.

77 The taxpayer may sue in superior court, but the Franchise Tax Board can change the venue to Sacramento. CAL. REV. & TAX. CODE § 19088 (West 1970).

78 The Court in Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932), explained:

> The principle reason [for generally not allowing suits to stay enforcement of a tax] is that . . . such suits would enable those liable for taxes in some amount to delay payment or possibly to escape their lawful burden and so to interfere with and thwart the collection of revenues for the support of the government.

Id. at 509.

79 *See* note 34 & accompanying text *supra.*

80 *See* notes 38-40 & accompanying text *supra.*

he may not bring suit for injunctive relief under section 6213(a).[81] The courts are divided as to whether a taxpayer must establish the existence of traditional grounds for equitable relief to obtain this statutory injunctive relief.[82]

The second exception to the prohibition against injunctive relief has been created by the courts. The Supreme Court in *Enochs v. Williams Packing & Navigation Co.*[83] held that the prohibition against injunctions is inapplicable if the taxpayer (1) qualifies for equitable relief by demonstrating irreparable harm and the absence of an adequate legal remedy, and (2) establishes that if the Government's claim were contested, it would not be upheld "under the most liberal view of the law and the facts."[84]

It is easier to satisfy the first requirement of *Enochs*, qualification for equitable relief. First, the taxpayer must demonstrate "irreparable harm" if his funds are not immediately returned. Courts have found sufficient injury in the imminent collapse of a business[85] or severe physical deprivation.[86] One court held that freezing funds needed to post bail for a pending criminal trial results in "an incarceration that will cause irreparable injury."[87] Another court has intimated that prejudicing a taxpayer's sixth amendment right to counsel might satisfy the standard.[88] The taxpayer must also demonstrate the absence of an adequate legal remedy. Some cases have held that jeopardy assessments and termi-

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[81] *See* note 40 & accompanying text *supra*.

[82] *Compare* Hogan v. United States, 32 Am. Fed. Tax R.2d ¶ 73-5148 (E.D. Mich. 1973), *with* Lisner v. McCanless, 356 F. Supp. 398 (D. Ariz. 1973).

[83] 370 U.S. 1 (1962).

[84] *Id.* at 7. The court observed:

> We believe that the question of whether the Government has a chance of ultimately prevailing is to be determined on the basis of the information available to it at the time of suit. Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained. . . . To require more than good faith on the part of the Government would unduly interfere with a collateral objective of the Act—protection of the collector from litigation pending a suit for refund.

Id. at 7-8. The court found that "[t]he record before us clearly reveals that the Government's claim of liability was not without foundation," and denied an injunction. *Id.* at 8.

[85] Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932); Lucia v. United States, 474 F.2d 565 (5th Cir. 1973); Pizzarello v. United States, 408 F.2d 579 (2d Cir.), *cert. denied*, 396 U.S. 986 (1969). *But see* Morton v. White, 174 F. Supp. 446 (E.D. Ill. 1959).

[86] The court in Willits v. Richardson, 497 F.2d 240, 246 (5th Cir. 1974), approved injunctive relief where an assessment denied the taxpayer the means of supporting herself and her children.

[87] Shapiro v. Secretary of State, 499 F.2d 527, 535-36 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3451 (U.S. Feb. 18, 1975).

[88] The taxpayer in Lisner v. McCanless, 356 F. Supp. 398, 400 (D. Ariz. 1973), apparently alleged that assessments would deprive him of counsel, but failed to produce evidence supporting this allegation.

nations of the taxable year leave the taxpayer with inadequate legal remedies;[89] others have remanded for determinations of whether the taxpayer would suffer "irreparable harm" if relegated to Tax Court review.[90]

Enochs requires an additional showing that the Commissioner's assessment is wholly invalid.[91] This second requirement presents the most significant problems, since many tax cases involve factual disputes in which the Government could conceivably prevail. Nonetheless, assessments have been found invalid where the assessment was not preceded by a factual inquiry into the taxpayer's financial background,[92] where the evidence was insufficient to support the amount of the assessment,[93] and where the tax was erroneously computed.[94] The IRS has promulgated strict procedural guidelines to reduce the possibility of arbitrary jeopardy assessments.[95] Failure to follow these guidelines may render the assessment invalid.[96]

Assessments have also been held invalid when undertaken in "bad faith," *i.e.*, when not motivated by the collection of revenue. In *Iannelli v. Long*,[97] a taxpayer contended that the IRS made a summary assessment to put economic pressure on persons believed to be engaged in large scale criminal activities. The court found that this motive was unrelated to tax collection and would support an injunction; it reasoned that under these circumstances "a suit to

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89 *See, e.g.*, Willits v. Richardson, 497 F.2d 240 (5th Cir. 1974). The court in Shapiro v. Secretary of State, 499 F.2d 527 (D.C. Cir. 1974), held that review procedures available to a taxpayer subjected to a jeopardy assessment were inadequate safeguards against the "irreparable injury" of incarceration, reasoning that "while he can pursue his remedy against the levies either during or after his probable incarceration, a mere restoration of his funds will not repair the injury caused by his imprisonment." *Id.* at 536.

90 Lucia v. United States, 474 F.2d 565, 577 (5th Cir. 1973).

91 *See* notes 83-84 & accompanying text *supra*.

92 United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub nom.* United States v. Dono, 428 F.2d 204 (2d Cir. 1969), *cert. denied*, 400 U.S. 829 (1970). *See* notes 9-10 & accompanying text *supra*.

93 *See* note 5 *supra*.

94 *Id.*

95 Revenue Procedure 60-4, 1960-1 CUM. BULL. 877-79, requires that: (1) All such assessments be reviewed personally by the District Director (*Id.* at 878, § 2.03); (2) After an assessment has been made it must be sent to the Regional Commissioner's Office to determine whether the Code and pertinent regulations have been followed (*Id.* § 3.01); and (3) All requests for abatement must be personally considered by the Director, and his action on such requests, together with reasons for such action, must be included in the file (*Id.* at 879, § 5.02).

96 Thornton v. United States, 493 F.2d 164 (3d Cir. 1974). Apparently failure to follow these guidelines was a significant factor in the court's invalidation of the jeopardy assessment in United States v. Bonaguro, 294 F. Supp. 750 (E.D.N.Y. 1968), *aff'd sub nom.* United States v. Dono, 428 F.2d 204 (2d Cir. 1969), *cert. denied*, 400 U.S. 829 (1970).

97 487 F.2d 317 (3d Cir. 1973), *cert. denied*, 414 U.S. 1040 (1974).

restrain the tax collector's enterprise is not in reality a suit to restrain the collection of taxes."[98] However, the court denied relief, since the assessment and levies were also "bona fide and potentially productive attempts to collect revenue."[99] In *Sherman v. Nash*,[100] the court remanded for an evidentiary hearing to determine whether the Government's motive in applying a "ruinous" summary assessment was to force the taxpayer to testify before a grand jury. Clarifying the holding of *Iannelli*, the court observed that if summary assessments were brought in bad faith, they would not be sustained simply because they might yield substantial revenue.[101]

It may be difficult for a taxpayer to make a showing of invalidity because the Government possesses all the information regarding the computation of the assessment. The court in *Shapiro v. Secretary of State*[102] held that the Government must divulge sufficient information regarding an assessment to enable the court to determine whether it was made in good faith.[103] Although the Supreme Court is presently considering whether this initial burden should be placed on the IRS,[104] logic and fairness require that the taxpayer have access to information necessary to determine whether this second requirement for injunctive relief is satisfied.

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98 *Id.* at 318.

99 *Id.*

100 488 F.2d 1081 (3d Cir. 1973).

101 The court noted that,

> [w]hen the IRS has acted ostensibly under section 6861, but in fact has used the jeopardy assessment as a device to harass a taxpayer or as a leverage to exert pressure on a taxpayer for nontax purposes, it has exceeded its statutory authority.

Id. at 1084. The *Sherman* court did not clarify whether an injunction is proper if the illegal aim is one of the purposes, the primary purpose, or the exclusive purpose for an assessment, although it does establish that the incidental collection of revenue, standing alone, will not justify the assessment.

102 499 F.2d 527 (D.C. Cir. 1974), *cert. granted*, 43 U.S.L.W. 3451 (U.S. Feb. 18, 1975).

103 Shapiro petitioned the district court to enjoin a federal jeopardy assessment against funds allegedly earned in narcotics transactions, claiming that there was no factual foundation for believing that he was engaged in narcotics sales, and that the calculation of the deficiency had no rational basis. The appellate court remanded for a factual inquiry into the method of assessment:

> [A]t the very least the District Court must obtain some evidence by which to judge whether the asserted deficiency was a tax or was so arbitrary and excessive as to be "an exaction in the guise of a tax." While it is not probable that the Government created the deficiency out of whole cloth, it is equally true that "(the Government's) burden (to show good faith) is not met by mere 'protestations of good faith and conclusory statements of plaintiff's tax liability.'" The District Court should therefore inquire whether there are any facts from which good faith may be inferred, and absent such facts, the judge should not dismiss the case in deference to any presumption in favor of the IRS.

Id. at 535.

104 Shapiro v. Secretary of State, 499 F.2d 527 (D.C. Cir.), *cert. granted*, 43 U.S.L.W. 3451 (U.S. Feb. 18, 1975).

The California Revenue and Taxation Code contains an anti-injunction statute similar to that of Internal Revenue Code section 7421.[105] However, California cases have explicitly refused to create an *Enochs* exception; the rationale is that "equitable process" is altogether precluded by the literal wording of the statute,[106] and that procedures for review set out in the revenue code are adequate.[107] These holdings have been challenged in light of recent developments in federal law, and are under consideration by the California Supreme Court.[108] While the court may adhere to

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[105] Section 19081 provides:

> No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this State or against any officer of this State to prevent or enjoin the assessment or collection of any tax under this part . . . .

CAL. REV. & TAX. CODE § 19081 (West 1970). This is almost a verbatim restatement of CAL. CONST., art. XIII, § 15.

[106] The California Supreme Court in Eisley v. Mohan, 31 Cal. 2d 637, 192 P.2d 5 (1948), emphasized that "[t]he provision of the California Constitution is much more than a mere declaration of the rules generally applicable in proceedings for injunction, mandamus, or other legal or equitable relief." *Id.* at 641, 192 P.2d at 8. In Modern Barber Colleges, Inc. v. Employment Stabilization Comm'n, 31 Cal. 2d 720, 192 P.2d 916 (1948), the court added that to ignore section 19081 "would not only result in impeding the collection of these contributions and in jeopardizing the state's system of social security benefits; it would also have a far reaching and destructive effect on the administration of justice." *Id.* at 732-33, 192 P.2d at 923. The court explicitly refused to create a judicial exception analogous to that in federal courts, holding:

> It follows [from the foregoing discussion] that cases such as *Miller v. Standard Nut Margarine Co.* . . . which discuss the various instances under which an injunction may be available according to the common law rules of equity or under statutes restating them are not applicable here.

Id. at 725, 192 P.2d at 919 (citations omitted). The prohibition in the California statute, which precludes all "equitable process," is more sweeping than the ban in Internal Revenue Code section 7421, which forbids only "injunctive relief."

[107] In Horack v. Franchise Tax Bd., 18 Cal. App. 3d 363, 95 Cal. Rptr. 717 (4th Dist. 1971), a jeopardy assessment was brought against funds seized pursuant to an arrest. The defendant initiated administrative proceedings, and then petitioned for a writ of mandate in the superior court for return of the funds. In overturning the grant of the writ, the appellate court held that "[a] suit to recover alleged overpayments is the exclusive means of obtaining judicial review of tax proceedings." *Id.* at 370, 95 Cal. Rptr. at 721.

[108] In Dupuy v. Superior Court, Civil No. 4490 (Cal. Ct. App., 2d Dist., Oct. 3, 1974) (petition for writ of mandate denied), *hearing granted*, No. L.A. 30381, Cal. Sup. Ct., Nov. 15, 1974, a taxpayer petitioned for a writ of mandate barring enforcement of a jeopardy assessment, contending that judicial exceptions similar to those for the federal anti-injunction act should be available to California taxpayers. The appellate court denied the writ, apparently on the ground that administrative remedies within the California Code provided adequate opportunity for relief.

However, *Dupuy* did not involve criminal charges. One recent California case does indicate that a taxpayer facing criminal prosecution may have an even stronger case for injunctive relief, particularly if he can demonstrate a need for the funds to preserve sixth amendment rights. Franchise Tax Bd. v. Municipal Court, 45 Cal. App. 3d 377, 387 n.4, 119 Cal. Rptr. 552, 559 n.4 (2d Dist. 1975).

The Supreme Court has treated federal summary assessment as an "extraordinary situation" exception to the requirement that a levy should be preceded by a

precedent and deny attacks on assessments outside the proscribed procedures, the equitable considerations discussed in this section should require courts to permit injunctive relief if the taxpayer can demonstrate a significant hardship and a bad faith or fraudulent tax assessment.

If both state and federal tax assessments are involved, jurisdictional problems may further complicate judicial review. Federal courts are barred from enjoining state taxes when a "plain, speedy, and effective remedy" is available in state court.[109] In rare instances federal courts have enjoined the collection of state taxes upon proof similar to that required under *Enochs*.[110] An additional ground for injunctive relief may arise under 42 U.S.C. sections 1981 through 1987, which permit "civil rights" suits whenever state actions deprive persons of rights guaranteed by the Federal Constitution.[111]

6. Assignment to an Attorney

Additional remedies are available to a taxpayer who assigns his interest in seized funds to an attorney. A federal tax lien applies to all of a taxpayer's real and personal property from the time a deficiency is assessed.[112] It is not effective against subsequent mortgagees, pledgees, purchasers, or judgment creditors whose interests arose prior to either filing of the lien or serving notice of levy.[113] Since an assignment for consideration is a "pur-

prior judicial hearing. *See* Phillips v. Commissioner, 283 U.S. 589 (1931). It relied upon the availability of a post-seizure hearing. *Id.* If the California Supreme Court is to conclude that due process does not require a pre-seizure hearing, then adequate and effective post-seizure remedies must be available to the taxpayer. However, the administrative procedures obviously do not provide the state taxpayer with a speedy remedy for obtaining the return of seized property or a meaningful opportunity to stay further collection. Therefore the court can protect the interests of the revenue agencies and the taxpayer by formulating standards which require a prompt and effective opportunity to contest assessments and provide the taxpayer a meaningful procedure to stay the enforcement of a series of continuing liens and levies.

109 28 U.S.C. § 1341 (1970).

110 In D.C. Transit System v. Pearson, 149 F. Supp. 18, 20 (D.D.C.), *rev'd on other grounds*, 250 F.2d 765 (D.C. Cir. 1957), the court noted that the federal statute limiting injunctions of state assessments (28 U.S.C. § 1341 (1970)) restated general principles of equity. The court catalogued several cases in which courts have enjoined state taxes when an injunction would otherwise be appropriate under the standards of *Enochs*. The court in Denton v. City of Carrollton, 235 F.2d 481, 485 (5th Cir. 1956), noted that state taxes may be enjoined if they have a punitive character or impose a heavy burden on the taxpayer. Collection of a state tax pursuant to a jeopardy assessment which was brought in bad faith for the purpose of punishing a criminal defendant, or without the proper foundation, should be enjoined under these standards.

111 *See* notes 126-37 & accompanying text *infra*.

112 INT. REV. CODE OF 1954, § 6321. The lien arises when the summary record is signed by the assessment officer. Treas. Reg. § 301.6203-1 (1954).

113 INT. REV. CODE OF 1954, § 6323(a).

chase,"[114] and a purchaser prior to the filing of a tax lien has priority,[115] an attorney who pledges legal services in consideration of an assignment of a taxpayer's seized funds has priority over subsequently filed tax liens as a purchaser. Similar rules govern priorities under California law.[116] An attempt by the IRS to levy upon the property is ineffective, because a notice of levy only affects property in which the taxpayer has retained rights at the time notice is served.[117] Since an assignment of funds prior to notice of levy ter-

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[114] The Code defines "purchaser" as one who for valid consideration acquires property or an interest therein. *Id.* § 6323(h)(6).

[115] Johansson v. United States, 336 F.2d 809 (5th Cir. 1964); Marteney v. United States, 245 F.2d 135 (10th Cir. 1957); *In re* City of New York, 5 N.Y.2d 300, 157 N.E.2d 587 (1959). *See* S. REP. No. 1708, 89th Cong., 2d Sess. 3-4 (1968).

The taxing authorities generally contend that the assignment has priority to tax liens only to the extent of the value of legal services actually performed. This argument is based upon the theory that the fiduciary relationship between an attorney and a client requires the attorney to charge only a reasonable fee. However, federal cases indicate that an assignment is valid if it is made for valuable consideration, whether or not the consideration is reasonable. *See, e.g.*, Enochs v. Smith, 359 F.2d 924, 926 (5th Cir. 1966). Since it is difficult to put a monetary value on the worth of services to a client, this latter interpretation is the more reasonable view, particularly if the priority of an assignment is litigated before the attorney has provided his services. At most, any inquiry into the reasonableness of fees should be limited to a threshold determination of whether fraud was involved or whether any substantial value was given.

The amount of funds assigned raises two ethical problems for the attorney-assignee. First, he cannot accept an assignment with the understanding that all or part of the funds will later be returned to the client. ABA CODE OF PROFESSIONAL RESPONSIBILITY, Disciplinary Rule 7-102. Second, if the attorney accepts an unreasonably large assignment without such an agreement, he may be charged with collecting a "clearly excessive" fee. *Id.* at 2-106. In attempting to determine value, the funds must be discounted because of the delay, expense, and uncertainty of eventual recovery by the attorney-assignee.

[116] Tax penalties constitute a lien against all the taxpayer's real property in the county and his personal property in the state from the time of filing. CAL. REV. & TAX. CODE §§ 18882, 18882.5 (West Supp. 1975). However, an assignment prior to recordation of the lien prevails. *In re* Estate of Beffa, 54 Cal. App. 186, 201 P. 616 (3d Dist. 1921). In California, upon summary assessment, there is always a tax warrant or an order to withhold issued. *See* Cal. Rev. & Tax Code §§ 18906, 18817-19 (West Supp. 1975). Since a warrant has the force and effect of a writ of execution (*id.* § 18907), recordation is unnecessary and the priority of the Franchise Tax Board is established at the time of service. *Cf.* Estate of Badivian, 31 Cal. App. 3d 737, 107 Cal. Rptr. 537 (2d Dist. 1973). However, an order to withhold is one of two "separate and distinct procedures." Greene v. Franchise Tax Board, 27 Cal. App. 3d 38, 42, 103 Cal. Rptr. 483, 485 (4th Dist. 1972). Since the legislature did not provide that an order to withhold "has the force and effect of a writ of execution" such an order is analogous to a notice of a writ of attachment. The service of a notice of a writ of attachment creates a lien which is not valid against a purchaser. CAL. CIV. PRO. CODE § 542(b) (West Supp. 1975). Therefore, when the order to withhold procedure is followed, absent recordation or notice, a prior assignee will prevail since the funds are no longer the property of the debtor-taxpayer. *See, e.g.*, Fount Wip, Inc. v. Goldstein, 33 Cal. App. 3d 184, 108 Cal. Rptr. 732 (2d Dist. 1973).

[117] Stuart v. Willis, 244 F.2d 925, 929 (9th Cir. 1957).

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mize its propensity to disregard its own criteria for determining whether an assessment should be levied. Furthermore, the finding that termination assessments are unproductive from a tax collection viewpoint[171] indicates the government's need to use such procedures is far outweighed by the effect an assessment can have on a taxpayer. Because the detrimental effects of assessments are magnified when an assessment is made for improper purposes, and minimal interference that preseizure, independent review can have on lawful Service duties would be justified.

Fashioning a Remedy

Several proposals have been advanced calling for independent judicial

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We have one further review. We have an Inspection Service that, as a general rule, gets to visit every district at least once a year and as a part of their program they look into this. So there are multiple reviews of what we do in this area.

Hearings on Proposals for Administrative Changes in Internal Revenue Service Procedures Before the Subcommittee on Oversight of the House Committee on Ways and Means, 94th Cong., 1st Sess. 373, 408 (1975) (testimony by Singleton V. Wolfe, Assistant Commissioner (Compliance)).

[171] *See Hearings on Proposals for Administrative Changes in Internal Revenue Service Procedures Before the Subcommittee on Oversight of the House Committee on Ways and Means*, 94th Cong., 1st Sess. 373 (1975) (General Accounting Office report):

> The GAO report indicated that most jeopardy assessments and termination assessments were utilized against taxpayers engaged in illegal activities, although some of the jeopardy assessments under section 6862 were utilized to collect penalty taxes from persons who had failed to collect, or pay over, employment taxes. Although the GAO generally found that these types of assessments had not been misused, it did note that the termination assessments were generally unproductive from a tax collection viewpoint, since in 25 cases which had been completed at the time of review, $742,294 was assessed and the total deficiency after audit was $36,665 (4.9 percent of the assessments). GAO also noted that, in at least one case where a section 6862 jeopardy assessment was used to collect penalty taxes resulting from a corporation's failure to pay employment taxes, it was at least possible that the taxpayer was not liable for payment of the penalty tax.

Furthermore, statistical data provided by the Service confirms the report, that the majority of assessments in recent years have been for the purposes of narcotics control and, in some cases, have been unrelated to collecting tax revenues. In 1973, during the height of the narcotics program, jeopardy and termination assessments were made against 3,090 taxpayers. In 1975 the figure was cut to 548. According to Commissioner Donald Alexander, while testifying before the Subcommittee on Oversight of the House Committee on Ways and Means, the reduction represents a shift in attitude towards using the summary seizure power against narcotics traffickers. The following data is also taken from Mr. Alexander's report:

review of the Service's summary seizure power.[172] Although all of these recommendations recognize the need for limitations on the jeopardy and termination assessment power, none has suggested judicial authorization or review prior to the assessment. However, under a fourth amendment analysis, review of the Commissioner's determination by a neutral and detached magistrate would be required prior to each seizure. In addition to examining the latest of these proposals, consideration will turn to what remedy should be made available to a taxpayer who has had his assets illegally seized.

"Tax Reform Act of 1975"

The most recent proposal calling for independent review is the House Committee on Ways and Means recommendation embodied in the "Tax Reform Act of 1975."[173] The bill recognizes the need for additional protections for the taxpayer in order to lessen the hardship which a jeopardy or termination assessment entails.[174] In addition to provisions limit-

U.S. JEOPARDY AND TERMINATION ASSESSMENTS

[*Fiscal years; dollar amounts in thousands*]

	1972	1973	1974	1975
Narcotics:				
Taxpayers—Jeopardy	98	141	113	60
Amount assessed—Jeopardy	$11,879	$13,892	$9,170	$8,568
Taxpayers—Terminations	999	2,448	1,523	304
Amount assessed—Termination	$35,837	$65,463	$37,126	$7,040
Total number of taxpayers	1,097	2,589	1,636	364
Total assessments	$47,716	$79,355	$46,836	$15,608
Other than narcotics:				
Taxpayers—Jeopardy	200	358	413	150
Amount assessed—Jeopardy	$73,771	$55,519	$38,032	$22,930
Taxpayers—Terminations	73	143	125	34
Amount assessed—Terminations	$12,359	$6,551	$6,036	$921
Total number of taxpayers	273	501	538	184
Total number of assessments	$86,030	$62,070	$44,068	$23,851
Summary:				
Number of taxpayers	1,370	3,090	2,174	548
Amount assessed	$133,746	$141,425	$90,904	$39,459

[172] *See, e.g.*, Tax Reform Act of 1975, H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975); H.R. 11450, 89th Cong., 1st Sess., §§ 87–88 (1965); Committee on Procedure in Fraud Cases of the Tax Section of the American Bar Association, *Section of Taxation*, 1958 *A.B.A. Rep.* 158; Note, *Termination of the Taxable Year: the Need for Timely Judicial Review*, 48 S. CAL. L. REV. 184 (1974).

[173] Tax Reform Act of 1975, H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975).

[174] *See generally* H.R. REP. No. 94–658, 94th Cong., 1st Sess. 92 (1975):

ing the power of the Service to sell property, and exempting a limited amount of the taxpayer's wages from an assessment, the proposal provides for judicial review in the Tax Court within 20 days after the taxpayer files a petition for such review.[175] Most important, the Tax Court is authorized to review whether the Service had reasonable cause for making the assessment and whether the amount of the assessment was reasonable.[176]

"While recognizing that the jeopardy and termination procedures are valuable tools for the collection of taxes, the committee believes that, because of the suddenness and harshness of their application, a taxpayer subjected to such procedures should have a timely right to obtain judicial review of the propriety of the use of these procedures in his case."

[175] The new provision would eliminate the exception to the section prohibiting the sale of assets where the property is unduly expensive to maintain, but would maintain an exception to the prohibition where the taxpayer consents to the sale of the seized assets, or the assets are perishable. H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975). The bill would add to the exemptions from levy stated in section 6334 an exemption for a portion of the taxpayer's wages. An individual taxpayer who is paid on a weekly basis may have exempted from levy $50 per week plus $15 per week for each dependent. The allowance for dependents does not include a minor child for whom an amount is already excluded from levy as a court ordered support payment. Individuals who are not paid on a weekly basis are also to have a similar amount exempted, as provided for by regulations to be promulgated by the Secretary of the Treasury. H.R. 10612, 94th Cong., 1st Sess., § 1209 (1975). *See also* H.R. REP. No. 94–658, 94th Cong., 1st Sess. (1975).

H.R. 10612 provides:

> (a) Filing of Petition—Within 30 days after the day on which there is notice and demand for payment under section 6861(a) or 6862(a) notice of termination of a taxable period under section 6851(a), the taxpayer may file a petition with the Tax Court for a redetermination under this section.
>
> (b) Determination by Tax Court—Within 20 days after a petition is filed under subsection (a) with the Tax Court, the Tax Court shall determine . . . .

H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975). This section would at least give the taxpayer whose assets have been levied upon pursuant to a termination assessment, the right to have the reasonableness of the assessment reviewed. Under the existing statute, the Service maintains that a termination taxpayer has no right to review in the Tax Court.

H.R. 10612 also gives the taxpayer the sole right to extend the 20 day period by not more than an additional 40 days.

[176] The Tax Court is authorized to review whether or not

> (1) there was reasonable cause for making the assessment under section 6821 or 6862 or declaring the termination of the taxable period under section 6851, as the case may be,
>
> (2) the amount so assessed or demanded was appropriate under the circumstances, and
>
> (3) there is reasonable cause for rescinding (in whole or in part) the action taken under section 6861, 6862, or 6851, as the case may be.

H.R. 10612, 94th Cong., 1st Sess. § 1209 (1975). Although the above determinations may be made by commissioners appointed by the Tax Court, the Tax Court

The committee's proposal recognizes the need for review which is both independent from the Service and includes an examination of the Service's reasons for making the assessment. Although the bill fails to specify whether an assessment should be rescinded where the Service obtains information justifying the assessment subsequent to its being levied,[177] the proposal may prevent abuses which have occurred from happening again. However, because the bill calls for review after a taxpayer's assets have been seized, it does not eliminate irreparable injury which may occur upon the seizure of assets or while review is pending.

Remedies for Illegal Seizure of Assets

Because the exclusionary rule can only operate to prevent the introduction of illegally seized evidence in a later judicial proceeding it is inapplicable to the problem of fashioning a remedy for summary tax seizure violations. However, the concomitant rule requiring the return of illegally seized assets to their owner is relevant.[178] Unlike mere evidence which is seized for later use in a criminal proceeding, assets either seized or encumbered under a tax assessment are almost always financially of great value to their owner.[179] Consequently, there is greater justification for requiring the return of illegally seized assets in the tax context than there is in the criminal setting. However, since the invalidity of one assessment does not prevent additional assessments from being made, this remedy alone cannot fully protect the taxpayer from abuse; the Service could still make spurious assessments with the hope of obtaining information to justify the summary seizure prior to review in the Tax Court or in a refund suit.

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may review the commissioners' decisions. However, once the Tax Court reviews the decision, it may not be appealed or reviewed by any other court.

The committee report makes clear that the determination indicated above has no effect upon the determination of the correct tax liability:

> A determination made under new section 6866 will have no effect upon the determination of the correct tax liability in a subsequent proceeding. The proceeding under the new provision is to be a separate proceeding which is unrelated, substantively and procedurally, to any subsequent proceeding to determine the correct tax liability, either by an action for refund in a Federal district court or the Court of Claims or by a proceeding in the Tax Court.

H.R. REP. No. 94–658, 94th Cong., 1st Sess. (1975).

[177] However, under existing case law, the invalidity of one assessment does not prevent additional assessments from being made. *See* N. 27 *supra.*

[178] *See, e.g.*, Go-Bart Importing Co. v. United States, 282 U.S. 344, 355 (1931); Weeks v. United States, 232 U.S. 383, 398 (1914) ("That papers wrongfully seized should be turned over to the accused has been frequently recognized in the early as well as later decisions of the courts.").

[179] Although contraband may also be of great value to its owner, it is not subject to return to its owner even if it is obtained illegally.

A second potential remedy for illegal summary tax seizures is an action for damages against officials who violate taxpayer's fourth amendment rights.[180] This solution would compensate the taxpayer for damages incurred as a result of official illegality and, in addition, would discourage Service agents from making assessments without determining whether there is probable cause to believe that the tax payment is in jeopardy.[181] Because the chance of succeeding in such a suit would depend on the degree to which the Service pursued the assessment in good faith, and not merely on the substantive legality of the tax,[182] this solution would discourage the Service from seizing or levying upon a taxpayer's assets before it has justification for such an assessment.[183]

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[180] *See* Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). The Court held that an individual could recover damages for any injuries which he has suffered as a result of official misconduct which violated his fourth amendment rights. *See also* Miloszewski v. Sears Roebuck & Co., 346 F. Supp. 119 (W.D. Mich. 1972) (damage action for official misconduct pursuant to a state replevin action resulting in fourth amendment violation).

[181] Although section 421(c) of the Federal Tort Claims Act, 28 U.S.C. § 2680 (c) (1964), might foreclose a suit against the Service for damages, the taxpayer would still be able to sue the individual agents responsible for carrying out the assessment. However, even the agents themselves would be immune from suit whenever they perform " 'discretionary acts at those levels of government where the concept of duty encompasses the sound exercise of discretionary authority . . . .' Once an official is found to be exercising this kind of discretion, the act complained of must be 'within the outer perimeter of [his] line of duty,' before the official will be granted immunity." Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 456 F.2d 1339, 1342–43 (2d Cir. 1972), *on remand from* 403 U.S. 388 (1971).

[182] Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 456 F.2d 1339 (2d Cir. 1972), *on remand from* 403 U.S. 388 (1971), held that officials charged with violating fourth amendment rights would not have to show that probable cause for the search or seizure existed, but would have a valid defense to the claim for damages if they could "allege and prove [that they] acted in the matter complained of in good faith and with a reasonable belief in the validity of the arrest and search and in the necessity for carrying out the arrest and search in the way that the arrest was made and the search was conducted." 456 F.2d at 1341.

[183] However, see Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (Burger, C.J., dissenting):

> The problems of both error and deliberate misconduct by law enforcement officials call for a workable remedy. Private damage actions against individual police officers concededly have not adequately met this requirement, and it would be fallacious to assume today's work of the Court in creating a remedy will really accomplish its stated objective. There is some validity to the claims that juries will not return verdicts against individual officers except in those unusual cases where the violation has been flagrant or where the error has been complete, as in the arrest of the wrong person or the search of the wrong house.

403 U.S. at 421. *Accord,* Wolf v. Colorado, 338 U.S. 25, 41 (1949) (Murphy, J., dissenting).

See Laing v. United States, 96 S. Ct. 473 (1976); United States v. Hall, 96

Conclusion

Unless the Service is required to obtain judicial review prior to carrying out each seizure, the assessment power will continue unchecked. The ready availability of procedures which allow the government to summarily seize "every meaningful asset" a taxpayer may own destroys for all taxpayers the security inherent in the right to privacy guaranteed by the fourth amendment. Mere governmental self-restraint, which has not worked in the past, is not sufficient to protect personal rights guaranteed by the Constitution.

Merely interposing an independent magistrate between the Service and the taxpayer cannot prevent all abuses which are possible under the statutory scheme. Rather, review by a neutral and detached magistrate is proposed because it involves only minimal interference with the lawful duties of the Service yet it presents a means of eliminating the errors in judgment which sometimes arise when virtually uncontrolled power is vested within one agency. Because a magistrate may on occasion act as a rubber stamp, the solution does not ignore the need for self control on the part of the government in using its power. Nevertheless, review of summary tax assessments by a neutral and detached magistrate, coupled with the possibility of an action for damages against Service agents abusing their power, are necessary limitations and should substantially curb misuses of the summary jeopardy and termination power.

S. Ct. 473, 497 n.14 (1976) (Blackmun, J., dissenting). Justice Blackmun's opinion suggests the view that a damage action would be an appropriate remedy for abuses of the jeopardy or termination assessment power:

> I do not condone abuse in tax collection. The records of these two cases do not convincingly demonstrate abuse, although Mrs. Hall's situation, as it developed after the initial critical moves by the Service, makes one wonder. I have no such concern whatsoever about Mr. Laing. In any event, abuse is subject to rectification otherwise, and Congress and the courts surely will not be unsympathetic. Cf. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

Washington report

Editor: JOEL M. FORSTER, *CPA*

The taxpayers' bill of rights

Amid all the furor over the dollar and cents effect of the current tax reform provisions, a little-noticed bill may be progressing toward enactment. This bill, entitled "The Federal Taxpayers' Rights Act of 1975" (H.R. 9599), was introduced on September 15, 1975, by Rep. Charles Vanik, Chairman of the House Ways and Means Subcommittee on Oversight of the IRS. The bill's four co-sponsors are also members of that subcommittee. The proposal also has support on the Senate side as evidenced by its companion, S. 2342, which was introduced by Sen. Magnuson and a bipartisan group of senators.

While this bill cannot be evaluated by the public in terms of a cost benefit or hardship, there is no doubt that it could have far-reaching effects on tax administration. The Ways and Means Committee has already agreed that its reform bill will include a number of provisions relating to tax administration. Upon introducing the bill, Mr. Vanik indicated that he was hopeful that this legislation would be included within the general tax reform bill.

While the tentative decisions now being formulated by the Ways and Means Committee at this point do not include all of the proposals included in H.R. 9599, there seems a good chance that some action on this bill will be taken, if not in the general tax reform bill then perhaps as a separate item.

Pressure for legislation of this type has been building for quite a while. For instance, separate bills presently exist which would authorize the GAO to conduct oversight audits of the IRS or restrict the use of tax returns for investigative purposes. In addition, the Treasury has recently transmitted proposed legislation to Congress which would amend Sec. 6103 and related Code sections having to do with disclosure of federal tax returns and tax return information. Since H.R. 9599 would accomplish in one sweep most of what these other bills would do separately, and since it has strong backing in both the House and Senate, it could become the principal vehicle for administrative tax reform.

Basically, the bill provides the following:

- Require IRS to fully inform the taxpayer of his rights during any audit or tax appeal procedure.
- Establish a taxpayer Service and Complaint Assistance Office to monitor improper behavior by IRS agents.
- Authorize a pilot project of independent legal assistance to taxpayers in audits and appeals.
- Protect taxpayers from arbitrary IRS procedures by placing limits on the power of jeopardy assessment and termination of a tax year.
- Establish safeguards against the political misuse of the IRS and place limits on nontax related surveillance activities.
- Place new limitations on disclosure of tax return information, and would permit taxpayers to recover civil damages for unauthorized disclosure of personal tax data.
- Provide General Accounting Office oversight authority of the IRS.

Following is a detailed analysis of all the sections contained in the bill with the exception of Sections 1 and 2 which are definitional in scope.

Disclosure of rights and obligations of taxpayers

Section 3 would require the IRS to develop a series of booklets which describe in clear and simple language the

—rights and obligations of a taxpayer and the Service during an audit;

—procedures by which a taxpayer may appeal any adverse decision of the Service (including administrative and judicial appeals);

—procedures for prosecuting refund claims and filing of taxpayer complaints; and

—procedures which the Service may use in enforcing the internal revenue laws (including assessment, jeopardy assessment, levy and distraint, and enforcement of liens).

This information would be transmitted to the taxpayer with the taxpayer's first communication from the Service regarding his liability for a taxable year. In other words, the taxpayer would automatically be advised of his rights in all of his dealings with the IRS.

The bill would also require that the congressional tax-writing committees be given an opportunity to comment on all of the proposed publications prior to their release by the Treasury Department.

Office of taxpayer services

Section 4 would establish an Office of Taxpayer Services under the direction of a new Assistant Commissioner for Taxpayer Services. This office would be responsible for

—helping taxpayers to obtain easily understandable tax information and information on audits, corrections, and appeals procedures (in addition, it would provide assistance in answering questions on tax liability, preparing and filing returns, and in locating documents or payments such as lost refund checks or unrecorded tax payments);

—providing personnel in local offices of the IRS to receive, evaluate, complaints on, and take corrective action against, improper, abusive, or inefficient service by IRS personnel;

—surveying taxpayers to obtain their evaluation of the quality of the service provided by the IRS; and

—compiling data on the number and type of taxpayer complaints in each internal revenue district and evaluating the actions taken to resolve these complaints.

One very important aspect of this office would be its authority to issue "Taxpayer Assistance Orders (TAO)," a new vehicle for taxpayer relief. The issuance of a TAO would occur, after application by the taxpayer, if the Assistant Commissioner for Taxpayer Services determined that the taxpayer was suffering from an unusual, unnecessary or irreparable loss resulting from administration of the internal revenue laws.

If a TAO is issued, the IRS would be prevented (for up to 60 days) from taking any action adverse to the taxpayer including actions relating to collection, jeopardy, bankruptcy, discovery of liability and enforcement of title.

Legal representation for taxpayers

Section 5 would establish a 3-year pilot project for the legal representation of taxpayers in tax matters. The pilot project authorizes the Legal Services Corp. (an agency established under the Legal Services Corporation Act of 1974 to provide legal assistance to lower-income citizens) to set up Taxpayer Representation Offices in 4 cities. These offices would provide legal representatives, for individuals desiring their services, in all administrative matters before the Service and in any litigation involving tax matters.

Fees for these services would be set in accordance with the individual's ability to pay and the type of service provided. The fees would be returned to the U.S. Treasury as miscellaneous receipts. It is hoped that the project will be useful in determining whether the treatment of lower- and middle-income taxpayers can be improved through more readily available legal assistance.

Jeopardy and termination assessments

Section 6 of the proposed legislation would amend Secs. 6851 and 6861 concerning the termination of taxable years and jeopardy assessments. Under existing law, when the Service decides to use its assessment powers under these sections, there is no provision affording taxpayers immediate access to the courts.

H.R. 9599 provides for access to the District Courts within 10 days if petitioned by the taxpayer. If the court determines that the IRS, by a preponderance of the evidence, did not have reasonable cause for making the assessment or terminating the taxable period, then the assessment will be abated or the year reopened. In the event a jeopardy assessment is found to be an unreasonable amount, the IRS will be ordered to release the portion found unreasonable.

Furthermore, *Section 7* would provide for an increase, as a result of inflation, in the amount of property exempt from assessment. It is intended to provide an assessed taxpayer with enough income to meet daily needs. For instance, it would raise the amount of the exemption for personal effects from $500 to $1,500 and for tools of a trade or profession from $250 to $1,000.

In addition, it would grant a taxpayer an exemption for salary received in the amount of $100 per week for personal needs plus so much of his income as might be necessary to comply with a judgement to contribute to the support of his minor children. Formerly, there was no specific salary exemption for the taxpayer's personal needs.

Certain investigations prohibited

Section 8 would make it illegal to investigate or maintain surveillance or records regarding the beliefs, associations, or activities of an individual or an organization which are not directly related to the revenue laws. An individual or organization would be able to bring suit for damages against any officials who violate this provision.

Access to tax returns

The privacy of tax returns and the misuse of tax information is one of the major issues resulting from Watergate. If no other reason exists for the enactment of this bill, the questions raised by Watergate may provide sufficient impetus.

Section 9 of the bill would increase the taxpayer's right to privacy and protection against political misuse of tax information by amending Sec. 6103. Basically, the bill provides that returns will be available for inspection only by the taxpayer or an official or employee of the Treasury Department, the Department of Justice, or the President if the purpose of inspection is solely in connection with administration of the Internal Revenue Code.

In connection with investigations of alleged criminal acts by the taxpayer, it would be necessary for employees of the investigating branch to obtain search warrants before the taxpayer's return could be inspected. Strict conditions must be met before a search warrant can be issued. In addition, certain agencies of the federal government may continue to inspect returns for purposes of accomplishing their mission. The agencies enumerated are the Social Security Administration, Railroad Retirement Board, Department of Labor, Pension Benefit Guaranty Corporation, HEW, Bureau of Census, and the GAO.

The legislation would strictly limit the disclosure of information obtained from federal tax returns to be made available to the states. No individual's return would be made available for inspection to any state unless that state has enacted a law which provides criminal penalties for disclosing information derived from federal tax returns and which substantially conforms with this bill and Sec. 7213. While the sponsors of this bill recognize that this provision may make it difficult for states to collect their taxes, they feel that federal tax return confidentiality is the prime concern. In this regard, they suggest that if the state wants help with the collection of taxes it use the "piggy back" provisions in Title 2 of the Revenue Sharing Act, which provides for IRS collection of state taxes.

Finally, Section 9 provides for inspection of returns by the tax-writing committees of Congress, certain other committees authorized by resolution of the Senate or House, and by persons having a substantial interest such as partners or stockholders of a corporation in certain instances.

Section 10 would establish civil remedies for an individual's benefit when information is improperly obtained from his tax return.

GAO oversight of IRS

Finally, the bill would attempt to lay to rest the continuing controversy between Congress and the IRS as to the oversight authority of the GAO. In a very comprehensive manner, *Section 11* instructs the Comptroller General of the GAO to establish a program to provide for a continuing audit of the efficiency, uniformity, and equity of the administration of the internal revenue laws. To carry out this mandate, specific provisions give the GAO access to any federal agency's records and the right to inspect returns.

Additionally, the GAO would be instructed to prepare an annual report on the IRS, including its findings concerning

—the type and extent of assistance which the Service provides to taxpayers in the preparation of returns, and the accuracy and consistency of its advice;

—the adequacy of the procedures by which the Service responds to taxpayer complaints, and the number and nature of such complaints;

—the equity of the procedures by which the Service conducts audits, makes collections, hears taxpayer appeals, and advises taxpayers of such procedures;

—the uniformity of the Service's administration of the internal revenue laws, including the uniformity of the standards and legal interpretations it employs;

—the number and specific circumstances of disclosures, if any, of returns or of information derived from such returns which the Comptroller General determines to be in violation of law;

—the investigation and prosecution by the Service and the Department of Justice of alleged civil and criminal violations of the internal revenue laws;

—the implementation by the Service of section 552 of title 5, United States Code (relating to freedom of information); and

—any other matter which the Comptroller General determines to be necessary or appropriate.

IRS SUBPOENA POWER TO INVESTIGATE UNKNOWN TAXPAYERS

I

INTRODUCTION

Through its power in Section 7602 of the Internal Revenue Code[1] to subpoena documents and records to aid in investigations of taxpayer liability, the Internal Revenue Service (IRS or the Service) has a disturbingly great ability to influence the life of every citizen of the United States. Recent litigation has highlighted this power as the IRS has attempted to obtain records from third parties concerning the tax liability of unknown taxpayers. Either an individual financial transaction or a class of transactions has attracted the Service's attention and the IRS has subpoenaed records in order to discover what taxpayers were involved. For example, the IRS has requested the names of all lessors whose leases expired or were returned in a given year to an oil company,[2] the names of all farmers bringing their soybean crop to a processor,[3] and the names of all income beneficiaries of trusts administered by a trust company.[4] In these cases, the IRS had no knowledge of any outstanding liability on the part of the individuals whose transactions comprised the class, while the burden was on the third party (that is, one who is not himself under investigation) to provide financial records.

In other instances, an individual transaction has led the IRS to suspect that some unknown person or persons had outstanding tax liability.[5] In such cases, the Service has issued a subpoena to a third-

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[1] INT. REV. CODE OF 1954, § 7602, provides in part:

> For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—
>
> (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry.

[2] United States v. Humble Oil & Ref. Co., 488 F.2d 953 (5th Cir. 1974), *vacated and remanded*, 95 S. Ct. 1670 (1975).

[3] United States v. Anderson Clayton & Co., 369 F. Supp. 6 (S.D. Miss. 1973).

[4] Mays v. Davis, 7 F. Supp. 596 (W.D. Pa. 1934).

[5] United States v. Bisceglia, 420 U.S. 141 (1975); United States v. Theodore, 479 F.2d 749 (4th Cir. 1973); Tillotson v. Boughner, 333 F.2d 515 (7th Cir.), *cert. denied*, 379 U.S. 913 (1964).

party participant in the transaction either to identify the unknown person so that his liability could be investigated further, or to obtain the financial records of the suspected taxpayer to aid in determining whether or not liability actually exists.

While traditionally courts have interpreted section 7602 to bar enforcement of John Doe subpoenas[6] because a particular taxpayer or taxpayers were not under investigation, the IRS has recently attacked this interpretation by several routes. The Supreme Court has reviewed the issue in *United States v. Bisceglia*,[7] and has supported the IRS in its attempt to have a John Doe subpoena enforced without having a particular taxpayer under investigation.

Ten years ago, in another rare review of a section 7602 subpoena, the Court, in *United States v. Powell*,[8] enunciated four criteria for enforcing a subpoena issued pursuant to section 7602. The first two criteria, that the subpoena be issued for a legitimate statutory purpose and that the documents subpoenaed be relevant to that purpose, are based on the constitutional requirements developed in earlier administrative subpoena cases. The third and fourth criteria, that the information subpoenaed not already be in the Service's possession and that the IRS adhere to its own administrative procedures, are based upon the statute itself. These four criteria provide the general framework within which the statutory questions raised by John Doe subpoenas of third-party records are considered.

This Note will first examine the constitutional criteria enunciated in *Powell*. The roots of these restrictions will be set forth and their effects on John Doe subpoenas of third parties will be explored. After establishing the constitutional framework, the statutory limits which courts have enforced in reviewing section 7602 subpoenas issued to third parties will be analyzed through an examination of three recent cases, and, finally, an analysis of the Supreme Court's decision in *Bisceglia* will be undertaken with a view to the construction of guides for future IRS John Doe subpoena cases.

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[6] So called because the IRS subpoena form reads, "In the matter of the tax liability of _____," and if the taxpayer is unknown, John Doe is used. United States v. Humble Oil & Ref. Co., 346 F. Supp. 944, 948 (S.D. Tex. 1972). The IRS refers to its subpoenas as "summonses." The term "subpoena" will be used in this Note to refer to IRS as well as to other administrative subpoenas.

[7] 420 U.S. 141 (1975).

[8] 379 U.S. 48 (1964).

II

THE CONSTITUTIONAL CRITERION OF REASONABLENESS

A. *The Development of Constitutional Standards for Administrative Subpoenas*

When exercising its subpoena powers, the IRS is bound by the same constitutional requirements of reasonableness as are all administrative agencies.[9] These requirements originated very early in the history of administrative agencies when the fourth amendment prohibition of unreasonable searches and seizures[10] was applied to a subpoena duces tecum.[11] Though its nature as an investigatory tool appears to have shielded the civil subpoena from the probable cause necessary for the issuance of a warrant, the early cases held that the scope of the subpoena could not be so sweeping as to be "unreasonable."[12]

Regarding subpoenas issued by administrative agencies, as well as those issued by other arms of government, the Supreme Court in the early twentieth century interpreted this requirement to give considerable protection to the object of a subpoena.[13] An agency could request only documents which it already had reason to believe were relevant to a pending investigation, and Mr. Justice Holmes spoke for a unanimous Court when he said: "It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up."[14]

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[9] Only the fourth amendment and the due process clause are of interest here. The fifth amendment privilege against self-incrimination does not apply to third parties who are not themselves under investigation even if the documents would tend to incriminate them. United States v. White, 322 U.S. 694, 698-700 (1944).

[10] The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[11] The first case to apply the fourth amendment to a civil subpoena appears to have been Boyd v. United States, 116 U.S. 616, 621-22 (1886). None of the early cases appears to have demanded probable cause to be shown for enforcement, and later cases specifically negated any such requirement, despite statutory language indicating such a showing to be necessary, *see* United States v. Powell, 379 U.S. 48, 52-54, 56-57 (1964), *discussed in* note 122 *infra*, and even when the agency's jurisdiction over the defendant was in question. *See* Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 508-09 (1943).

[12] Hale v. Henkel, 201 U.S. 43, 76 (1906).

[13] *See, e.g.*, FTC v. American Tobacco Co., 264 U.S. 298 (1924).

[14] *Id.* at 306. Holmes also proscribed "fishing expeditions into private papers on

As the increased complexity of the economy produced an increased need for regulation, however, and as administrative agencies consequently multiplied, Congress countered these court-imposed limits on agency investigations with new legislation which broadened agency authority.[15] Eventually the courts joined Congress in loosening the constitutional reins that checked administrative investigation.

The most important manifestation of this change of heart came in the 1946 case of *Oklahoma Press Publishing Co. v. Walling*.[16] There, a massive request for production, *inter alia*, of all books, papers and documents showing hours worked and wages paid to employees over a five-year period in connection with an investigation of possible violations of the Fair Labor Standards Act was upheld over fourth amendment objections. Mr. Justice Rutledge, for the Court, was unsure whether the fourth amendment even applied to the enforcement of a subpoena.[17] The Court, however, did not feel called upon to decide this question because, whether the validity of a subpoena was constitutionally measured by the fourth amendment or by the more general restrictions of the due process clause, "[t]he gist of the protection is in the requirement . . . that the disclosure sought shall not be unreasonable."[18] In the case of an administrative subpoena duces tecum, the Court held that this requirement is satisfied by a court's determination (1) that the documents are relevant to an investigation authorized by Congress and for a purpose Congress can order; and (2) that the specification of the documents to be produced is not so indefinite or overbroad as to be beyond the scope of the pending investigation.[19] Clearly, these constitutional criteria place only the most general limits on agency investigations. Courts have been loath to quash such subpoenas unless documents are described so broadly that they cannot be specifically identified,[20] or the subpoena is both very broad and directed to a third party.[21]

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the possibility that they may disclose evidence of crime." *Id.*

[15] *See* 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 3.03 (1958).

[16] 327 U.S. 186 (1946). A precursor of this decision was Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 508-09 (1943).

[17] 327 U.S. at 195, 202, 208. Unlike a warrant, which is issued *ex parte* and to which the full panoply of fourth amendment restrictions applies, a subpoena can be enforced only after a court hearing at which the object of the subpoena has an opportunity to present his objections. *See id.* at 195; See v. City of Seattle, 387 U.S. 541, 545 (1967).

[18] 327 U.S. at 208.

[19] *Id.* at 209.

[20] *See* First Nat'l Bank v. United States, 160 F.2d 532, 535 (5th Cir. 1947).

[21] *See* Fraser v. United States, 452 F.2d 616, 619 (7th Cir. 1971), *citing* Hale v. Henkel, 201 U.S. 43 (1906), and United States v. First Nat'l Bank, 173 F. Supp. 716,

Subpoenas directed at third parties are, however, more frequently narrowed than quashed. A third-party object of a subpoena must be a good citizen and shoulder some burden in producing evidence or information required for the proper administration of governmental regulations.[22] There are limits, though, on the extent to which an agency may impose this burden. If the cost to the third party of producing the information is too high, or the interference with the third party's business is too great, then the court will not enforce the subpoena as it stands.[23] Whether the source of these restrictions is considered to be the fourth amendment[24] or the due process clause of the fifth amendment,[25] the result is the same.

B. Unreasonableness and IRS Subpoenas

It is evident that under *Oklahoma Press* the effect which constitutional restrictions have on an agency's administrative subpoenas depends in large part on the breadth of that agency's enabling legislation. If Congress has given an agency broad investigatory powers, and the agency institutes sweeping investigations based on these powers, the *Oklahoma Press* criteria are largely satisfied. Only if the requests are quite burdensome to a third party is there real hope of judicial restriction of a subpoena.

Judicial consideration of section 7602 IRS subpoenas has reflected this state of affairs. The criteria set forth in *Oklahoma Press* are echoed in *United States v. Powell*,[26] a section 7602 case. These criteria are combined with a broad statutory grant of investigatory authority to give the IRS a great degree of freedom from constitutional restrictions on its subpoenas.[27]

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720 (W.D. Ark. 1959). Administrative agencies have the power to subpoena documents that are necessary and relevant to a lawful investigation even from parties that are outside the agency's regulatory jurisdiction. FCC v. Cohn, 154 F. Supp. 899, 906 (S.D.N.Y. 1957).

[22] *See* Foster v. United States, 265 F.2d 183, 188 (2d Cir.), *cert. denied*, 360 U.S. 912 (1959); United States v. Northwest Pa. Bank & Trust Co., 355 F. Supp. 607, 614 (W.D. Pa. 1973).

[23] *See* United States v. First Nat'l Bank, 173 F. Supp. 716, 718, 720-21 (W.D. Ark. 1959). *See also* Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 213 (1946); FTC v. American Tobacco Co., 264 U.S. 298, 306 (1924).

[24] *See* See v. City of Seattle, 387 U.S. 541, 544 (1967); Hale v. Henkel, 201 U.S. 43, 71 (1906); United States v. Harrington, 388 F.2d 520, 523 (2d Cir. 1968); United States v. Dauphin Deposit Trust Co., 385 F.2d 129, 131 (3d Cir. 1967).

[25] *See In re* Horowitz, 482 F.2d 72, 75-79 (2d Cir.) (Friendly, J.), *cert. denied*, 414 U.S. 867 (1973); United States v. Giordano, 419 F.2d 564, 569 (8th Cir. 1969), *cert. denied*, 397 U.S. 1037 (1970).

[26] 379 U.S. 48 (1964).

[27] *See* Miller, *Administrative Agency Intelligence-Gathering: An Appraisal of the Investigative Powers of the Internal Revenue Service*, 6 B.C. IND. & COM. L. REV. 657, 696-97 (1965); Ritholz, *The Commissioner's Inquisitorial Powers*, 45 TAXES 782 (1967); Comment, 22 KAN. L. REV. 141, 144 (1973).

The breadth of this statutory grant is manifested in section 7602(1),[28] under which the Service has the authority to subpoena documents "which may be relevant or material to [the] inquiry" authorized in section 7602. Under section 7602 the IRS is authorized to inquire into and determine the liability of "any person" for "any internal revenue tax." The usual judicial reading of section 7602 provides that documents in the hands of third parties which on their face are financial records of the taxpayer under investigation are relevant and that the IRS need not specify precisely which financial records it needs. In addition, documents relevant to a taxpayer's liability for purposes of an IRS subpoena may include records that are technically not of a financial nature, such as memoranda or letters. The occasional situations in which a court has narrowed a subpoena directed to a third party have not proved overly confining. Clearly, for example, "limiting" the IRS to those portions of corporate minutes and correspondence which actually indicate the receipt or disbursement of money[29] does not interfere significantly with the ability of the IRS to subpoena a vast range of documents.[30]

When subpoenaed documents are not actual records of income and disbursements, however, courts have looked more closely at the nature of the records subpoenaed to determine their relevance to the IRS inquiry. One frequently cited test for determination of relevance and materiality was set out in *Foster v. United States*,[31] in which the court phrased the question as "whether the inspection sought 'might have thrown light upon' the correctness of the taxpayer's returns."[32] This test is hardly more enlightening than the bare words of the statute. A later explanation of this standard in *United States v. Harrington*[33] indicated that "whether the inspection sought 'might have thrown light upon' the correctness of the taxpayer's returns" depends, in a given case, on "an indication of a realistic expectation [that the documents subpoenaed will determine the correctness of the taxpayer's returns] rather than an idle hope that something may be discovered."[34] The opinion further suggested that when the IRS subpoenas a third party, the Service may be

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[28] INT. REV. CODE OF 1954, § 7602(1).

[29] United States v. Luther, 481 F.2d 429, 433 (9th Cir. 1973).

[30] *See also* United States v. Ruggeiro, 300 F. Supp. 968, 973 (C.D. Cal. 1969), *aff'd*, 425 F.2d 1069 (9th Cir. 1970), *cert. denied*, 401 U.S. 922 (1971), which upheld a subpoena of all records "relating to the financial and business transactions" of a taxpayer.

[31] 265 F.2d 183 (2d Cir.), *cert. denied*, 360 U.S. 912 (1959).

[32] *Id.* at 187.

[33] 388 F.2d 520 (2d Cir. 1968).

[34] *Id.* at 524.

required to show a stronger expectation that information bearing on the tax liability of the taxpayer under investigation will be discovered than if the subpoena is directed at the taxpayer himself. Two cases together illustrate this distinction between two- and three-party situations.

In *United States v. Egenberg*,[35] the IRS, as part of an investigation of an accountant's tax liability, subpoenaed all the tax returns prepared by the accountant for his clients in certain tax years. The Service stated that the clients' returns would show the amount the clients had deducted for the taxpayer-accountant's services and thereby reflect at least a part of the accountant's income. The 7602 subpoena was directed to the taxpayer-accountant himself,[36] and, since none of his clients objected to his surrendering their returns, no financial burden or invasion of privacy was imposed upon anyone else in requiring the accountant to produce the records. The court held that the government had provided the minimum showing of a "reasonable expectation" that the documents subpoenaed would indicate the correctness of the taxpayer-accountant's return, and thus the subpoena was enforceable.[37]

The second illustrative case, *United States v. Williams*,[38] is very similar to *Egenberg* but involved a significant burden on third parties which resulted in the subpoena's being quashed. In *Williams*, the IRS subpoenaed all the records of a taxpayer-doctor's answering service to get the names of the patients who had seen the doctor during the tax period in question. The IRS hoped to determine some portion of the doctor's income by questioning his patients in order to discover how much the patients had paid the taxpayer for medical services. The court found that the list of names subpoenaed from the answering service would have included persons who were not patients of the doctor, and patients who did not see the doctor during the pertinent time period. But because the records obtained from patients who used the doctor's answering service could reasonably have been expected to shed light on the income and therefore the tax liability of the taxpayer-doctor, making the subpoenaed records relevant in the broadest sense, the court indicated that the irrelevant data and the burden to third parties would not alone have

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[35] 443 F.2d 512 (3d Cir. 1971).

[36] A fifth amendment objection was not sustained because records were actually the property of the accountant's clients. No clients objected to the subpoena. *Id.* at 516.

[37] *Id.* at 515-16.

[38] 337 F. Supp. 1114 (S.D.N.Y. 1971), *appeal dismissed and judgment vacated as moot*, 466 F.2d 1397 (2d Cir. 1972).

barred the subpoena. At the same time, however, the court noted that the subpoenaed records would not have included the names of many patients who saw the doctor during this time but left no messages with his service. The court therefore concluded that because the information obtained from these persons would fall far short of determining the doctor's income and his resulting tax liability, the burden on the third parties whose names were included in the records and who would have been questioned by the IRS to determine when they saw the doctor would be disproportionate to the end achieved by the IRS.[39] The lists of names were not sufficiently relevant to an investigation of the doctor's tax liability to justify the resulting burden on third parties.

These two cases illustrate that the constitutional criterion of relevance may be applied differently in two- and three-party situations. In an ordinary two-party situation, in which the Service subpoenas records from the party being investigated, the relevance of the documents subpoenaed to the investigation of tax liability is broadly defined. However, if the party subpoenaed is not the object of the investigation into tax liability, one can argue, using *Egenberg* and *Williams*, that courts should weigh more carefully the balance between the burden on the interests of a third party producing the documents, or others affected by their production, and the public interest represented by the subpoena.[40] Revenue collection is an important public interest to be balanced against the private interest to be "free from officious intermeddling."[41] One must keep in mind, however, that the public interest is in revenue collection and not merely in the Service's ability to investigate. The cost to the private individual should be weighed against the actual probability of determining outstanding tax liability from the subpoenaed records. Relevance and burdensomeness as elements of the constitutional requirement of reasonableness, then, have some impact on the ability of the IRS to browse through citizens' records. Within this constitutional framework, it may be argued that an IRS subpoena can be struck down if a court finds that the burden on a third party is not

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[39] *Id.* at 1116. The facts in *Williams* would have been exactly the same as those in *Egenberg* if the IRS had subpoenaed the patients' names directly from the doctor. This was not done because the doctor could have asserted his fifth amendment privilege against self-incrimination and refused to produce the names. The accountant was not similarly protected because the returns subpoenaed were his *clients'*, merely in his possession, and not within his privilege. United States v. Egenberg, 443 F.2d 512, 516 (3d Cir. 1971).

[40] *See* United States v. Matras, 487 F.2d 1271, 1274-75 (8th Cir. 1973); Venn v. United States, 400 F.2d 207, 211-12 (5th Cir. 1968).

[41] Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 213 (1946).

proportionate to the end the Service hopes to achieve with the subpoena.

This argument has not been favored by the courts, however, which more commonly have achieved a similar result by narrowing a burdensome subpoena directed at a third party to those documents most clearly relevant to the investigation.[42] When it was not possible to specify the documents actually relevant to the investigation, one court permitted the IRS to examine certain records in order to identify and specify exactly what further records were required.[43] The court suggested that the government issue two narrow subpoenas, the second based on information received from the first,[44] to replace a sweeping request for records which, if enforced, would have cost the third party $30,000.[45]

Thus, with the broad scope of judicial notions of relevance and burdensomeness applied to administrative subpoenas generally and to section 7602 subpoenas in particular, neither the fourth amendment nor due process in the guise of reasonableness provides a practical barrier to the power of the IRS to use its subpoena authority. If there are to be significant restraints on the ability of the IRS to subpoena records from third parties, therefore, they must come from the enabling statute itself.

III

The Statutory Limitations

A. *The History*

Section 7602 authorizes examinations of records to determine the liability of any person for any internal revenue taxes. In most cases, the IRS issues a subpoena for documents concerning tax liability of a named person who is under investigation. As to these subpoenas, at least, the only restrictions on enforcement imposed by the statute are those reflected in *United States v. Powell*:[46] the information subpoenaed must not already be in the Service's possession and the IRS must adhere to its own administrative procedures.[47] The issues may be different, however, when the

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[42] *See, e.g.*, United States v. Luther, 481 F.2d 429, 433 (9th Cir. 1973).
[43] United States v. First Nat'l Bank, 173 F. Supp. 716, 721 (W.D. Ark. 1959).
[44] *Id.*
[45] *Id.* at 718.
[46] 379 U.S. 48, 57-58 (1964).
[47] *See* text accompanying note 8 *supra*.

investigation involves an unknown taxpayer or taxpayers, and the subpoena is issued in the name of John Doe to a third party, frequently a bank, which is not itself under investigation.

The few cases decided prior to 1972 involving unnamed taxpayers have a common denominator: enforcement was predicated upon the existence of a taxpayer or taxpayers actually under investigation. The earliest such case, *Mays v. Davis*,[48] was decided under the predecessor to section 7602.[49] The government there sought enforcement of a subpoena for all records of all income beneficiaries of testamentary trusts administered by the defendant bank to determine if the beneficiaries had any outstanding tax liability from unreported trust income. The court refused to enforce the subpoena, calling it a "mere [exploratory] search for information," and finding that it was outside the Service's lawful authority of "ascertaining the correctness of any return."[50] While the court did not discuss the case in constitutional terms, its interpretation of the statute is entirely consistent with Holmes's proscription in *American Tobacco* of "fishing expeditions."[51] *Mays* introduced a statutory limitation on the ability of the IRS to use its subpoena power, roughly equivalent in scope to the pre-*Oklahoma Press* constitutional limits.[52]

Even after the judicial expansion of administrative authority in the 1940's and 1950's and the accompanying debasement of the constitutional limitations on agency subpoena authority,[53] the courts continued to require a particular individual to be under investigation before they would enforce an IRS subpoena. The broad purpose of section 7602 to investigate any person's tax liability, combined with expanding judicial notions of the permissible scope of administrative investigations, would otherwise have permitted the IRS to examine virtually any records held by anyone to see if those records indicated undisclosed tax liability. The judicial interpretation of the statute to require that a particular individual be under investigation before a subpoena could be enforced, then, has provided an important constraint on IRS subpoena power. And this yoke was not significantly loosened by the one instance prior to 1972 in which a subpoena

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[48] 7 F. Supp. 596 (W.D. Pa. 1934).

[49] Revenue Act of 1928, ch. 852, § 618, 45 Stat. 878. According to the Sixth Circuit Court of Appeals, Congress meant no material change in the law in enacting the 1954 Code. Bisceglia v. United States, 486 F.2d 706, 712 (6th Cir. 1973), *rev'd*, 420 U.S. 141 (1975). *But see* United States v. Armour, 376 F. Supp. 318, 322 (D. Conn. 1974).

[50] 7 F. Supp. at 596.

[51] *See* note 14 *supra*.

[52] *See* text accompanying notes 9-14 *supra*.

[53] *See* text accompanying notes 15-21 *supra*.

involving an unknown taxpayer was enforced. In *Tillotson v. Boughner*,[54] the IRS subpoenaed an attorney to testify concerning the identity of the taxpayer who had sent the IRS a cashier's check for unpaid taxes. The court held that the subpoena was enforceable because a specific taxpayer was under investigation; only the taxpayer's identity was unknown to the IRS.

Both *Mays* and *Tillotson* illustrate the courts' historical insistence that a subpoena be issued pursuant to an investigation of a particular person's tax liability. Recently, however, the IRS has attacked this interpretation in the courts. Three cases represent the direction of the offensive and the partial success of the IRS.

B. United States v. Theodore

In 1972 the Internal Revenue Service initiated the Tax Preparers Project to investigate the accuracy of returns prepared by independent tax preparers who were not governed by any code of professional ethics like those which regulate certified public accountants and attorneys.[55] A Project investigation would begin when an undercover agent provided a commercial tax preparer with financial data from which to fill out a return. If the return was not correct, the case was transferred to the Audit Division of the IRS which determined whether copies of other returns prepared by the preparer or a list of clients for whom returns were prepared would be subpoenaed.[56] If the preparer refused to comply with the subpoena, the IRS applied to the local district court for enforcement.

United States v. Theodore[57] was the first Project enforcement case to reach a circuit court. As a result, *Theodore* has become a frequently cited case regarding section 7602 John Doe subpoenas, and has been relied on as precedent in more recent enforcement proceedings against commercial tax preparers. Its importance requires attention here despite the lack of clarity in its holding and supporting rationale.

In *Theodore*, the IRS subpoenaed all the returns, with accompanying documentation, that Mr. Theodore had prepared for a three-year period, as well as a separate list of the names, addresses and social security numbers of these clients. The district court enforced the subpoena.[58] The Fourth Circuit Court of Appeals denied enforcement of that portion of the subpoena which requested the tax

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[54] 333 F.2d 515 (7th Cir.), *cert. denied*, 379 U.S. 913 (1964). The attorney-client privilege was not at issue in this decision.

[55] *See* United States v. Turner, 480 F.2d 272, 274 (7th Cir. 1973).

[56] *See* United States v. Theodore, 479 F.2d 749, 752 (4th Cir. 1973).

[57] 479 F.2d 749 (4th Cir. 1973).

[58] United States v. Theodore, 347 F. Supp. 1070 (D.S.C. 1972).

returns and documentation.[59] At the same time, the court upheld the IRS request for a client list.[60]

In considering the subpoena of Theodore's documents, the court had two inquiries to make: first, whether an investigation of Theodore's clients was a valid subject of the subpoena directed to Theodore and therefore within the agency's statutory power; and second, whether the scope of the subpoena was within the constitutional bounds of reasonableness.[61]

The Fourth Circuit separated the request for documents into two parts and decided these questions differently as to each. The court denied enforcement of that portion of the subpoena relating to the returns and documentation because it was "too broad and too vague to be enforced."[62] The district court's grant of enforcement of the list of names, on the other hand, was upheld, as the Fourth Circuit said that such a request was clearly within the authority of the IRS and that the only determination left for the district court on remand was whether the IRS could practically compile the list itself.[63] Since the burden on Theodore in providing the list of names was slight,[64] it would appear that the differentiation between the two sets of documents was made on the basis of the burden to Theodore, that is, the constitutional reasonableness of the request.[65]

The court seemed at other points in the opinion, however, to have qualms about the authority of the IRS to have a John Doe subpoena enforced at all. The court noted that in *Tillotson* only a single taxpayer had been involved, not a large group as in *Theodore*.[66] In denying the returns and documentation to the IRS,

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[59] 479 F.2d at 754-55.

[60] *Id.* at 755.

[61] A court should decide the statutory question before the constitutional question to avoid unnecessary constitutional adjudication. *See* Ashwander v. TVA, 297 U.S. 288, 347 (1935) (Brandeis, J., concurring).

[62] 479 F.2d at 755. Previously the court had described the subpoena for approximately 1500 returns and documentation as "unprecedented in its breadth." *Id.* at 754. *But see* Adams v. FTC, 296 F.2d 861, 867-80 (8th Cir. 1961), *cert. denied*, 369 U.S. 864 (1962), in which the court enforced an administrative subpoena of, *inter alia*, books, records, writings, documents and letters pertaining to the relationships under investigation from as early as 1940 until 1959.

[63] 479 F.2d at 755.

[64] The list had already been deposited *in camera* pursuant to an order of the district court. *Id.*

[65] The court noted an alternative argument based on the third *Powell* criterion, *see* text accompanying note 8 *supra*, that the information not already be in the Service's hands. So far as the returns are concerned, they were indeed already in the possession of the IRS. However, Theodore's accompanying documentation was not. The court determined that the IRS could get the list of names only if the IRS could show that retrieval of the returns in their possession was not otherwise possible. 479 F.2d at 755. *See also* United States v. Turner, 480 F.2d 272, 274 (7th Cir. 1973).

[66] 479 F.2d at 754.

the court said: "We hold that [section 7602] only allows IRS to summon information relating to the correctness of a particular return or to a particular person."[67] If the Service's authority extends only to investigations of particular returns and taxpayers, though, the court could no more grant the list of taxpayer names than it could grant the returns and documentation. Clearly the court was not saying exactly what it meant and this has led to some confusion. Courts enforcing post-*Theodore* subpoenas of names and addresses of tax-preparer clients have cited *Theodore* as authority without considering the basis of the court's reasoning.[68] Other courts have made a fundamental error in interpreting *Theodore* as a case in which the third-party tax preparer was the "particular person" under investigation.[69] Theodore might have been liable for fraud,[70] but not for his clients' civil tax liability. Since courts will not enforce a section 7602 subpoena if there is no civil liability under investigation,[71] the subpoena could not have been enforced against Theodore in a criminal investigation of fraud in his preparation of the returns, and therefore Theodore could not have been the taxpayer under investigation.

In the tax-preparer cases since *Theodore*, the IRS appears to have stopped subpoenaing any documents beyond a list of the clients' names, addresses and social security numbers, and the courts have regularly enforced these subpoenas.[72] Since *Tillotson* appears to be the only instance prior to *Theodore* of a court's enforcing a section 7602 John Doe subpoena, *Theodore* seemingly broadened IRS authority to subpoena.[73] Outside the area of the Tax Preparers Project, however, the courts have looked more carefully

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[67] *Id.* at 755.

[68] United States v. Carter, 489 F.2d 413, 414-15 (5th Cir. 1973) (per curiam); United States v. Berkowitz, 488 F.2d 1235, 1236 (3d Cir. 1973) (per curiam), *cert. denied*, 95 S. Ct. 1674 (1975).

[69] United States v. Humble Oil & Ref. Co., 488 F.2d 953, 958 (5th Cir. 1974), *vacated and remanded*, 95 S. Ct. 1670 (1975); United States v. Armour, 376 F. Supp. 318, 324 (D. Conn. 1974).

[70] *See* INT. REV. CODE OF 1954, § 7207.

[71] United States v. Held, 435 F.2d 1361, 1364 (6th Cir. 1970).

[72] *See* United States v. Carter, 489 F.2d 413 (5th Cir. 1973) (per curiam); United States v. Berkowitz, 488 F.2d 1235 (3d Cir. 1973) (per curiam), *cert. denied*, 95 S. Ct. 1674 (1975); United States v. Turner, 480 F.2d 272 (7th Cir. 1973).

[73] Not everyone has regarded *Theodore* in this light. The Fourth Circuit's refusal to enforce the subpoena of the returns and documents appears to have caused some to look upon *Theodore* as a restraint upon the expansive powers of the IRS. *See* Note, *The Expanding Rights of Third Parties Under the Internal Revenue Service's Tax Preparers Project: A Limit on Internal Revenue Fishing Expeditions?*, 5 ST. MARY'S L.J. 773, 798-99 (1974); Comment, 22 KAN. L. REV. 141, 142, 150 (1973). These discussions of *Theodore* assume the validity of John Doe subpoenas and regard the decision as restrictive of the IRS since a portion of the subpoena was not enforced.

at *Theodore*, and the IRS has continued to have difficulty with John Doe subpoenas, even when names, rather than financial documents per se, are the target.

C. United States v. Humble Oil & Refining Co.

Not satisfied with only the client lists it obtained in *Theodore*, the IRS in *United States v. Humble Oil & Refining Co.*[74] attempted to use the broader language of section 7601[75] to justify court enforcement of a section 7602 subpoena. The Fifth Circuit there upheld the district court's denial of enforcement of a subpoena which requested the names of all lessors who held mineral leases surrendered by Humble Oil during 1970. The purpose of the IRS project was to determine if the mineral lessor taxpayers properly adjusted their tax status upon termination of the leases.[76]

Since the Service conceded that it was gathering data only and that the tax liability of neither Humble nor any specific lessors was under investigation, the Fifth Circuit upheld the district court's decision that the subpoena could not be enforced, quoting the lower court's contention that enforcement of a section 7602 subpoena required "some nexus between information sought and a specific investigation of specific individuals before the government can compel third parties, at their own expense, to give information to the Internal Revenue Service."[77] The appellate court did not, however, base its holding on the lack of a particular person under investigation. Rather the court came to the same conclusion as the district court by examining the differences in language between sections 7601 and 7602. The former, the court noted, permitted IRS "inquiries" of "all persons," while the latter section permitted "examinations" only of "any persons." The court maintained that this difference required that a subpoena be enforced "only when IRS scrutiny of a taxpayer or a group thereof becomes particularized or focused."[78] As a result, the *Humble Oil* court barred the IRS on statutory grounds from

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[74] 488 F.2d 953, 955-56 (5th Cir. 1974). The decision in *Humble Oil* was recently vacated by the Supreme Court and remanded to the Fifth Circuit "for further consideration in light of United States v. Bisceglia." 95 S. Ct. 1670 (1975).

[75] INT. REV. CODE OF 1954, § 7601, provides:

> The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

[76] 488 F.2d at 954-55.

[77] *Id.* at 960.

[78] *Id.*

using section 7601 to support a subpoena. At the same time it left open the enforcement of John Doe subpoenas when the investigation of the taxpayers "becomes particularized or focused" and the subpoena is therefore within the investigatory power authorized by section 7602. When this time might occur was not discussed by the court, but the requirement seems similar to, if not the same as, the differently worded requirement of *Theodore* that a particular taxpayer's liability be under investigation to support enforcement of a subpoena.[79] The court concluded this argument by noting that since there exists this difference in language between the two sections, it is illogical to enforce under the broader section 7601 a subpoena that would be barred as a "fishing expedition" under section 7602.[80]

Thus the *Humble Oil* decision barred on statutory construction grounds an alternative attempt by the IRS to use the agency's subpoena power to obtain tax information from third parties concerning unknown taxpayers. In *Theodore*, the court blocked enforcement of the subpoena on the constitutional grounds of burdensomeness. Although the court in *Humble Oil*, like that in *Theodore*, referred to the statutory requirement that a particular taxpayer be under investigation, the focus of both decisions lay elsewhere, in the Constitution and in section 7601. Our third recent case, however, focuses and was decided on the question of whether section 7602 requires a particular taxpayer to be under investigation for an IRS John Doe subpoena to a third party to be enforced. The only case to have been decided by the Supreme Court, it is basic to all further litigation.

D. United States v. Bisceglia

In *United States v. Bisceglia*,[81] a routine currency report on large cash transactions filed by the Federal Reserve Bank with the

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[79] *See* text accompanying note 67 *supra*.

[80] 488 F.2d at 960-61. Whether or not one accepts as correct the court's reading of the language of the two sections, it is clear from the structure of the Code and Regulations that the complex argument was unnecessary. Sections 7601 and 7602 are linked by physical proximity but by nothing else, though frequently they have been casually linked in general discussions of IRS authority to conduct investigations. *See* Donaldson v. United States, 400 U.S. 517, 523-24 (1971); United States v. Brown, 349 F. Supp. 420, 430-31 (N.D. Ill. 1972), *modified*, 478 F.2d 1038 (7th Cir. 1973). Treas. Reg. § 301.7602-1(b) provides that a subpoena issues for the purposes specified in section 7602, but the Regulation makes no mention of section 7601. Sections 7603 and 7604 of the Code, providing for service and enforcement of IRS subpoenas, specifically name the sections to which this service and enforcement authority apply, but again section 7601 is not included. In short neither Code nor Regulations contemplate that a subpoena power will be associated with section 7601. *See* United States v. Bisceglia, 420 U.S. 141, 155 n.1 (1975) (Stewart, J., dissenting).

[81] 420 U.S. 141 (1975).

IRS noted that the Bank had received a large number of badly deteriorated $100 bills from a local bank in its district. Because the IRS suspected that the bills had come from a cache of money never reported by a taxpayer,[82] it issued a subpoena for the local bank's records to identify the taxpayer-depositor. The subpoena, as ordered enforced by the district court, required production of all records for a one-month period relating to deposits over $20,000 or which contained more than $5000 of $100 bills at one time.[83]

The Sixth Circuit reversed and refused enforcement of the section 7602 subpoena because "the section presupposes that the IRS has already identified the person in whom it is interested as a taxpayer before proceeding,"[84] and found that the words of the statute provide no authority for the IRS to examine financial records of an indefinite number of unspecified persons to learn identities of persons who might be liable for taxes. Additional support for the court's position was found in the subpoena form itself, which begins: "In the matter of the tax liability of _____." This indicated to the court that a specific taxpayer must be under investigation before the subpoena could be enforced.[85] Once the court interpreted the language of the statute to require a particular person to be under investigation, the decision in the case was made easy by the Service's admission that no taxpayer was under investigation and that the subpoena was issued solely to get the depositors' names.[86]

A majority of the Supreme Court took a very different approach, emphasizing the unusual nature of both the size of the transactions and the state of the currency.[87] The subpoena itself was described as the "initial step in an investigation" that might or might not bear fruit.[88] The Court explicitly denied, however, that the Sixth Circuit's "restrictive reading" requiring a particular taxpayer to be under investigation was mandated by the statute.[89] The Court's reasoning was based on the language of sections 7601 and 7602, the analogous power of such other bodies as the grand jury, and historical enforcement of John Doe subpoenas.

The second and third reasons are ancillary and not difficult to dispense with. The Court pointed out that a grand jury could have

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[82] It is possible, of course, that the bills did not come from a depositor at all but from some person or persons exchanging old bills for new.

[83] United States v. Bisceglia, 72-1 U.S. Tax Cas. ¶ 9474, at 84,645 (D. Ky. 1972).

[84] Bisceglia v. United States, 486 F.2d 706, 710 (6th Cir. 1973).

[85] *Id.*

[86] *Id.* at 712.

[87] United States v. Bisceglia, 420 U.S. 141, 142-43, 150 (1975).

[88] *Id.* at 143.

[89] *Id.* at 149.

compelled the respondent bank to testify and then, citing *United States v. Powell*,[90] noted that the subpoena power of federal agencies is analogous to the power of the grand jury.[91] That may be true when describing the maximum constitutional scope of the Commissioner's power. Unlike the grand jury, however, the IRS is restricted by its statutory power. Analogies to the grand jury cannot expand the Service's power beyond what Congress has chosen to give it. Nor, as we have seen, is the history of John Doe enforcement a weighty argument.[92] The Court cited[93] *Tillotson v. Boughner*[94] and two recent tax-preparer cases.[95] *Tillotson* was the product of a highly unusual fact pattern in which an unknown taxpayer had admitted outstanding liability, and we have already seen that it was the Service's mixed success with the tax-preparer cases that enticed it to venture into the new area which produced this case.[96]

The majority relied most heavily on the language of the statute. It stated both that the words of the statute do not require a particular person to be under investigation and that such a requirement actually frustrates the general statutory scheme. In arriving at this conclusion, the Court looked at both sections 7601 and 7602. Pointing out that section 7601 authorizes the Service to inquire after "*all* persons . . . who *may be* liable" and that section 7602 permits subpoenaing of records to ascertain the "liability of *any* person," the Court concluded that this language is inconsistent with a requirement that the investigation already be focused on a particular person or liability.[97] The Court did not make any attempt to justify its use of section 7601 authority to support a section 7602 subpoena. Nor did it distinguish a "research" purpose of section 7601 from an "investigation" purpose of section 7602 as the Fifth Circuit did in *Humble Oil*.[98] Rather, the Court rested on the proposition that the subpoena power is available to effect the general purposes stated in section 7601,[99] despite the specific statement of purpose in section 7602 itself. Stressing the importance of revenue collection, the

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[90] 379 U.S. 48 (1964), *discussed in* text accompanying note 8 *supra*.

[91] 420 U.S. at 147-48.

[92] *See* text accompanying notes 48-54 *supra*.

[93] 420 U.S. at 148-49.

[94] 333 F.2d 515 (7th Cir.), *cert. denied*, 379 U.S. 913 (1964), *discussed in* text accompanying note 54 *supra*.

[95] United States v. Carter, 489 F.2d 413 (5th Cir. 1973) (per curiam); United States v. Turner, 480 F.2d 272, 279 (7th Cir. 1973).

[96] *See* text accompanying notes 55-73 *supra*.

[97] 420 U.S. at 149 (emphasis added by the Court).

[98] *See* text accompanying notes 78-80 *supra*.

[99] 420 U.S. at 145-46, 149.

Court said that the IRS is legitimately interested in large or unusual transactions, and that if the Service cannot determine who was involved, investigations into tax liability are stopped before they have really begun.[100]

Justices Blackmun and Powell concurred in the Court's opinion, but took the opportunity to point out what they considered to be the narrowness of the issue decided. They stressed the "overwhelming probability, if not . . . certitude," that the currency in *Bisceglia* came from one taxpayer[101] and the Service's "more than plausible" suspicion that outstanding liability existed.[102] This suspicion provided the IRS with a valid basis for an investigation. Unlike the majority, the concurring opinion cited *Humble Oil* for its differentiation of research and investigation.[103] In short, the concurring opinion read the Court's opinion as leaving undecided the Service's authority to enforce a subpoena "where neither a particular taxpayer nor an ascertainable group of taxpayers is under investigation."[104]

Mr. Justice Stewart's dissent, joined only by Mr. Justice Douglas, adhered strictly to the long-established standard that a particular taxpayer must be under investigation. Stressing the tax relevancy of virtually all economic transactions in the United States, the dissent argued that the Service could use this newly authorized power, contrary to congressional intent, to "closely monitor the operations of myriad segments of the economy."[105] Stewart pointed out that, in the past, when a type of transaction was shown to be of particular importance to revenue collection, Congress has required that these transactions be specifically reported, keeping the subpoena power within narrower bounds.[106]

Certainly the Court's decision has expanded the bounds of the Service's subpoena power. The Court reviews IRS subpoena cases infrequently and there are many such cases every year in the district courts. Thus, the manner in which this decision is applied by the district courts will be very important to taxpayers. The question to be explored in the next section of this Note is whether the expansion of authority in *Bisceglia* is necessarily, as the dissent says, so broad that "[t]hese transactions will now be subject to forced disclosure

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[100] *Id.* at 149-50.
[101] *Id.* at 151.
[102] *Id.* at 152.
[103] *Id.*
[104] *Id.*
[105] *Id.* at 154.
[106] *Id.* at 154-55.

at the whim of any IRS agent, so long only as he is acting in good faith.' "[107]

IV

The Future in the Lower Courts

Bisceglia, read in the broadest possible way, permits the IRS to subpoena documents concerning the possible tax liability of any taxpayer, known or unknown.[108] This Note has pointed out that records relevant to tax liability include all of a taxpayer's financial and many types of his personal and business documents.[109] If the requirement of an investigation is not linked to the presence of a particular person, and the statute is read at its broadest, third parties such as banks could be required to produce virtually any records concerning taxpayers at the third party's expense and with relatively little potential value to the IRS or the public policy of revenue collection. In Mr. Justice Jackson's words, the IRS could "investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not."[110] Since practically everyone falls within the "regulation" of the IRS, since income tax liability reflects virtually all of one's finances, and since most of one's life can be connected in some way to these finances, the IRS would have an awesome ability, far greater than that of any other governmental agency, to delve into individual lives and harass third parties. Protection is required for the general public as well as for those directly involved in the transactions.

But the courts are not required by the decision to give the Service this broad latitude. The *Bisceglia* Court noted specifically that it was not authorizing "fishing expeditions" and that enforcement is predicated on the existence of a "legitimate investigation" in progress,[111] but did not provide the lower courts with any guidance as to what constitutes a "legitimate investigation." Likewise, the Court stressed the protection inherent in judicial enforcement of subpoenas but did not provide standards to make that protection meaningful.[112]

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[107] *Id.* at 157.

[108] For an example of broad use of IRS subpoena power predating *Bisceglia*, see United States v. Anderson Clayton & Co., 369 F. Supp. 6 (S.D. Miss. 1973).

[109] *See* text accompanying notes 28-30 *supra*.

[110] United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950); *see* Local 174, Teamsters v. United States, 240 F.2d 387, 394 (9th Cir. 1956) (Pope, J., dissenting).

[111] 420 U.S. at 150-51.

[112] *Id.* at 146-47, 151.

In attempting to define a "legitimate investigation," one must remember that revenue collection, not information gathering, is the basic goal of the IRS. When the IRS has subpoenaed records of a class of transactions or of similarly situated taxpayers, the court must be assured that there is an investigation in progress and not either a general collection of data or a non-tax investigation hidden by the bulk of tax-related information requested.[113] Similarly, if "fishing expeditions" are not authorized, a district court asked to enforce a John Doe subpoena must be assured that the IRS is after some kind of specific tax-related information and not just sweeping a field to see what it picks up.

If one looks to the district court in *Bisceglia* to see what the Supreme Court called a finding of a legitimate investigation,[114] one gets little assistance. It appears that the lower court assumed the existence of a taxpayer under investigation,[115] that is, the existence of a focused investigation, rather than a generalized fishing expedition. This assumption was not entirely unwarranted by the facts: a small number of highly unusual transactions, apparently related, occurred within a short time at one bank. If these facts warrant a conclusion that a legitimate investigation exists, some generalizations on that basis may be made for future cases.

There are at least two possible approaches that lower courts might take in making this determination for themselves. The first is requiring the IRS to show some degree of probable cause to believe that outstanding tax liability exists, and the second is attempting to balance the probable gain in revenue to the IRS against the reasonableness of the burden on the third party. Although neither approach defines "investigation" in any classic sense, each measures the seriousness of the Service's tax interest, and therefore provides a restraint upon abuses. Additionally, each approach balances the revenue collection policy underlying the IRS's powers with protection of third parties from expensive and unproductive interference with their business.[116]

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[113] *See* United States v. DiPiazza, 415 F.2d 99, 109-10 (6th Cir. 1969) (Celebrezze, J., dissenting), *cert. denied*, 402 U.S. 949 (1971). In this case, information obtained from an IRS subpoena was the basis of a search warrant resulting in indictment and conviction of a third party on gambling charges. The importance of the criminal non-tax investigation may lead courts, viewing the situation after the fact, to overlook the abuse of the civil subpoena.

[114] 420 U.S. at 151.

[115] *See* 72-1 U.S. Tax Cas. at 84,644.

[116] *See* Miller, *supra* note 27, at 663-64.

A. A Probable Liability Standard

The majority opinion in *Bisceglia* noted the extraordinary nature of the deposits in the particular bank[117] and this appears to have played a part in the Court's conclusion that *Bisceglia* involved a valid investigation of tax liability. It is the concurring opinion of Mr. Justice Blackmun, joined by Mr. Justice Powell, however, that announced an investigation standard based on suspicion of liability. The concurrence described the holding as permitting John Doe subpoenas when the Service needs to "ascertain the identity of a person whose transactions with [a] bank strongly suggest liability for unpaid taxes."[118] It is this "more than plausible" suspicion that a particular person owed the IRS money which, to two members of the Court, defined the Service's activity as a genuine investigation.

Justices Blackmun and Powell joined in the majority opinion, so it is clear that they felt their description of the case was consistent with that of the majority. The majority made no mention of the concurrence and evidently was unwilling to give real substance to "legitimate investigation" at this time. The concurrence provides a straightforward standard, however, even if the actual point at which there is sufficient suspicion to support the subpoena is not clearly defined.

Applying this standard in the commercial tax-preparer cases, such as *Theodore*, one can conclude that, on the basis of the IRS research generally[119] and the one incorrectly prepared return specifically, the IRS had a strong reason to believe that a significant number of the tax preparer's clients had outstanding tax liability. Enforcement of the IRS subpoena request, therefore, was proper. In *Humble Oil*, on the other hand, the IRS had no reason to suspect Humble's lessors to have been any less honest in their reporting of their changed tax status than any other oil company's lessors.[120] The "investigation" was in fact data collection and enforcement of a subpoena of Humble's records would have been unjustified.[121]

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[117] 420 U.S. at 150.

[118] *Id.* at 151.

[119] An official tally of 4600 returns prepared for IRS agents by commercial tax preparers between January and March of 1973 showed that 16% were "incorrect, non-fraudulent" and 22% were "potentially fraudulent." N.Y. Times, Mar. 18, 1973, § 1, at 23, col. 1; *see* Note, *Tax Preparation Agencies: What is Needed for the Public's Protection?*, 13 B.C. IND. & COM. L. REV. 895 (1972).

[120] *See* United States v. Humble Oil & Ref. Co., 488 F.2d 953, 955 (5th Cir. 1974), *vacated and remanded*, 95 S. Ct. 1670 (1975).

[121] The Service, through research in local real estate records, however, could develop a sample of mineral lessors in the area. An examination of these lessors'

Demanding that the IRS show a strong suspicion of outstanding liability to enforce a John Doe subpoena would be considered by some to be a substantial departure from present notions of agency subpoena power. Courts have consistently held that probable cause is not required for the enforcement of administrative subpoenas.[122] It can be argued, however, that, when there is no known taxpayer under investigation, such a required showing is the best way for the courts to assure themselves that the IRS is pursuing a legitimate investigation.

B. A Balancing Standard

The second approach lower courts might take in determining whether an investigation is in progress is that based on the test formulated by the Second Circuit in *United States v. Harrington*,[123] which does not concern itself with the existence of an individual taxpayer but requires the IRS to show a realistic expectation that the documents subpoenaed will shed light on outstanding tax liability.[124] When a third party is subpoenaed, this standard additionally requires this realistic expectation to be balanced against the burden placed upon the third party to produce the information.[125]

The contrast between the tax-preparer cases and other situations involving IRS subpoenas of third parties illustrates, once again, the potential application of this balancing approach. In the tax-preparer cases, because of its research[126] and because of the existence of at least one incorrect return, the IRS was able to show a likelihood that the subpoenaed documents would result in the determination of outstanding tax liability. Initially, therefore, the relatively minor burden on the preparer was proportionate to the end to be achieved by enforcement of the subpoena. But the analysis may be carried further to point out differences between the third parties themselves, for a commercial tax preparer and an unin-

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returns might justify an assertion that probable cause existed to believe that one group of lessors was less reliable in reporting its changed tax status than another, thus making a subpoena such as that in *Humble Oil* enforceable under this standard. *See id.* at 957 n.8.

[122] *See* text accompanying note 12 *supra*. Section 7605(b) of the Code bars unnecessary examinations, and limits the IRS to one inspection of books for a taxable year; any additional inspections must be approved by the Secretary or his delegate. Despite the statute's requirement that the IRS make a determination of necessity before allowing a second examination, the Supreme Court held that "necessity" did not mean probable cause. United States v. Powell, 379 U.S. 48, 53 (1964). The Court placed the burden on the taxpayer to prove a lack of good faith. *Id.* at 58.

[123] 388 F.2d 520 (2d Cir. 1968).

[124] *See* text accompanying notes 33-34 *supra*.

[125] *See* text following note 34 *supra*.

[126] *See* note 119 *supra*.

volved third party like a bank stand in very different positions relative to the IRS.

First, because the tax preparer incorrectly prepared an undercover agent's return, it is the preparer's activity that triggered the IRS investigation initially. Even if the tax preparer himself is not under investigation, as it appears he cannot be,[127] he is deeply involved in the investigation. Second, a commercial tax preparer may be liable for penalties under the Code for fraud if he willfully misrepresents clients' information on their returns.[128] And he may be liable in tort to the clients for any penalties assessed to clients as a result of the tax preparer's misrepresentations. Initially, therefore, there is a very close and purposeful relationship between the tax preparer and his clients.

In contrast, banks and oil companies are neutral third parties, affected by the IRS investigation and subpoena only because of the actual cost to them of compliance with the subpoena. They have not purposely involved themselves with the question of their depositors' or lessors' tax liability, and they have no responsibility to the IRS or to the taxpayer for that liability. They are burdened by IRS requests not through any action or fault of their own, but only because they provide a ready repository of financial information about individual taxpayers. Thus the relationship of the third-party object of the subpoena to the taxpayer or to the IRS would affect application of a balancing test of probable liability against burden to the third party.[129] The close relationship of the tax preparer to his clients' tax liability and the voluntary nature of his undertaking make the burden on the commercial tax preparer less than the burden on a bank or other innocent third party to produce the same documents.

In determining the burden, a court should look at the volume of documents involved. Assuming a low volume and little or no burden on the party's other customers, the order could reasonably be enforced.[130] But if the cost were significant or if the disruption of

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[127] *See* text accompanying notes 69-71 *supra*.

[128] INT. REV. CODE OF 1954, § 7206(2).

[129] At least one court has suggested that the government be held to a higher standard where there is no indication of evasion on the part of the burdened party. *See* United States v. Matras, 487 F.2d 1271, 1275 (8th Cir. 1973). In fact this reasoning may have played a part in the inscrutable *Theodore* decision. The court, though abhorring the idea that the IRS was attempting to "police the accounting profession," 479 F.2d at 754, had no difficulty in authorizing the turning over of a list of clients' names so that the IRS could effectuate the same purpose from its own records. *Id.* at 755.

[130] The burden is on the third party to prove the subpoena too burdensome. *See, e.g.*, United States v. Humble Oil & Ref. Co., 488 F.2d 953, 957 n.8 (5th Cir. 1974), *vacated and remanded*, 95 S. Ct. 1670 (1975).

normal activities interferes with customers other than those who might have possible liability, a court might well decide that the probability that the IRS would discover any tax liability was too small to justify the cost of ferreting out the documents. *Bisceglia* would be enforceable under this standard since there was sufficient likelihood of liability in that case to overcome the inconvenience to the bank.

Social as well as financial costs should be considered, for a burden may fall on third parties other than the object of the subpoena. Subpoenaing names of a doctor's patients in order to examine them and their returns to assist in determining the doctor's income is an invasion of patients' privacy out of all proportion to the importance of the doctor's tax liability.[131] Third parties should not have their privacy invaded for the convenience of the IRS. Again, it is worth noting that the purpose of IRS subpoenas is to aid in determinations of liability, not to gather financial data, even if tax-related. The absence of a particular taxpayer under investigation makes it especially important that the court assure itself of a legitimate probability of liability, even if the third-party burden is light. If the IRS cannot show that the possibility of outstanding liability exceeds the interference with third parties, the existence of a valid tax investigation must be questioned.

Thus tests exist, short of permitting enforcement of all such subpoenas, which may be used to limit the IRS in its subpoenas to third parties concerning unknown taxpayer liability. Either balancing the third-party burden with the probability of liability, or requiring some probability that an individual is indeed liable for unpaid taxes, provides a means to measure the concreteness of the Service's interest in a particular suspected case of tax liability and to distinguish those requests which are relatively frivolous. Since both approaches would permit enforcement in the tax-preparer cases as well as in those other instances in which outstanding tax liability is most likely to exist, they do not conflict with the important and oft-stated policy of revenue collection, while providing some protection to individuals and third-party businesses involved with the IRS as well as to the general public.

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[131] Although expressly denying a doctor-patient privilege in *Williams*, Judge Motley recognized the peculiar nature of the burden on the patients in having to disclose the times and number of their visits to a practicing psychologist. United States v. Williams, 337 F. Supp. 1114, 1116 (S.D.N.Y. 1971), *appeal dismissed and judgment vacated as moot*, 486 F.2d 1397 (2d Cir. 1972).

V

CONCLUSION

In a country with an annual federal government budget in excess of 274 billion dollars,[132] emphasis on the policy of revenue collection has taken the IRS far. This Note has examined the inadequacy of constitutional limitations on section 7602 John Doe subpoenas to third parties in the absence of patent burdensomeness, and the expansion of IRS authority in the Court's decision in *Bisceglia*. Since the Court did not provide any guidelines for lower court determinations of what constitutes a valid investigation in the absence of a known taxpayer, there will undoubtedly be a variety of standards applied. Courts will, at best, make their determinations on a case-to-case basis, enforcing subpoenas when revenue collection is most likely to be affected (such as in the tax-preparer litigation) and quashing them when it appears that the IRS is simply rummaging. The goal of revenue collection should not impinge further than this on freedom from governmental curiosity. Section 7602 should not be construed to confer upon the IRS the right to browse.

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[132] BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1974, at 222.

Department of Justice

TESTIMONY

OF

SCOTT P. CRAMPTON
ASSISTANT ATTORNEY GENERAL
TAX DIVISION
DEPARTMENT OF JUSTICE

ON

SECTION 1205 of H. R. 10612

ADMINISTRATIVE SUMMONS PROVISION
OF THE TAX REFORM BILL OF 1976

BEFORE

THE SENATE COMMITTEE ON FINANCE

July 22, 1976

My name is Scott P. Crampton and I am Assistant Attorney General in charge of the Tax Division, Department of Justice. We welcome the opportunity to present the views of the Department of Justice on Section 1205 of the Tax Reform Bill of 1976 captioned "Administrative Summons." This section would amend the Internal Revenue Code of 1954 by redesignating Section 7609 as 7611 and inserting new Sections 7609 and 7610. Proposed Section 7609 is entitled "Special Procedures for Third-Party Summonses" and proposed Section 7610 would provide for fees and costs of witnesses in these new procedures. We believe this proposal, if enacted, would seriously interfere with the enforcement of the tax laws, particularly in the organized crime and white-collar crime areas, and further overburden the federal judicial system.

In principal part and with certain exceptions, Section 1205 of the bill would require notice to the person, usually the taxpayer and hereinafter referred to as such, identified in a summons issued to a third-party record keeper by the Internal Revenue Service. The taxpayer would be given 14 days within which to notify the record keeper not to comply with the summons. Once the taxpayer thus barred compliance, the Government could only obtain enforcement through a court proceeding in which the taxpayer would have a right to intervene and to litigate the matter. A summons to require testimony relating to records would be treated as a summons to produce records. The civil and criminal statutes of limitations would

be suspended during the period of such court action, including appeals, if the person barring compliance is the taxpayer. A John Doe summons could only be served after a court proceeding.

Under present law, a taxpayer or third party cannot intervene in a summons enforcement proceeding unless he has a legally protectable interest. Reisman v. Caplin, 375 U.S. 440 (1964). However, in Donaldson, et al. v. United States, 400 U.S. 517 (1971), the Supreme Court said this meant a significantly protectable interest. In that case, the Court held against the taxpayer because he had no "proprietary interest" in the records sought and they were not protected by an attorney-client or other legally recognized privilege. It is worth noting at this point that, although the district court had denied the intervention of the taxpayer in Donaldson, stays were granted pending appeal; that the summonses were issued on September 12 and 13, 1968, with respect to tax liabilities for 1964 through 1967, inclusive, and that the date of the Supreme Court's opinion was January 25, 1971, or some two years and four months after issuance of the summonses. In this context, one can understand the concern the Supreme Court expressed by saying that to allow the taxpayer to intervene in such case would "stultify the Service's every investigatory move" (p. 531). We completely agree and believe that the word "stultify" was used in the dictionary sense: "to impair, invalidate, or reduce to futility."

As the Supreme Court pointed out in Donaldson, the statute (Section 7601, Internal Revenue Code of 1954) imposing the duty on Treasury Department officers to "proceed . . . and to inquire after and concerning" all persons "who may be liable to pay any internal revenue tax" has its roots in the first modern general income tax act, the Tariff Act of October 3, 1913, Sec. II, 38 Stat. 178, and, beyond that, in Section 3122 of the Revised Statutes of 1874. Thus, the express requirement that the Secretary or his delegates go to third-party sources to "canvass and to inquire," as the Supreme Court put it (p. 523, supra), is an historical procedure. The implied requirement or practice probably goes back to the beginning of the country. Never was it considered that a taxpayer could or should have the right to prevent this except where he had some legally protectable right in or to the papers at issue. As the late Justice Douglas put it in his concurring opinion in Donaldson, "it is difficult to see how the summoning of a third party, and the records of a third party, can violate the rights of the taxpayer."

Thus, the proposal would create a completely new legal right, which, we believe, would be used to frustrate fair and uniform enforcement of the revenue laws. Existing law is a necessary adjunct to the self-assessment system. Many millions of taxpayers are subject to withholding. Declarations of their

incomes and the taxes withheld and paid over are routinely submitted to the Government by their employers as required by law. Their incomes are known and their ability to reduce their taxes is limited. Therefore, the proposed section would benefit, primarily, those taxpayers the major part of whose income is not subject to withholding. Congress has recognized that they may not always comply and has enacted criminal sanctions for any person who willfully fails to keep any records or supply any information required by the statutes or the regulations thereunder (Section 7203, Title 26, U.S.C.). However, the Government cannot compel an individual to produce those records against a claim of self-incrimination under the Fifth Amendment. When the individual taxpayer fails to keep records or fails to produce or falsifies the records he has kept, the Government must go to third-party sources to determine the tax liability. Even under existing law, this is not something the Internal Revenue Service undertakes, other than as a last resort, for it is a tedious, time-consuming, and expensive process to reconstruct the income and the tax of an individual or corporation by third-party sources. In fairness to all other taxpayers, however, it is a statutory duty that must be carried out. But it is the breakdown, or alleged breakdown, of the self-assessment system that renders it necessary.

Apparently, the right to privacy is the principal consideration underlying this proposal; yet it would confer this right only on the person named in the summons. The necessity for this highly selective grant of a right to privacy was recognized in the Report of the Senate Finance Committee, fn. 3, p. 369, in the CCH Report, No. 28, dated June 16, 1976, where it is stated:

> Of course, the Service would not be required to send a notice to each person to whom the X corporation wrote a check during the period under examination; not only would this be impossible administratively, but the identity of these persons would not even be known by the Service until the records had been examined.

It might be questioned why the "privacy" of "X corporation" should be respected and that of the thousands of persons having transactions with it not be? And what about the privacy of other individuals in multi-party transactions, not named in the summons, whose status and interest in the records are identical to that of the one who is named? Therefore, it is highly likely that persons other than those named in the summons would attempt to intervene. It could be questioned whether the proposal offers equal protection of the laws to persons whose interests in a record are identical. A court conceivably could permit such persons to intervene.

The foregoing illustrates, and the Report of the Senate Finance Committee concedes, that it is not administratively possible to give equal protection to the "privacy" of all persons involved in commercial transactions. Thus, the effect of this provision would, primarily, be to protect the "privacy" of the individuals who had not complied with the requirements of the self-assessment system. It is true that, occasionally, what appear on their face to be adequate records are checked by reference to third-party sources. This is because, as the Supreme Court said in Holland v. United States, 348 U.S. 121 (1954), p. 132, some records are "more consistent than truthful" and Congress never intended a "set of blinders which prevents the Government from looking beyond the self-serving declarations in a taxpayer's books." It is important, then, to emphasize just whose "privacy" is being protected by this proposal. If neither the record keeper nor the taxpayer objects to the summons, the transactions of hundreds or even thousands of other individuals may be laid bare. Therefore, unlike the historically recognized privileges, there is no uniform standard for the proposed selectivity of persons whose privacy is to be legally protected. There is only the common denominator of being listed on a summons.

Aside from the unfairness of this provision to the millions of taxpayers who fully comply with the law and the highly selective "privacy" that would be protected, we have the following specific objections to the proposal:

1. The delays resulting from taxpayer intervention could effectively frustrate efforts of the Internal Revenue Service to reconstruct income and tax by resort to third-party records. Of the approximately 500 Special Agent summons cases handled by the Tax Division each year, it is most often some special relationship between the taxpayer and the record keeper that accounts for the failure of the latter to comply. If taxpayers are allowed to intervene of right, it could very well take two years for the agents to obtain the records of the first bank and the number of summons enforcement proceedings would only be limited by the number of record keepers involved, most of whom may not even be known until after the records of the first are obtained.

2. The already overburdened courts, in which some 1,100 summons enforcement cases are currently being brought (about 500 Special Agent summons cases and 600 Revenue Agent summons cases), would be further swamped at a time when the Speedy Trial Act means that criminal trials will be occupying more of the courts' time. It would mean substantial increases in the number

of agents and the number of lawyers handling such cases. A prime consideration would then be whether the investigation was administratively feasible. The areas most affected would be the organized crime and white-collar crime drives, because those categories of taxpayers have developed delay and non-compliance to a fine art. This proposal would further the process of turning the district courts into administrative tribunals.

Although the statute of limitations would not run when the taxpayer intervened, it would continue to run when the person named in the summons was the nominee of the taxpayer. This is commonly the case (the use of nominees) as to organized and white-collar crime figures. As stated earier, it is possible that the courts would permit intervention of persons with identical relationships to the records at issue. If the taxpayer did not intervene, the statute of limitations would run. And, there is, of course, the problem that the statute would be running when the record keeper is contesting the summons alone.

4. There would probably be motions to suppress evidence in subsequent proceedings on the ground that there had been some failure on the part of the Government to comply with some aspect of this proposal.

Although we object to the subject proposals, we wish to assure you, Mr. Chairman, that we have a sincere concern with the privacy of individuals. In the sustained effort to comply with the Freedom of Information Act on the one hand and the Privacy Act on the other hand, we are constantly on guard against an inadvertent disclosure that would provide information to one at the expense of the privacy of another. We literally have to make a line-by-line, paragraph-by-paragraph analysis of many documents; and, because of the complex nature of the areas of law we administer, sometimes it takes an experienced tax lawyer to determine what should be turned over and what should be withheld. Knowledgeable defense counsel are now inundating us with requests under these two acts as discovery weapons in current criminal tax cases, including those under investigation by grand juries. This has increased the strain on our limited manpower resources, particularly on our trial attorneys, since the attorney handling the case must, of course, be consulted concerning the documents involved which may range in the thousands. In other words, F.O.I. and Privacy Act provisions are being used effectively and with resulting delay of criminal justice, both at the administrative and subsequent stages. We foresee the proposal here providing another vehicle for the same result at the investigative stage.

Although we disagree with other aspects of the proposal, we think it may be advisable to have a statutory requirement of notice to a taxpayer that the Internal Revenue Service may be serving summonses on third parties. As noted earlier, there are circumstances when the taxpayer does have a right to intervene under the Reisman and Donaldson decisions of the Supreme Court. A notice was suggested by a committee of the Section of Taxation, A. B. A., see 26 The Tax Lawyer 591, in which the Committee on Civil and Criminal Tax Penalties discussed studying the advisability of registers in each Internal Revenue Service District or Federal Judicial District where such summons would be listed. We think it may be preferable to give the taxpayer notice directly rather than to make a public record at the investigative stage. This notice provides the taxpayer with a last opportunity to substantiate the items on his returns and, thus, to obviate the necessity (in most instances) for a summons. The taxpayer is then in the best position to safeguard his own privacy.

The following examples illustrate our concern about this provision as a means for delay:

1. Taxpayer is in an illegal business and refuses to substantiate the items on his returns. As direct evidence of specific items of income is unavailable, the Government undertakes to reconstruct his taxable income by the net worth method (see

Holland v. United States, supra). A summons is issued to his only known bank (bank A); he intervenes in the ensuing court proceeding, and it takes from a year to eighteen months to gain access to the records of that bank. In going over the records of that bank, leads to banks or brokerage accounts B, C, and D are obtained, and it appears that property is held for him in the names of nominees. If only nominees intervene in summons proceedings, the statute of limitations is not suspended. At any rate, each proceeding, which could take from one to two years, results in the discovery of leads to additional record keepers, and so on. Obviously, if taxpayer has dealt with multiple institutions which become known through this unraveling process, it may not be feasible at all to develop this type case. Had this proposal been the law, many of the famous net worth cases on prominent racketeers probably could never have been made. See, e.g., Costello v. United States, 350 U. S. 359 (1956).

2. In an audit of Contractor Jones, a revenue agent obtains documentary evidence, which Jones corroborates, of a bribe paid to Federal Procurement Officer Smith. Smith's return is audited to see if he reported the item. There are items on Smith's return which could include the bribe. Smith refuses to furnish his records from which the reported items may be checked; third-party summons are issued, and Smith intervenes. The

agents foresee a year, or perhaps years, of litigation. In the meantime, the Title 18, U.S.C., offense has been referred to the Federal Bureau of Investigation and is soon ready for the grand jury. The alternatives, then, are: (1) to proceed with the Title 18 offense without the Title 26 offense, or (2) to investigate the Title 26 offense by grand jury. The result of the first choice is to weaken the case and to divide offenses which should be joined; the second choice bypasses the careful review process which is essential to uniform enforcement of the revenue laws. Often it is not a simple process to determine whether an item is or is not on a return: considerable investigation and expertise in tax law may be required.

In summary and in conclusion: This proposal would hamstring the investigative procedures of the Internal Revenue Service. It would require large manpower resources in the Internal Revenue Service, in the Tax Division, and in the Offices of the United States Attorneys. It would further overburden the Federal court system. And, most importantly, it would afford procedures whereby those who would thwart the self-assessment system could do so with impunity. Thank you, again, for permitting us to present the view of the Department of Justice on this matter.

Drug-Law Enforcement: Should We Arrest Pushers or Users?

Any society wishing to reduce the consumption of an "undesirable" item, such as illegal drugs, has available two general strategies: reducing demand, by harassing buyers, or reducing supply, by harassing sellers. Law enforcement agencies in the United States, presumably with the approval of the voting public, seem to have opted largely for the latter strategy ("we're not really interested in users; we want the pushers"), and yet ex-addict William S. Burroughs (1966, p. xl) advises: "If we wish to annihilate the junk pyramid, we must start with the bottom of the pyramid: *the Addict in the Street*, and stop tilting quixotically for the 'higher ups' so called, all of whom are immediately replaceable" (italics in original). This note will consider what is involved in choosing between these two strategies and will argue that the United States has chosen to emphasize the strategy which, for a given enforcement expenditure, (1) probably has the smaller effect upon drug consumption, (2) seems likely to increase crime rates by addicts, making enforcement of other laws more difficult, and (3) seems more likely to corrupt police. That something is wrong with our strategy seems clear enough. The Government Accounting Office recently concluded from a year-long investigation that traffic in heroin is too big to stop at United States borders (*New York Times*, December 13, 1972, p. 31). In some ways even more disturbing, however, was the recent announcement that about one-fifth of the heroin and cocaine seized in New York City over the past 12 years has been stolen from the police department (*New York Times*, February 1, 1973, p. 1).

The economics of drug law enforcement is similar to that of sales taxes. As is well known, who "pays" such a tax and its effects upon price and quantity depend upon the slopes of the demand-and-supply curves as well as upon the content of the law. The law determines whether the buyer or the seller shall act as the state's "collection agent," in the case of sales taxes. Since punishment for violating drug laws is usually at least partly

nonpecuniary, taking the form of jail time, social disgrace, and other inconveniences, the content of drug laws, together with police enforcement decisions, determines upon whom these nonpecuniary costs shall fall as well as upon whom the initial burden of pecuniary "taxes" (the expected value of fines, legal fees, etc.) shall fall. If sale is prohibited and purchase not (by law, or de facto, by police decisions within the constraints of limited enforcement resources), the tax will fall initially upon sellers, who will convert the resulting pecuniary and nonpecuniary costs into a pecuniary increase in supply price to buyers. Likewise, buyers will convert pecuniary and nonpecuniary inconveniences arising from police harassment into a pecuniary decline in demand price to sellers. As is true with sales taxes, a given shift in demand relative to supply will result in the same effect upon consumption, regardless of whether the shift is in demand or supply. Presumably, sales taxes are usually levied upon sellers because of lower enforcement and collection costs; a given amount of enforcement effort will produce more net revenue if directed at sellers. With sales taxes, we would wish to arrange collections so as to shift demand relative to supply as little as possible for a given tax rate.

With drug laws, on the other hand, the goal is not to collect revenue but to discourage consumption, and we would wish to arrange laws and enforcement procedures so as to shift demand relative to supply as much as possible. Whether we would wish to impose the "tax" initially upon sellers or buyers depends upon which arrangement we would expect to result in a greater shift in demand relative to supply. This, in turn, would seem to depend mostly upon whether buyers or sellers are more efficient in converting the inconveniences of dealing with fines or nonpecuniary punishments such as jail sentences, social disgrace, etc., into pecuniary shifts in supply or demand. The more efficient the conversion, the smaller the shift a given amount of harassment will produce. It seems likely that sellers would have the advantage over buyers in making this conversion, since opportunities for specialization should attract to the drug-selling trade individuals who are peculiarly suited for it. If the law requires that sellers occasionally cope with fines, jail sentences, and resulting social disapproval, we should expect successful drug dealers to be those who have the lowest supply prices for these services or are most adept at avoiding them. Presumably, the successful practitioners of any trade are largely distinguished by their ability to convert pecuniary and nonpecuniary costs into small pecuniary prices; there is no obvious reason why drug dealers should be an exception. In addition, specialization by drug dealers makes investment in devices for reducing the impact of enforcement (knowledge of whom to bribe to avoid arrest, which lawyers to hire to avoid conviction, etc.) more remunerative. Finally, possibilities for entering the drug-selling trade will tend to make seller harassment less effective. A buyer jailed means one buyer less for the duration of the

sentence; a seller jailed may simply mean fresh opportunity for a hopeful entrant.

Empirical evidence on the effects upon consumption of buyer harassment versus seller harassment is extremely difficult to obtain, but the meager evidence available seems to indicate that decreases in the effective penalty on buyers does lead to marked increases in consumption. Wheat (1972) found that in Boston the expected costs of arrest to a user (defined as probability of arrest times probability of being sentenced to prison times average prison sentence) declined sharply between 1961 and 1970, while the estimated number of addicts in Boston increased by a factor of about 10. During the British experiment with decriminalizing heroin use and allowing physicians to prescribe heroin as they wished, addiction increased so greatly that the practice was abandoned in 1968.

A second point to consider in choosing a drug-law enforcement strategy is the effect upon the pecuniary drug price. Clearly, reducing supply will raise the price; reducing demand will lower it. In effect, reducing supply imposes an income tax upon those with highly inelastic demand ("addicts"?). Simon Rottenberg (1968, p. 87 n.) claims that the price of a gram of heroin rises from $0.05 in Turkey to $295 retail in Chicago. Since much of this price increase is due to enforcement of drug laws, the implicit income tax upon addicts resulting from seller harassment is substantial. Adding to the troubles of these unfortunates is a perhaps regrettable concomitant of reducing drug consumption. However, much of the income tax imposed upon addicts by current enforcement strategy seems to be shifted onto others by theft and other addict crimes. Estimates of the proportion of property crimes committed by addicts range from about one-fourth to two-thirds (Erickson 1969, p. 485; Wilson, Moore, and Wheat 1972, p. 12). This heavy tax upon innocent bystanders has no obvious social function and could be largely avoided by concentrating enforcement effort upon users, reducing demand and the pecuniary price of drugs. In effect, by shifting to such a policy we would be exchanging the current pecuniary tax upon addicts, which they easily shift onto innocent bystanders, for a largely nonpecuniary tax, which they could not easily shift onto anyone except drug sellers.

Becker (1968, pp. 193–98) has argued convincingly in favor of fines for criminal offenses whenever feasible. Indeed, given the current strategy of concentrating on sellers, it would seem that a given amount of enforcement cost would have more effect upon drug traffic if expenditure currently used to maintain in prison those already arrested and convicted were diverted to making more frequent arrests or obtaining more convictions once arrests are made. However, fines for drug users would seem as likely to increase property crime rates as the current seller-harassment strategy, since they result in an increase in the pecuniary price of drugs to addicts. Nonpecuniary punishment of users is not so easy to shift onto others and

also has the advantage of giving the community a mechanism for encouraging users to seek rehabilitation. Some authorities have claimed that many addicts will not seek rehabilitation without some measure of compulsion (Wilson et al. 1972, pp. 20, 25, 27; see also statements by Dr. Herbert D. Kleber of the Connecticut Mental Health Center reported by the *New York Times*, April 27, 1973, p. 39).

Perhaps the most serious flaw of a policy of harassing drug sellers is that it lays the basis for a cooperative relationship between drug sellers and the police. The gains from collusion in an industry are known to be greater the smaller the elasticity of demand, the greater the elasticity of marginal costs, and the smaller the costs of enforcing the collusion (Becker 1968, pp. 205–7). It is widely believed that the elasticity of demand for hard drugs is very small (at least in the short run). The elasticity of marginal costs is presumably very large. Thus, the gains from collusion would be large if colluding sellers could obtain cheap means of enforcing collusion and of preventing entry into the industry. Enforcement policies directed against sellers furnish just that. Schelling (1967, pp. 119, 124–25) cited evidence that the Miami wire service syndicate "relied heavily upon the police as their favorite instrument of intimidation." Drug laws directed against sellers make this instrument available to colluding sellers for use against price cutters and potential entrants. One way to view police policies of harassing sellers is as establishing a nonpecuniary "license fee." Those who are relatively efficient in converting arrest and other harassment into pecuniary terms will "pay the fee" and sell; others will be barred from the trade. The sellers who succeed have an interest in enforcement of the law to prevent entry by others. Both sellers and enforcement officials, however, have an interest in converting the license fee into terms other than harassment and arrest. One possibility is to convert it into pecuniary (and illegal) bribes for police inaction, which raises ominous possibilities as to the types of people who will seek police work in the long run. But colluding sellers may purchase police inaction by furnishing information on other criminal activity or by rendering other quite legal services to the police. In this way, the police could avoid illegal and antisocial behavior. Indeed, they could simultaneously serve their social mandate of reducing drug consumption and serve the interests of the colluding sellers by preventing individual members of the collusion from increasing their sales at the expense of other members and preventing new entrants from competing with established sellers.

Thus, enforcement strategy directed against drug sellers tends to enhance a natural accord between illegal business firms and the police based upon their common interest in civil order. After visiting Harlem in May 1968, Harry McPherson (1972, p. 371) reported hearing of a conversation between Rap Brown and a Harlem rackets boss. Brown

had made a strong speech. The boss told him: "I agree with a lot of what you said. Except I don't want any riots. I've got to raise $60,000 to buy off some people downtown on a narcotics rap. I can't do that if there's a riot. You start a riot and I'll kill you." Brown is rumored to have left town the next day.

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NOTES

CRIMINAL TAX FRAUD INVESTIGATIONS: LIMITATIONS ON THE SCOPE OF THE SECTION 7602 SUMMONS*

Although every individual is subject to examination by the Internal Revenue Service concerning the correct payment of any federal tax, few realize the danger of criminal prosecution in such an investigation. By relinquishing his tax records to an Internal Revenue agent or assisting in a review of such records a taxpayer may reveal sufficient evidence to support a criminal prosecution. Although this threat of criminal sanction always exists, constitutional protections normally extended to an accused have generally been denied in tax investigations because the examination is deemed both "civil" and "criminal" in nature.

Since the examination is considered civil, the courts have consistently permitted use of an administrative summons to gather evidence in furtherance of the investigation.[1] The taxpayer who will not voluntarily produce records for examination may be compelled by the Service to relinquish records that may lead to criminal conviction.[2] In recent years, however, the United States Supreme Court has emphasized that criminal investigations must be conducted with a sense of fair play, and the use of the administrative process to aid in criminal investigations will be closely scrutinized.[3] Since the hybrid civil-criminal nature of tax examinations invites abuse of the administrative summons, commentators and some courts have urged tighter controls on the Service's inquisitorial investigations.[4] However, the issuance of a summons has been used with increasing frequency by the Service to gather evidence for use in criminal prosecution, or to determine whether criminal action should be initiated against the taxpayer. This note will discuss the Internal Revenue Service's summons power and examine the grounds upon which the taxpayer may challenge the issuance and enforcement of a section 7602 summons.

INTERNAL REVENUE SERVICE SUMMONS POWER AND PROCEDURE

The Internal Revenue Service is empowered to summon any books, papers, records, or other relevant data in order to: (1) ascertain the correctness of any return, (2) make a return where none has been made, (3) determine the liability of any person for any Internal Revenue tax, and (4) collect any

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1. *See* United States v. Mothe, 303 F. Supp. 1366 (E.D. La. 1969) and cases cited therein.

2. INT. REV. CODE OF 1954, §7602 (1); *see* note 5 *infra*.

3. *See, e.g.*, Camara v. Municipal Court, 387 U.S. 323 (1967); Abel v. United States, 362 U.S. 217 (1960).

4. *E.g.*, United States v. Ruggeiro, 300 F. Supp. 968, 974-75 (C.D. Cal. 1969); *see, e.g.*, Andres, *The Right To Counsel in Criminal Tax Investigations Under* Escobedo *and*

such liability.[5] Although the Service possesses this seemingly pervasive power to summon an individual's records, the power is seldom utilized during a routine audit.[6] When a taxpayer is selected for audit he is first contacted by a revenue agent whose duty is merely to determine the taxpayer's correct tax liability. The taxpayer is usually willing to cooperate because he feels such cooperation will lead to a favorable settlement. Since less than three-tenths of one per cent of all audited returns advance beyond the civil deficiency state,[7] he may be correct in his assumption. If the taxpayer were aware of the potential criminal prosecutions that may result from this examination, however, he might not relinquish his private records so willingly.

In addition to this unawareness of potential criminal prosecution, few taxpayers realize the distinction between a revenue agent and a special agent, or the change that has occurred in the nature of an investigation in which a special agent is participating. A revenue agent is not empowered to investigate criminal tax fraud. If his examination reveals evidence of fraud, he must suspend the examination and refer the matter to the Service's Intelligence Division.[8] Upon referral a special agent is assigned to make a preliminary investigation,[9] which in most cases results in a determination that further action is not justified.[10] However, if a full-scale investigation is deemed necessary it is conducted jointly by a special agent and a revenue agent. The revenue agent is responsible for determining the correct civil liability and the special agent coordinates the investigation and development of evidence to

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Miranda: *The "Critical Stage,"* 53 IOWA L. REV. 1074 (1968); Duke, *Prosecutions for Attempts To Evade Income Tax: A Discordant View of a Procedural Hybrid,* 76 YALE L.J. 1 (1966); Hewitt, *The Constitutional Rights of the Taxpayer in a Fraud Investigation,* 44 TAXES 660 (1966); Note, *Extending* Miranda *to Administrative Investigations,* 56 VA. L. REV. 690 (1970).

5. INT. REV. CODE OF 1954, §7602 (1).

6. *See* B. GEORGE, DEFENDING TAX FRAUD PROSECUTIONS 42 (1970). "The policy of the Service respecting the issuance of a summons by special agents is very specific. First, all testimony, records, etc. should be obtained on a voluntary basis, if possible. Secondly, a summons should be used very sparingly—only when absolutely necessary and only when enforcement action will be taken in the event the summons is not honored."

7. Duke, *supra* note 4, at 35.

8. *See* United States v. Ruggeiro, 300 F. Supp. 968 (C.D. Cal. 1969); United States v. Crespo, 281 F. Supp. 928 (D. Md. 1968); Lipton, *Constitutional Protection for Books and Records in Tax Fraud Investigations,* N.Y.U. 29TH INST. ON FED. TAX 948, 972 n.96 (1971); "If during an investigation the agent discovers what he believes to be an indication of fraud, he will immediately suspend his investigation . . . and report his findings in writing to the Chief of the Audit Division through his group supervisor . . . ."

9. *See* Statement of Organization and Functions, 30 Fed. Reg. 9399-9400 (July 28, 1965) promulgated by the Internal Revenue Service: "1118.6 Intelligence Division. The Intelligence Division enforces the criminal statutes applicable to income, estate, gift, employment, and excise tax laws . . . by developing information concerning alleged criminal violations thereof, evaluating allegations and indications of such violations to determine investigations to be undertaken, investigating suspected criminal violations of such laws, recommending prosecution when warranted, and measuring effectiveness of the investigation and prosecution processes."

10. In 1968 the Intelligence Division evaluated 123,000 information items and conducted 10,000 preliminary investigations; 2,900 full scale investigations resulted from the 10,000 preliminary investigations. B. GEORGE, *supra* note 6, at 65.

permit an informed decision on whether criminal prosecution should be recommended.[11]

During any of these stages of investigation, whether it is the routine audit, the preliminary investigation by the Intelligence Division, or the full-scale joint investigation, the agents may issue a summons requiring the taxpayer to produce his books, papers, records, and any other relevant materials.[12]

Procedure for Objecting to a Section 7602 Summons

It is not mandatory that a taxpayer comply with a section 7602 summons, but he is precluded from seeking pre-enforcement relief.[13] Instead, he must appear at the time and place of the scheduled examination,[14] and may then object to the validity of the summons and refuse to divulge the summoned information.[15] In *Reisman v. Caplin*[16] taxpayer's attorneys sought declaratory and injunctive relief from a summons issued to taxpayer's accounting firm to produce all audit reports, work papers, and correspondence pertaining to taxpayer's business interest. The Court concluded an adequate remedy existed at law and dismissed the suit for want of equity.[17] However, the Court did establish procedures to be followed in objecting to such a summons,[18] and stated a good faith refusal to comply may be asserted without incurring risk of sanction for noncompliance.[19] Upon such refusal the Service must make application to the district court for enforcement.[20] The enforcement proceeding provides the taxpayer with an appealable judicial determination of the validity of the summons.[21]

11. *See* B. GEORGE, *supra* note 6, at 33.

12. INT. REV. CODE OF 1954, §7602 (2).

13. Reisman v. Caplin, 376 U.S. 440 (1964).

14. "The time and place of examination . . . shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances . . . . [T]he date fixed for appearance . . . shall not be less than 10 days from the date of the summons." INT. REV. CODE OF 1954, §7605 (a).

15. Reisman v. Caplin, 375 U.S. 440 (1964).

16. *Id.*

17. *Id.* at 443.

18. A person summoned must appear at the time and place specified and may then interpose challenges to the summons' validity. If the challenges are rejected by the hearing officer and the witness still refuses to testify or produce, the examiner is given no power to enforce compliance or to impose sanction for non-compliance. However, if the person summoned fails "to appear or produce," he is subject to fine or imprisonment or both under §7210. Prosecution under §7210 may not be maintained, however, if the person appears and interposes good faith challenges to the summons.

If the Service wishes to enforce the summons, it must proceed under §7402 (b), granting jurisdiction to the district courts to compel testimony or production. In the enforcement proceeding, only a refusal to comply with an order of the district judge subjects the person to contempt proceedings. Reisman v. Caplin, 375 U.S. 440, 445-47 (1964). *See* Bender, *The Implications of* Reisman v. Caplin *in Fraud Cases*, N.Y.U. 23D INST. ON FED. TAX. 1293 (1965).

19. Reisman v. Caplin, 375 U.S. 440, 447 (1964).

20. Enforcement may be sought under §§7402 (b), 7604 (a); Reisman v. Caplin, 375 U.S. 440, 445-46 (1964); INT. REV. CODE OF 1954, §§7402 (b), 7604 (a).

21. Reisman v. Caplin, 375 U.S., 440, 446 (1964).

A frequent problem in objecting to a section 7602 summons arises when the documents summoned are not within the taxpayer's possession or when a person other than the taxpayer is summoned. In such cases the taxpayer may challenge the validity of the summons only if he is permitted to intervene in the administrative process. The *Reisman* Court held that if a third-party witness indicates an intention to comply with a summons, the taxpayer may intervene and raise the same objections to the validity of the summons as if it were directed to himself.[22]

In *Donaldson v. United States*,[23] however, the Court held the right of intervention in such cases is only permissive, not mandatory,[24] despite the taxpayer's contention that Federal Rule of Civil Procedure 24(a)(2)[25] granted intervention as a matter of right. The rule implies those having an interest relating to the property that is the subject of the action may intervene. The Court, however, said the phrase "an interest relating to the property" refers to a "significantly protectable interest" and such interest was not present in the case *sub judice*.[26] Although the term "significantly protectable interest" was not explicitly defined, the Court said such an interest might exist by way of privilege, or to the extent "abuse of process" exists.[27] Intervention is thus precluded unless the intervenor can show the records summoned are

22. *Id.* at 450.

23. 400 U.S. 517 (1971).

24. In *Reisman* the Court had stated: "[T]hat both parties summoned and those affected by a disclosure may appear or intervene before the District Court and challenge the summons by asserting their constitutional or other claims." Reisman v. Caplin, 375 U.S. 440, 445 (1964). While this language would seem to grant taxpayer intervention as a matter of right, Justice Blackmun, speaking for the *Donaldson* court, interpreted it as permissive only and left the question of intervention to the discretion of the district court. Donaldson v. United States, 400 U.S. 517, 529 (1971).

Three circuits had interpreted *Reisman* as giving a taxpayer the right of intervention simply because it is his tax liability that is the subject of the summons. United States v. Benford, 406 F.2d 1192, 1194 (7th Cir. 1969); United States v. Bank of Commerce, 405 F.2d 931, 933 (3d Cir. 1969); Justice v. United States, 365 F.2d 312, 314 (6th Cir. 1966). The Supreme Court, however, agreed with the opposite conclusion reached by the First, Second, and Fifth Circuits. United States v. Donaldson, 418 F.2d 1213, 1218 (5th Cir. 1969); O'Donnell v. Sullivan, 364 F.2d 43, 44 (1st Cir.), *cert. denied*, 382 U.S. 969 (1966); *In re* Cole, 342 F.2d 5, 7-8 (2d Cir.), *cert. denied*, 381 U.S.. 950 (1965).

25. FED. R. CIV. P. 24(a)(2) states: "(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action; (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

26. Donaldson v. United States, 400 U.S. 517, 531 (1971). The Court apparently concedes that a literal reading of rule 24(a)(2) would give taxpayer the right to intervene, since it relies on rule 81(a)(3) to limit the application of rule 24(a)(2). *Id.* at 528. "Rule 81. Applicability in General (a) To what proceedings available (3) . . . . These rules apply to proceedings to compel the giving of testimony or production of documents in accordance with a subpoena issued . . . by an agency of the United States . . . except as otherwise provided by statute or by rules of the district court or by order of the court in the proceedings." FED. R. CIV. P. 81(a)(3).

27. Donaldson v. United States, 400 U.S. 517, 531 (1971).

within his fifth amendment privilege, subject to the attorney-client privilege or that the court's process has been abused.[28] The Court further indicated its disapproval of liberal intervention, stating the taxpayer may always assert these interests in due course at their "proper place in any subsequent trial."[29]

A contrary holding would have allowed the taxpayer to intervene on all summonses issued to third parties and appeal each court's decision. The Court felt liberal intervention would be devastating to the Service's collection of the revenue. Subsequent decisions indicate intervention will seldom be granted and the *Donaldson* rationale will be followed.[30] Since a summons is usually issued only when criminal fraud is suspected, however, it would not seem burdensome in light of the potential penalties to allow the taxpayer to intervene to protect his interests.

Limitations on Issuance of a Section 7602 Summons

Although literally section 7602 appears to encompass every taxpayer and any of his records, other provisions of the Internal Revenue Code limit its scope to some degree. Additionally, the summons power is always subordinate to the taxpayer's constitutional guarantees. Furthermore, courts have placed restrictions upon the use of a 7602 summons when it will apparently be used solely to gather evidence for use in a criminal prosecution.

Statutory Limitations

Despite the broad purposes for which the Service may issue a summons pursuant to section 7602,[31] Congress has placed certain restrictions upon both the time and the reasons a summons may be issued. Section 7605 (b) of the Internal Revenue Code provides that no taxpayer is to be subject to unnecessary examination or investigation, allowing only one examination for each taxable year unless an authorized Internal Revenue officer notifies the taxpayer in writing that an additional inspection is necessary.[32] The scope of the "one examination" limitation is uncertain and has often required judicial determination. For example, subsequent visits are not considered second examinations if at the first visit the taxpayer did not furnish all the records necessary to complete the examination.[33] Also, if the investigation is classified

28. In *Donaldson* the documents summoned were those of the taxpayer's former employers. Although the documents concededly were of significance for federal income tax purposes, they were not within either the taxpayer's fifth amendment privilege against self-incrimination or the attorney-client privilege. *Id.* at 530. Seemingly, the district courts will have to rule on whether the materials are privileged to determine whether the taxpayer will be allowed to intervene. Such a procedure will prevent the taxpayer from appealing adverse decisions on the privileged nature of the materials.

29. *Id.* at 531.

30. United States v. Newman, 441 F.2d 165 (5th Cir. 1971); United States v. White, 326 F. Supp. 459 (S.D. Tex. 1971).

31. Int. Rev. Code of 1954, §7602 (1).

32. Int. Rev. Code of 1954, §7605 (b).

33. United States v. Giordano, 419 F.2d 564 (8th Cir. 1969), *cert. denied*, 397 U.S. 1037 (1970) (on the first visit the taxpayer did not produce the accounts receivable, cash

as "continuing," additional inspections will not be considered second examinations requiring written notice.[34] In *United States v. Crespo*[35] investigation of taxpayer's books was being performed by two revenue agents. One agent had examined taxpayer's books and records sufficiently to complete his report for the taxable year ended March 31, 1963. The second agent, however, had not completed his reports for the years ended March 31, 1964, and March 31, 1965. The Court held that the examination was continuing for the years 1964 and 1965 and a subsequent inspection of these years would not amount to a second inspection within the meaning of section 7605 (b).[36]

If a second examination within the meaning of section 7605 (b) occurs, the taxpayer must make a timely objection to such examination or he will be deemed to have waived the requirement of written notice.[37] When a timely protest is entered, however, the court may either refuse to enforce a summons issued for a second examination or grant another appropriate remedy.[38] Since section 7605 (b) was designed to protect only the taxpayer from harassment by prolonged or repeated investigations, it does not apply to summonses issued to compel production of documents in the possession of a third person.[39] Thus, where a taxable year has been examined and closed and a deficiency assessed, further investigation may still be made of records in the hands of a third party.[40]

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disbursements, and other necessary underlying journals and documents. When the taxpayer's attorney notified the agent that such documents would not be produced, the agent issued summons requiring production of such documents); Application of Magnus, Mabee & Raynard, Inc., 299 F.2d 335 (2d Cir. 1962) (summons issued to third person after preliminary examination of taxpayer's records); *see* National Plate & Window Glass Co. v. United States, 254 F.2d 92 (2d Cir. 1958).

34. United States v. Crespo, 281 F. Supp. 928, 934 (D. Md. 1968).

35. *Id.*

36. *Id.* By implication, notice would have been required if the agents sought to further examine the books and records pertaining to the year ended March 31, 1963.

37. Lessman v. Commissioner, 327 F.2d 990, 996 (8th Cir. 1964); United States v. O'Conner, 237 F.2d 466, 477 (2d Cir. 1956).

38. Reineman v. United States, 301 F.2d 267 (7th Cir. 1962) (deficiency assessment was set aside, since discovered in violation of §7605 (b)); Application of Leonardo, 208 F. Supp. 124 (N.D. Cal. 1952) (suppressing evidence whether in the form of testimony by the agents or in the form of their notes and memoranda and restraining United States Attorney from using such evidence as the basis for any subsequent criminal tax prosecution).

39. Hall v. Commissioner, 406 F.2d 706 (5th Cir. 1969); United States v. Bank of Commerce, 405 F.2d 931 (3d Cir. 1969); United States v. Dawson, 400 F.2d 194 (2d Cir. 1968), *cert. denied*, 393 U.S. 1023 (1969); Hinchfield v. Clarke, 371 F.2d 697 (6th Cir.), *cert. denied*, 387 U.S. 941 (1967); Guerkink v. United States, 354 F.2d 629 (7th Cir. 1965) (neither examination of corporate books and records of which taxpayer is the sole shareholder nor examination of other records in hands of the Commissioner is a reexamination within §7605 (b)); Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963); DeMasters v. Arend, 313 F.2d 79 (9th Cir.), *cert. denied*, 375 U.S. 936 (1963); United States v. Crespo, 281 F. Supp. 928 (D. Md. 1968).

40. Hinchfield v. Clarke, 371 F.2d 697 (6th Cir.), *cert. denied*, 387 U.S. 941 (1967) (taxpayer could not object when agent had requested taxpayer's accountant to produce work papers pertaining to "open" years only, but papers received included workpapers of prior years leading to a summons issued to the accountant for production of all workpapers).

In addition to the one examination limitations, section 7605 (b) unequivocably states that no taxpayer shall be subjected to unnecessary examinations or investigations.[41] However, since the Commissioner's powers and duties in collecting the revenues are extremely broad, the possibility of an examination being held unnecessary seems virtually precluded.[42] An investigation is not deemed unnecessary if it contributes to the accomplishment of any purpose for which the Commissioner is authorized to make inquiry.[43] Since two such purposes are to ascertain the correctness of any return and to determine the tax liability of any person,[44] a first examination will rarely be held unnecessary.[45]

Constitutional Limitations

Constitutional challenges to the use of section 7602 summonses predominate in recent criminal tax cases. Although the taxpayer's right to be advised of his fifth amendment privilege set forth in *Miranda v. Arizona*[46] has received the most attention,[47] the fourth and sixth amendments also provide extensive protection.

Fourth Amendment Protection

The fourth amendment[48] is applicable to the Internal Revenue Service during a tax investigation and may limit the Service's use of the 7602 summons.[49] However, the question of what constitutes an unreasonable search or seizure has recently prompted extensive litigation.

Apparently the papers of the closed years would not have been subject to the summons had they been in taxpayer's possession. Thus, after a Service examination has been completed the accountant should transfer all workpapers to the client if they are no longer necessary to the performance of the accountant's services.

41. Int. Rev. Code of 1954, §7605 (b).

42. Int. Rev. Code of 1954, §7601 (a). "General Rule—The Secretary or his delegate shall to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed."

43. DeMasters v. Arend, 313 F.2d 79 (9th Cir.), *cert. denied*, 375 U.S. 936 (1963).

44. Int. Rev. Code of 1954, §7602.

45. DeMasters v. Arend, 313 F.2d 79 (9th Cir.), *cert. denied*, 375 U.S. 936 (1963); Application of Magnus, Mabee & Reynard, Inc., 311 F.2d 12 (2d Cir. 1962) (holding the prohibition applies only to inquiries made of the taxpayer personally and not to inquiries made to third persons). *But see* United States v. Pritchard, 438 F.2d 969 (5th Cir. 1969), *cert. denied*, 400 U.S. 929 (1970) (dismissing the enforcement proceeding where the Government made no showing that the documents were not already within the Service's possession).

46. 384 U.S. 436 (1966).

47. *See* text accompanying notes 129-160 *infra*.

48. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV.

49. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). *See also* Gouled v. United States, 255 U.S. 298 (1921).

Misrepresentation. Although a summons issued pursuant to section 7602 may not be unconstitutional on its face; fraud, trickery, or deceit in obtaining access to incriminating evidence can make an otherwise lawful search unreasonable. If a summons is issued to secure documents whose existence became known through an unlawful search, the documents will be protected by the fourth amendment.[50]

The nature of the ordinary tax investigation generally precludes the possibility of an unreasonable search or seizure occurring in the usual manner. No need ordinarily exists for secretive or forceful coercion, since the taxpayer is usually willing to cooperate thinking such cooperation will enhance the likelihood of a favorable settlement. Cooperation or consent to inspection may constitute a waiver of any constitutional rights the taxpayer could have asserted.[51] Where the taxpayer has not voluntarily waived his rights, however, the use of fraud, trickery, or deceit to obtain evidence for use in a subsequent criminal prosecution will require that evidence be suppressed.[52]

What constitutes a voluntary waiver by the taxpayer or a misrepresentation by the agent has become a litigious question. Apparently, the failure to disclose the duties of a special agent[53] as opposed to those of a revenue agent[54] does not constitute misrepresentation.[55] In *United States v. Prudden*[56] the Fifth Circuit reversed the lower court's holding that the agents had engaged in a deliberate scheme to deceive the taxpayer in order to prevent his suspecting that the nature of the investigation had altered materially.[57] The court held that letters written after referral to the Intelligence Division, which did not reveal the referral, friendliness of the agents, and promises of advice from the agents did not constitute fraud, deceit, or trickery.[58] The court decided the agents had not concealed anything, but had merely identified themselves.[59]

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50. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

51. *See* United States v. Spomar, 339 F.2d 941, 942 (7th Cir. 1964), *cert. denied*, 380 U.S. 975 (1965); Bowles v. Sachnoff, 65 F. Supp. 538, 547 (W.D.. Pa. 1946).

52. United States v. Prudden, 424 F.2d 1021 (5th Cir.), *cert. denied*, 400 U.S. 831 (1970) (although finding no such fraud, deceit, or trickery in the instant case, the court explicitly rejected the government's contention that the agents were free to use fraud, deceit, or trickery in obtaining taxpayers' consent to examine documents); Goodman v. United States, 285 F. Supp. 245 (C.D. Cal. 1968).

53. *See* text accompanying note 9 *supra*.

54. *See* text accompanying note 8 *supra*.

55. United States v. Tonahill, 430 F.2d 1042 (5th Cir.), *cert. denied*, 400 U.S. 943 (1970); United States v. Prudden, 424 F.2d 1021 (5th Cir.), *cert. denied*, 400 U.S. 831 (1970); Spahr v. United States, 409 F.2d 1303 (9th Cir. 1969); United States v. Sclafani, 265 F.2d 408 (2d Cir.), *cert. denied*, 360 U.S. 918 (1959); United States v. Decker, 311 F. Supp. 1223 (W.D. Mo. 1970); *see* Turner v. United States, 222 F.2d 926 (4th Cir. 1955).

56. 424 F.2d 1021 (5th Cir.), *cert. denied*, 400 U.S. 831 (1970).

57. *Id.* at 1032.

58. *Id.* at 1035 (note, however, the court emphasized that Prudden was a law school graduate and security analyst for a member firm of the New York Stock Exchange). *But cf.* Goodman v. United States, 285 F. Supp. 245 (C.D. Cal. 1968).

59. United States v. Prudden, 424 F.2d 1021, 1032 (5th Cir.), *cert. denied*, 400 U.S. 831

Expanding the Service's right to examine without a full disclosure of the nature of the investigation, the Fifth Circuit apparently condoned the practice of concealing the criminal nature of the investigation in *United States v. Tonahill*[60] and now requires a showing of a "material misrepresentation which *clearly* and convincingly shows fraud . . . ."[61] In *Tonahill* neither defendant nor his accountant knew the significance of the term "Special Agent" and asked several times why the audit was taking so long and whether fraud was involved.[62] Rather than disclose the criminal nature of the investigation, the agents merely replied that "their function was to reconcile the large discrepancies, to see if they were the result of innocent errors."[63] The court held this misrepresentation was immaterial and thus did not clearly and convincingly show fraud.[64]

At least one federal court has suppressed evidence gathered by an agent who intentionally misled the taxpayer and affirmatively represented to the taxpayer that he was investigating other taxpayers.[65] Active misrepresentation has also been found where a special agent told the taxpayer that he was not pursuing his usual kind of assignment, but rather was conducting a routine civil audit.[66] Similarly, if a special agent has a revenue agent secure documents for him, it would seemingly constitute a material misrepresentation.[67]

If a revenue agent uncovers evidence of fraud he is required to cease his examination and refer the case to the Intelligence Division for possible criminal prosecution.[68] To continue collecting incriminating evidence without alerting the taxpayer to the new dimensions of the investigation would arguably constitute a material misrepresentation in violation of the fourth amendment. The courts, however, have consistently refused to suppress evidence gathered by a revenue agent who delayed referral, holding such delays do not constitute active misrepresentation.[69] Similarly, courts have refused to

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(1970).

60. 430 F.2d 1042 (5th Cir.), *cert. denied*, 400 U.S. 943 (1970).

61. *Id.* at 1045.

62. *Id.* at 1044.

63. *Id.*

64. *Id.* at 1045. Note the court dropped the use of the terms "trickery" and "deceit" from its formula for obtaining consent by unreasonable means. If the special agent's response as to the nature of his investigation is compared with the duties of a special agent set forth in note 9 *supra*, it seems the court is condoning fraudulent practices. *See* note 9 *supra*.

65. Goodman v. United States, 285 F. Supp. 245 (C.D. Cal. 1968). In Goodman v. United States, 369 F.2d 166, 169 (9th Cir. 1966), the Government conceded that if the records were obtained pursuant to a scheme of deception and fraud, the seizures were unlawful.

66. United States v. Moon, 70-2 U.S. Tax Cas. ¶9491 (W.D. Wis. 1970) (evidence gathered after the taxpayer had obtained counsel was not suppressed however, since the attorney admitted he had considered the possibility that the audit might lead to a criminal prosecution).

67. United States v. Lipshitz, 132 F. Supp. 519 (E.D.N.Y. 1955).

68. *See* authorities cited note 8 *supra*.

69. United States v. Sclafani, 265 F.2d 408 (2d Cir.), *cert. denied*, 360 U.S. 918 (1959). The court stated a taxpayer surely knows that contained in an openly commenced "routine" tax investigation there is inherently a warning that the government's agents will pursue

suppress evidence gathered by revenue agents initially assigned to an investigation even though informants had previously related to the Service that criminal activities had transpired.[70] Thus, while active misrepresentation by agents will be considered an unlawful search and seizure, the courts have condoned practices that materially, if not actively, misrepresent the investigation.

Probable Cause. When the Internal Revenue Service seeks an enforcement order from the district court, the protection of the individual's right of privacy must be weighed against the public interest in the inspection.[71] Although the administrative summons per se does not violate the fourth amendment,[72] recent decisions have indicated the nature of the search authorized by the summons must be closely examined. Those aimed at the discovery of evidence of crime must show a high degree of necessity or probable cause.[73] Showing of probable cause, however, need not be made for issuance of a 7602 summons,[74] since the Treasury's responsibility to collect revenue and the public's interest in the performance of this duty justify the limited intrusion upon the individual's right to privacy.[75] Despite these factors, however, it would not seem overly burdensome upon the Service to require a showing of probable cause if the investigation has become criminally oriented.[76]

Such a procedure would make the taxpayer more acutely aware of the nature of the investigation and permit him to make a more intelligent decision whether to waive his constitutional protections. In *Donaldson v. United States*,[77] however, the Supreme Court concluded that Congress had authorized the use of the 7602 summons in investigating potentially criminal conduct. The Court refused to take notice of the emphasis on collection of criminal

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evidence of misreporting and held "moreover it is unrealistic to suggest that the Government could or should keep a taxpayer advised as to the direction in which its necessarily fluctuating investigations lead." *Id.* at 415; United States v. Decker, 311 F. Supp. 1223 (W.D. Mo. 1970); *see* Badger Meter Mfg. Co. v. Brennan, 216 F. Supp. 426 (E.D. Wis. 1962).

70. United States v. Davis, 424 F.2d 1241 (5th Cir.), *cert. denied*, 400 U.S. 821 (1970). But some cases have required the nature of the investigation or possibility of prosecution be made clear to the taxpayer where evidence indicated the possibility of criminal fraud from the outset. *See* United States v. Wheeler, 149 F. Supp. 445 (W.D. Pa. 1957), *rev'd on other grounds*, 256 F.2d 745 (3d Cir. 1958).

71. Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 213 (1946).

72. *Id.* at 214.

73. Camera v. Municipal Court, 387 U.S. 523 (1967); Frank v. Maryland, 359 U.S. 360 (1959). In *Frank* the Court repeatedly stated that evidence for use in criminal prosecutions may not be taken without a search warrant. A search warrant may be issued only upon a showing of probable cause and prior approval of a judge or magistrate. *Id.* at 363, 365-66. *See also* Katz v. United States, 389 U.S. 48 (1964); Abel v. United States, 362 U.S. 217 (1960).

74. United States v. Powell, 379 U.S. 48 (1964).

75. *Id.*

76. Only about 2,000 full-scale criminal fraud investigations are undertaken each year. Donaldson v. United States, 400 U.S. 517, 535 n.17 (1971); B. GEORGE, *supra* note 6, at 65.

77. 400 U.S. 517 (1971).

evidence occurring when a special agent enters the case.[78] If the entry of the special agent were recognized as the initiation of a criminal investigation, the *Donaldson* Court felt the Service would be forced to "forego either the use of the summons or the potentiality of an ultimate recommendation for prosecution."[79] This would not necessarily be the result, however, since the summons could be issued even though a special agent were investigating, if a standard of necessity or probable cause were met.

The Improper Purpose Test. Although recent decisions indicate increased fourth amendment protection for the taxpayer by holding issuance of a summons to collect evidence for criminal prosecution would not be tolerated, these holdings have continued to place the public interest in the uninterrupted collection of revenue above the individual's right to be free from unreasonable searches.[80] In *Reisman v. Caplin*[81] the Supreme Court indicated that a taxpayer could challenge a summons issued under section 7602 on any appropriate grounds, including "that the material is sought for the *improper purpose* of obtaining evidence for use in a criminal prosecution."[82] Although taxpayers have repeatedly relied upon this dictum in challenging the validity of summonses, lower courts have consistently refused to find an improper purpose.[83]

Ten months after *Reisman* the Court in *United States v. Powell*[84] indicated the improper purpose test would not be liberally applied, holding the fact that the statute of limitations had run on ordinary tax liability was insufficient to show an abuse of the Court's process.[85] The decision, however, reiterated that a court should not allow its process to be abused by issuing a summons for an improper purpose such as harassment, coercion, or for any other purpose reflecting on the good faith of the particular investigation.[86] Furthermore, the Commissioner must show that the investigation will be conducted pursuant to a legitimate purpose.[87]

While *Powell* appears to give taxpayers greater protection from an Internal Revenue Service summons by imposing a good faith restriction on the Service, the lower courts have concentrated on the existence of a legitimate purpose. Thus, even where the primary purpose of a summons is to further a criminal

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78. *Id.*

79. *Id.* at 535-36.

80. *See* United States v. Mothe, 303 F. Supp. 1366 (E.D. La. 1969), and cases cited therein.

81. 375 U.S. 440 (1964).

82. *Id.* at 445.

83. *See* United States v. Mothe, 303 F. Supp. 1366 (E.D. La. 1969), and cases cited therein. *Contra* United States v. O'Conner, 118 F. Supp. 248 (D. Mass. 1953).

84. 379 U.S. 48 (1964).

85. Although Powell did not specifically claim the improper purpose, the Court's additional finding that the examination was not unnecessary within the meaning of §7605(b) indicates a claim of improper purpose would not have succeeded. *Id.* at 58.

86. *Id.*

87. *Id.* at 57.

investigation, the secondary purpose of determining civil tax liability is a sufficient legitimate purpose to uphold issuance.[88] Every federal circuit facing the issue has held the existence of an improper purpose does not negate a proper purpose if they both exist.[89] Since determination of tax liability is a legitimate purpose, it would be virtually impossible, under the circuit courts' interpretations of *Reisman* and *Powell*, to prevent issuance of a summons because of an improper purpose.[90]

The Court further emasculated the *Reisman* dictum in *Donaldson v. United States*.[91] The Court held under section 7602 an Internal Revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution.[92] The majority interpreted *Reisman* to be limited to investigations *solely* for the purpose of gathering incriminating evidence that "would likely be the case where a criminal prosecution has been instituted and is pending . . . ."[93] Although lower federal courts had previously conflicted on the question

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88. United States v. Held, 435 F.2d 1361 (6th Cir.), *cert. denied*, 401 U.S. 1010 (1970). Apparently no test of good faith issuance will be made despite the Court's stipulation of such in *Powell*. *See also* Wild v. United States, 362 F.2d 206 (9th Cir. 1966) (special agent alone was conducting investigation). Some courts have used the existence of a revenue agent in an investigation to support the existence of a legitimate purpose and thereby negate any improper purpose. United States v. Schoendorf, 307 F. Supp. 1034 (E.D. Wis. 1970).

89. *See* cases cited in United States v. Mothe, 303 F. Supp. 1366 (E.D. La. 1969).

90. Despite the fact that the existence of a special agent intimates a search for information to be used in a criminal prosecution, investigation by such an agent does not make it improper. Wild v. United States, 362 F.2d 206 (9th Cir. 1966). *But see* United States v. Ruggeiro, 300 F. Supp. 968 (C.D. Cal. 1969), *aff'd* 425 F.2d 1069 (9th Cir. 1970). District Judge Real, though upholding the petition for enforcement of the summons because of circuit court holdings, points out the senseless rhetoric in which the decisions have been couched: "To say that a summons is not being used for an improper purpose unless the existence of a proper civil purpose is absent . . . simply begs the question. All criminal tax investigations to be prosecutable require the 'proper civil purpose' of determination of tax liability." Judge Real would interpret *Reisman* and *Powell* strictly to mean a 7602 summons cannot be used for the purpose of gathering evidence for use in a criminal prosecution. If it were shown a special agent was ascertaining tax liability as one of the steps in determining whether a criminal violation exists, then the summons should not be enforced. *Id.* at 975.

91. 400 U.S. 517 (1971). The Court held the taxpayer had no right to intervene in the proceeding, but attempted to clarify the *Reisman* improper purpose test.

92. *Id.* at 520.

93. *Id.* at 533. The dictum in *Reisman* included a citation to Boren v. Tucker, 239 F.2d 767 (9th Cir. 1956), which held the Service need not refrain from issuing a 7602 summons simply because criminal prosecution was a possibility; and while conceding the Court should not lend its support to the use of an unrestricted administrative subpoena power, found no such use in the instant case. The *Tucker* decision agreed with, but distinguished United States v. O'Conner, 118 F. Supp. 248 (D. Mass. 1953), which refused to enforce a subpoena where the taxpayer was presently under an indictment for tax fraud and the Department of Justice had suggested that the subpoena be used by the special agent to aid the Government in the preparation of the pending criminal case. The special agent admitted at least one of his purposes was to aid the Department of Justice in the prosecution of the criminal case.

whether a pending prosecution precluded issuance of a section 7602 summons,[94] *Donaldson* appears to establish that a recommendation for prosecution is the point beyond which a summons may not be issued.[95] Lower courts have interpreted *Donaldson* to say that if a recommendation for prosecution occurs after issuance of the summons, but before compliance, an enforcement order will not be granted.[96]

The good faith requirement of *Powell* was reiterated in *Donaldson*. It will apparently be limited, however, to cases where the taxpayer has been harassed or coerced into a settlement,[97] and will play little or no role in determining the validity of a section 7602 summons.[98] Protecting a taxpayer from summons of his records only after he has been recommended for prosecution, however, is no protection at all. If a special agent, whose duty it is to investigate and accumulate evidence of fraud, may use a summons to gather whatever documents he deems necessary and then transfer such information to the Justice Department, the taxpayer's protection is illusory.

Discovery. Following *Donaldson*, if a 7602 summons is issued, the taxpayer should be allowed to conduct discovery proceedings to establish the purpose for which the summons was issued, or at least to discern if a recommendation for prosecution has been made.[99] The Supreme Court has indicated that

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The Court felt the *Reisman* "improper purpose" dictum must be read in light of both the above decisions and concluded the dictum applies only to such factual situations as existed in *O'Conner*, where a criminal charge was pending or there was "at most . . . an investigation solely for criminal purposes." Donaldson v. United States, 400 U.S. 517, 533 (1971).

94. United States v. Moriarty, 435 F.2d 347 (7th Cir. 1970); *In re* Magnus, Mabee & Reynard, Inc., 311 F.2d 12 (2d Cir.), *cert. denied*, 370 U.S. 918 (1962) (where summons was issued 10 months prior to indictment, but taxpayer had not yet complied, enforcement order was issued subsequent to indictment); *see* United States v. DeGrosa, 405 F.2d 926 (3d Cir.), *cert. denied*, 394 U.S. 973 (1969) (summons enforced where criminal proceedings had been recommended, but not forwarded to Justice Department); *cf.* Venn v. United States, 400 F.2d 207 (5th Cir. 1968). *But see* Application of Myers, 202 F. Supp. 212 (E.D. Pa. 1962); United States v. O'Conner, 118 F. Supp. 248 (D. Mass. 1953).

95. Donaldson v. United States, 400 U.S. 517, 536 (1971).

96. United States v. Kyriaco, 326 F. Supp. 1184 (C.D. Cal. 1971). *See also* United States v. Monsey, 429 F.2d 1348 (7th Cir. 1970) (considering developments arising after issuance of the summons).

97. Since the court concludes that Congress has authorized use of the summons to investigate criminal conduct, seeking incriminating evidence would not constitute a bad faith use of the summons barring exceptional circumstances. (If recommendation for prosecution were delayed in order to summons incriminating documents, bad faith would possibly be a good defense.)

98. United States v. Troupe, 438 F.2d 117 (8th Cir. 1971) (although citing *Donaldson* the court did not make mention of the good faith test and upheld issuance of summons even though the investigation was begun solely because the taxpayer was on a list of alleged underworld members and had reported income under the heading of "miscellaneous").

99. Discovery should be granted if the summons is served upon the taxpayer or a third party and the taxpayer is allowed to intervene. A party is entitled to examine a deponent on "any matter, not privileged, which is relevant to the subject matter involved in the pending action." FED. R. CIV. P. 26 (b).

Federal Rules of Civil Procedure granting discovery are applicable to enforcement proceedings,[100] but lower courts have given the trial judge wide discretion as to the scope of discovery proceedings.[101] Where the purpose of the summons is in issue and affects the legality of its issuance, the taxpayer is given the right to discovery.[102] Discovery proceedings, however, must be conducted reasonably[103] and may not be used to harass the Internal Revenue Service.[104]

Fifth Amendment Privilege

The fifth amendment privilege against self-incrimination[105] clearly protects documents as well as oral evidence.[106] Thus, the Service may not require a taxpayer to produce self-incriminating documents that he created, owns, and possesses.[107] Documents afforded fifth amendment protection in the tax-

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100. Donaldson v. United States, 400 U.S. 517, 528 n.11 (1971); United States v. Powell, 379 U.S. 48, 58 n.18 (1964).

101. United States v. Bowman, 435 F.2d 467 (3d Cir. 1970); United States v. Erdner, 422 F.2d 835 (3d Cir. 1970) (not an abuse of discretion to deny an oral motion for discovery when the agent is present at the hearing and available for questioning); *see* United States v. Shoendorf, 307 F. Supp. 1034 (E.D. Wis. 1970); FED. R. CIV. P. 81(a) n.23.

The most far-reaching step taken by any federal court is the "Omnibus Hearing" initiated in the Western District of Missouri, which makes available to the accused all documentary evidence, statements of witnesses, computations, schedules and reports of both special and revenue agents. Lay, *Post Conviction Remedies and the Overburdened Judiciary: Solutions Ahead*, 3 CREIGHTON L. REV. 1, 14, 23 (1969); Morris, *Criminal Sanctions of the Internal Revenue Code*, CASE & COM., March-April 1972, at 3.

102. United States v. Roundtree, 420 F.2d 845 (5th Cir. 1969); United States v. Nunnally, 278 F. Supp. 843 (W.D. Tenn. 1968); *see* United States v. Moriarty, 278 F. Supp. 187 (E.D. Wis. 1967); Kennedy v. Rubin, 254 F. Supp. 190 (N.D. Ill. 1966). *But see* United States v. Monsey, 429 F.2d 1348 (7th Cir. 1970) (the lower court's holding that discovery may not be made after an indictment has been filed but before compliance would seem to be moot in light of *Donaldson*, since the summons could not be enforced after prosecution has begun).

103. FED. R. CIV. P. 30(d).

104. United States v. Nunnally, 278 F. Supp. 843, 846 (W.D. Tenn. 1968).

105. U.S. CONST. amend. V, provides in part: "No person shall be compelled in any criminal case to be a witness against himself."

106. Boyd v. United States, 116 U.S. 616 (1886). Although recent Supreme Court cases have iterated that only "communicative" or "testimonial" evidence is protected, Gilbert v. California, 388 U.S. 263 (1967); Schmerber v. California, 384 U.S. 757 (1966), it is clear that records prepared by the taxpayer or his employees are within the fifth amendment privilege. Gilbert v. California, 388 U.S. 263, 267 (1967), and cases cited therein.

107. However, the taxpayer may not make a blanket refusal to produce the documents or to testify. He must appear at the time and place summoned and elect on each question whether to raise the privilege, and the court will consider whether each objection is well taken. United States v. Roundtree, 420 F.2d 845 (5th Cir. 1969).

Although the privilege does not protect records subject to the "required records" doctrine set forth in Shapiro v. United States, 335 U.S. 1 (1948) (compelling production of records required to be kept under the Price Control Act), the Service has refrained from using the doctrine in tax cases. *See* Stuart v. United States, 416 F.2d 459, 462 n.2 (5th Cir. 1969). Moreover, recent cases have indicated the courts will be reluctant to apply the re-

payer's possession are likewise protected when transferred to his attorney.[108] No protection against self-incrimination, however, is provided when documents not owned by the taxpayer are in the hands of a third person.[109]

Additional problems arise when the Service asserts the taxpayer lacks an ownership interest in documents within his possession. A majority of the federal circuits facing the question have held that mere possession of documents by the taxpayer is insufficient to afford the fifth amendment privilege, and *ownership* of such documents is required.[110] The issue arises frequently when the documents are transferred from a third party to the taxpayer during an investigation or subsequent to the issuance of a summons calling for production of such documents.[111]

In determining whether the taxpayer or a third party owns documents, the decisions reiterate the doctrine that if the third party relinquishes all rights in such documents, they are within the taxpayer's privilege.[112] However, establishing the taxpayer's ownership interest in the documents when they have been transferred during an Internal Revenue Service examination may be difficult. For example, *United States v. Zakutansky*[113] held assertion of ownership by the taxpayer and the third party transferor are not binding on the court.[114] In *Zakutansky* taxpayer's accountant held the docu-

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quired records doctrine to an individual's financial records. Marchetti v. United States, 390 U.S. 39 (1968); *see* Lipton, *Record Keeping and the Privilege Against Self-Incrimination*, N.Y.U. 14TH INST. ON FED. TAX. 1331 (1956).

108. United States v. Judson, 322 F.2d 460 (9th Cir. 1963). *But see* Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963).

109. Donaldson v. United States, 400 U.S. 517, 537 (1971) (Douglas, J. concurring: "There is no right to be free from incrimination by the records or testimony of others"); Harris v. United States, 413 F.2d 316 (9th Cir. 1969) (customers of bank have no standing to object to subpoenas requiring the bank to produce records of the customer's account).

110. United States v. Lyons, 442 F.2d 1144 (1st Cir. 1971); United States v. Zakutansky, 401 F.2d 68 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969); Deck v. United States, 339 F.2d 739 (D.C. Cir. 1964), *cert. denied*, 379 U.S. 967 (1965); Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963). These decisions are extensions of the Supreme Court's holdings in United States v. White, 322 U.S. 694 (1944) and Wilson v. United States, 221 U.S. 361 (1911). In *White* the Court held that an officer of a labor union could not avail himself of the privilege to avoid producing his union's records despite the fact they might incriminate him. *Wilson* held a corporate officer could not claim the privilege to avoid producing his corporation's records. The decisions indicate that a person may not avail himself of the privilege if he has a duty to surrender the documents to another (that is, the union members or corporation's stockholders). Thus, the above circuit courts deny the privilege to a taxpayer in a mere possession of documents, holding he is under a duty to surrender the documents to the true owner.

111. It is clear that the person to whom a summons is issued cannot be held in contempt if he is unable to produce the object of the summons. United States v. Jacobs, 322 F. Supp. 1299 (C.D. Cal. 1971). *But see In re* D.I. Operating Co., 240 F. Supp. 672 (D. Nev. 1965) (holding gross inattention to and reckless disregard for the preservation of contested records can be nothing less than contemptuous).

112. *See, e.g.*, United States v. Zakutansky, 401 F.2d 68, 71 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969).

113. 401 F.2d 68 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969).

114. *Id.* at 72 and cases cited therein. *But see* United States v. Levy, 270 F. Supp. 601

ments until twice subpoened by the Service. The accountant had initially stated the papers were his, but subsequently transferred the papers to the taxpayer and denied possessing any interest in the documents.[115] The court held the attempted transfer of ownership was invalid as a mere attempt to thwart the government's investigation.[116] Thus, most decisions are determined on the bona fides of the transfer and not on notions of ownership and possession.[117] Several decisions have also held the transferor is under a moral, if not legal, duty to surrender the documents and therefore refuse to recognize the transfer.[118]

A minority of jurisdictions have held that possession, not ownership or time of transfer, is the determining factor when a taxpayer asserts his privilege against self-incrimination.[119] In *United States v. Cohen*[120] the Ninth Circuit Court of Appeals upheld the taxpayer's claim of privilege even though papers had been transferred the day after a special agent had begun his investigation and despite the transferor's request that the taxpayer return the papers.[121] In examining the nature of the privilege against self-incrimination the court rejected the ownership requirement, stating:[122]

> It is possession . . . not ownership which sets the stage for exercise of the governmental *compulsion* which it is the purpose of the privilege to prohibit. The "cruel trilemma" of perjury, contempt, or self-incrimination, of which the court spoke in *Murphy v. Waterfront Comm'n*[123] . . . faces the individual whenever the government seeks to compel him to produce papers in his possession . . . ."

The availability of the privilege against self-incrimination should not be determined by the fine distinction between possession and ownership. Al-

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(D. Conn. 1967) (where evidence had no convincing force as to who owned the documents, the summons could not be enforced).

115. United States v. Zakutansky, 401 F.2d 68, 72 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969).

116. *Id.*

117. United States v. Lyons, 442 F.2d 1144 (1st Cir. 1971); United States v. Zakutansky, 401 F.2d 68 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969); Deck v. United States, 339 F.2d 739 (D.C. Cir. 1964), *cert. denied*, 379 U.S. 967 (1965); Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963).

118. United States v. Zakutansky, 401 F.2d 68 (7th Cir.), *cert. denied*, 393 U.S. 1021 (1969); *see* United States v. Lyons, 442 F.2d 1144 (1st Cir. 1971) (a post-subpoena transfer cannot change the character of the papers and thereby defeat a legitimate government inspection).

119. United States v. Cohen, 388 F.2d 464 (9th Cir. 1967); *see* Colton v. United States, 306 F.2d 633 (2d Cir. 1962), *cert. denied*, 371 U.S. 951 (1963); United States v. Levy, 270 F. Supp. 601 (D. Conn. 1967); Bauer v. Orser, 258 F. Supp. 338 (D.N.D. 1966); Application of House, 144 F. Supp. 95 (N.D. Cal. 1956).

120. 388 F.2d 464 (9th Cir. 1967).

121. *Id.*

122. *Id.* at 468. The court rebutted the majority's reliance on *White* and *Wilson* (*see* note 110 *supra*) by interpreting them merely as an extension of the rule that the privilege against self-incrimination is available to protect only the personal interest of natural persons and not group interests embodied in impersonal organizations, *Id* at 467.

123. 378 U.S. 52 (1964).

though the taxpayer's interest in the documents should enter into the granting or denying of the privilege, it should not be conclusive. Despite the *Cohen* court's conclusion that the nature of the right against self-incrimination and the interests it was intended to protect should be the determining factor, most courts have continually refused to grant the privilege unless the taxpayer can prove good faith ownership of the documents.[124]

Nonprivileged Records. The fifth amendment privilege applies only to personal private documents of the privilege-claimant. In *Hale v. Henckel*[125] and subsequent cases[126] the Supreme Court has held that records of a corporation or other impersonal organizations are not subject to the privilege, even if an individual claiming such privilege has acquired both possession and title. In addition, it has been uniformly held, despite commentators' criticisms,[127] that the privilege does not apply to closely or even solely held corporations.[128]

Taxpayer's Right to Miranda *Warnings Under the Fifth and Sixth Amendments*

Since *Miranda v. Arizona*[129] and *Escobedo v. Illinois*[130] many commentators have advocated that taxpayers be warned of the potential criminal implications of tax investigations.[131] In *Miranda* the Court held statements

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124. *See* note 117 *supra*. A further problem arises when the taxpayer's attorney is summoned to produce documents in his possession. Some courts have held the attorney has no right to assert his client's privilege against self-incrimination. United States v. Goldfarb, 328 F.2d 280 (6th Cir.), *cert. denied*, 377 U.S. 976 (1964); Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963); *In re* Fahey, 300 F.2d 383 (6th Cir. 1961); United States v. White, 326 F. Supp. 459 (S.D. Tex. 1971); United States v. Boccuto, 175 F. Supp. 886 (D.N.J. 1959), *appeal dismissed*, 274 F.2d 860 (3d Cir. 1960). *Contra*, United States v. Judson, 322 F.2d 460 (9th Cir. 1963); Colton v. United States, 306 F.2d 633 (2d Cir. 1962), *cert. denied*, 371 U.S. 951 (1963); Application of House, 144 F. Supp. 95 (N.D. Cal. 1956).

125. 201 U.S. 43 (1906).

126. *See* Grant v. United States, 227 U.S. 74, 75 (1913); Wheeler v. United States, 226 U.S. 478 (1912); note 110 *supra* (discussion of *White* and *Wilson*). The Government may also contend that documents prepared by a third party such as a taxpayer's accountant are not personal, private papers of such taxpayer. United States v. Cohen, 388 F.2d 464 (9th Cir. 1967). The personal nature of schedules relating to itemized deductions, income, and related items, however, would seem to clearly bring such documents within the protection of the privilege. *Id.*

127. *E.g.*, Lipton & Petrie, *Constitutional Safeguards and Corporate Records*, N.Y.U. 23D INST. ON FED. TAX. 1315, 1325-26 (1965); Ritholz, *The Commissioner's Inquisitorial Power*, 45 TAXES 781, 784 (1967). The only judicial support for the commentators is Judge Madden's dissent in Wild v. Brewer, 329 F.2d 924 (9th Cir.), *cert. denied*, 379 U.S. 914 (1964).

128. *See* United States v. Crespo, 281 F. Supp. 928 (D. Md. 1968) and cases cited therein.

129. 384 U.S. 436 (1966).

130. 378 U.S. 478 (1964).

131. *See, e.g.*, articles cited note 4 *supra*.

solicited from a criminal suspect during a custodial interrogation would be excluded at trial unless the suspect had been advised of certain constitutional rights.[132] The lower federal courts have held, almost unanimously, that failure to give *Miranda* warnings in tax investigations will not lead to suppression of a taxpayer's statements because the taxpayer is not in custody.[133] *Miranda* clearly dealt with one whose freedom of movement had been curtailed,[134] and such restraints are usually not present at the outset of tax investigations.

The *Escobedo* decision concentrated not on custodial questioning, but rather on interrogations after the investigation had begun to focus on a particular suspect and the process had shifted from investigatory to accusatory.[135] A majority of courts have distinguished *Escobedo* from tax investigations in that the essential question in tax investigations is not who committed a known crime, but whether in fact any crime has been committed.[136] Moreover, the transfer of an investigation from a revenue agent to a special agent has been distinguished from the focusing on a particular suspect referred to in *Escobedo*.[137]

Miranda has been held inapplicable to non-custodial investigations on the grounds that it would complicate an already difficult administrative task; would require supplying indigents with attorneys; would hinder efficient collection of taxes; and would be administratively impossible to forewarn the taxpayer every time the investigation shifts.[138] Where the taxpayer is put under oath and questioned by agents, however, the warnings must be given or the testimony will be suppressed.[139]

In *Mathis v. United States*[140] the Supreme Court explicitly rejected the government's contention that tax investigations are immune from the *Miranda* requirements and held *Miranda* is applicable to custodial tax in-

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132. Miranda v. Arizona, 384 U.S. 436 (1966). A suspect must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation." *Id.* at 479.

133. *E.g.*, United States v. Squeri, 398 F.2d 785 (2d Cir. 1968), and cases cited therein; United States v. Dawson, 400 F.2d 194 (2d Cir.), *cert. denied*, 393 U.S. 1023 (1968) (interrogation at trial attorney's office in the Justice Department and at office of United States Attorney held not custodial). *Contra*, United States v. Lackey, 413 F.2d 655 (7th Cir. 1969) (questioning at office of the Internal Revenue Service is custodial interrogation).

134. Miranda v. Arizona, 384 U.S. 436, 467, 477 (1966).

135. Escobedo v. Illinois, 378 U.S. 478 (1964).

136. United States v. Mancuso, 378 F.2d 612 (4th Cir. 1967), *cert. denied*, 390 U.S. 955 (1968); Selinger v. Bigler, 377 F.2d 542 (9th Cir.), *cert. denied*, 389 U.S. 904 (1967); Kohatsu v. United States, 351 F.2d 898 (9th Cir. 1965), *cert. denied*, 384 U.S. 1011 (1966).

137. United States v. Mackiewicz, 401 F.2d 219 (2d Cir.), *cert. denied*, 393 U.S. 923 (1968).

138. *Id.*

139. United States v. Gower, 271 F. Supp. 655 (M.D. Pa. 1967). *But see* United States v. Dawson, 400 F.2d 194 (2d Cir.), *cert. denied*, 393 U.S. 1023 (1968).

140. 391 U.S. 1 (1968).

vestigations.[141] The peculiar circumstances of the case, however, resulted in the decision having virtually no effect on the lower courts.[142]

In *United States v. Dickerson*[143] the Seventh Circuit held the *Miranda* warnings must be given to the taxpayer after the case has been transferred to the Intelligence Division. The special agent in *Dickerson* neither advised the taxpayer the investigation had become criminally oriented nor informed him of any of his constitutional rights. The court realistically analyzed the taxpayer's dilemma and concluded few taxpayers would realize they could refuse to produce their records or understand the difference between a revenue agent and a special agent.[144] Thus, the court concluded:[145]

> Incriminating statements elicited in reliance upon the taxpayer's misapprehension as to the nature of the inquiry, his obligation to respond, and the possible consequences of doing so must be regarded as equally violative of constitutional protections as a custodial confession extracted without proper warnings.

Subsequent decisions, however, have declined to follow the *Dickerson* decision.[146]

Internal Revenue Bulletin No. 949. Prior to and in most cases after *Miranda* no warnings were given to the taxpayer when an investigation was transferred from revenue agents to special agents of the Intelligence Division.[147] However, in 1968 the Service stated in a news release:[148]

> At the initial meeting with a taxpayer, a Special Agent is now required to identify himself, describe his function, and advise the taxpayer that anything he says may be used against him. The Special

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141. *Id.* at 4.

142. *See* United States v. Squeri, 398 F.2d 785 (2d Cir. 1968), and cases cited therein. In *Mathis* the taxpayer was already in jail for a separate offense. *See* Lipton, *Supreme Court's Decision in* Mathis *Likely to Have Very Limited Effect*, 29 J. TAXATION 32 (1968).

143. 413 F.2d 1111 (7th Cir. 1969).

144. *Id.* at 1116.

145. *Id.* at 1116. The Court did not reject the necessity of "custodial interrogation" but interpreted *Miranda* as saying: "[O]ne confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances." *Id.* at 1114. The court rejected the *Kohatsu* logic as to the applicability of *Escobedo*, saying it is irrelevant whether the culprit be known before the crime or the crime before the culprit. In either instance the adversary process has begun and the investigator is attempting to gather evidence against this suspect for the purpose of criminal prosecution. *Id.* at 1115; *see* Orozco v. Texas, 394 U.S. 324 (1969) (custodial situation may exist in suspect's own bedroom if it appears he is not free to go where he pleases).

146. United States v. Prudden, 424 F.2d 1021 (5th Cir.), *cert. denied*, 400 U.S. 831 (1970), and cases cited therein. *But see* United States v. Browney, 421 F.2d 48 (4th Cir. 1970) (Sobeloff, J., concurring opinion).

147. *See* note 133 *supra;* United States v. Jaskiewez, 278 F. Supp. 525 (E.D. Pa. 1968).

148. CCH 1968 STAND. FED. TAX. REP. ¶6946.

> Agent will also tell the taxpayer that he cannot be compelled to incriminate himself by answering any questions or producing any documents, and that he has the right to seek the assistance of an attorney before responding.

Since the required procedure exceeds constitutional guarantees,[149] claims based upon the agent's failure to comply with the procedure have been held completely devoid of merit.[150]

In *United States v. Heffner*,[151] however, the court upheld the taxpayer's claim that the agent must scrupulously observe established rules, regulations, or procedures.[152] The decision rested upon the duty of an agency to follow its prescribed procedures rather than a constitutional right to warnings.[153] It was immaterial that the instructions were not promulgated into a "regulation" or adopted pursuant to the Administrative Procedures Act.[154] Further, the court held it was not significant that the procedures or instructions established by the Internal Revenue Service exceeded constitutional requirements.[155]

Due Process. Although agreeing with *Heffner* the First Circuit in *United States v. Leahey*[156] emphasized the "public" nature of the agency, the purpose of the announced procedures, and the fact that taxpayers may have relied upon the announcement.[157] The court said that after referral to the Intelligence Division, the Service was in effect conducting a criminal investigation and during such investigations the strict rules of due process are applicable.[158]

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149. The vast majority of decisions do not require the *Miranda* warnings at the time of referral to a special agent. *See* United States v. Squeri, 398 F.2d 785, 789-90 (2d Cir. 1968), and cases cited therein.

150. United States v. Jaskiewicz, 278 F. Supp. 525 (E.D. Pa. 1968) (constitutional rights are a matter for the court, and administrative policies may not be raised to the level of a constitutional mandate); *see* United States v. Luna, 313 F. Supp. 1294 (W.D. Tex. 1970) (administrative agencies may not dictate preconditions for the admissibility of evidence in a federal trial).

151. 420 F.2d 809 (4th Cir. 1969).

152. *Id.*

153. *Id.* at 811.

154. *Id.*; *see* United States *ex rel.* Accardi v. Shaughnessy, 347 U.S. 260 (1954); Administrative Procedure Act, 6 U.S.C. §552 (1966).

155. United States v. Heffner, 420 F.2d 809, 812 (4th Cir. 1969); *cf.* Service v. Dulles, 354 U.S. 363 (1957). The peculiar facts of *Heffner* must be noted. The taxpayer felt he had been done an injustice and several previous requests for government aid had gone unanswered. To get the government's attention the taxpayer claimed eleven, then twenty dependents, and then even wrote a letter to the Service notifying them of his claimed dependents. Upon dismissing the case, the Court recommended defendant not be tried again.

156. 434 F.2d 7 (1st Cir. 1970).

157. *Id.* at 10-11.

158. *Id.* at 9. The Government contended the strict rules of due process do not apply to investigative proceedings as they do in adjudicatory proceedings. However, the court found the Service was functioning not as a legislative factfinding agency, but rather as a police agency performing criminal investigations. *Id.*; *see* Hannah v. Larche, 363 U.S. 420 (1960) (Civil Rights Commission not bound by the strict rules of due process when functioning only in an investigatory factfinding capacity).

However, an agency's failure to follow pronounced procedures will not always constitute a denial of due process.[159] Yet when the procedure is specificially designed to protect the taxpayer and a public announcement is made, upon which many taxpayers may reasonably rely, a failure to conform to the procedure will require exclusion of evidence gathered in violation thereof.[160]

ATTORNEY-CLIENT PRIVILEGE

Documents not protected by the fourth and fifth amendments may be withheld from examination if within the attorney-client privilege. The privilege, however, may not be as extensive as commonly believed and does not apply to documents simply because they have been turned over to an attorney.[161]

Scope and Policy

Competing considerations are often suggested for determining the scope of the privilege. Generally, the privilege applies only to communications that are made to an attorney by the taxpayer as a client seeking legal advice.[162] Thus, documents prepared substantially prior to the time the attorney-client relationship arose are not within the privilege.[163] Although an attorney has drafted a document, it is not privileged if it is neither a confidential communication nor contains any legal advice.[164] Further restriction of the privilege has been urged for the purpose of seeking truth and the enforcement of testimonial duty.[165] On the other hand, liberal application has been advocated because the complexity and difficulty of our laws can only be interpreted by professional men, therefore making it "absolutely necessary that a man . . . should have recourse to the assistance of professional lawyers, and . . . it is

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159. United States v. Leahey, 434 F.2d 7, 11 (1st Cir. 1970).

160. *Id.*

161. *See* Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963).

162. The most commonly cited definition of the privilege is that of Judge Wyzanski in United States v. United Shoe Mach. Corp., 89 F. Supp. 357 (D. Mass. 1950). The privilege applies: "[O]nly if (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client."

163. Bouschor v. United States, 316 F.2d 451 (8th Cir. 1963) (holding the privilege may not be created by simply transferring documents to an attorney after an Internal Revenue Service audit has begun).

164. *In re* Kearney, 227 F. Supp. 174 (S.D.N.Y. 1964) (bank's attorney conferred with accountants in course of an investigation and aided in drafting report to support bank's claim against its insurers).

165. 8 J. WIGMORE, EVIDENCE §2192 (McNaughton rev. 1961). *See* United States v. Kovel, 296 F.2d 918 (2d Cir. 1961).

is equally necessary . . . that the communications he so makes to him should be kept secret."[166]

Procedure. A blanket refusal to produce or describe documents is not permitted on the basis of the attorney-client privilege.[167] The privilege extends only to the substance of matters communicated to an attorney in professional confidence; the client identity or the fact that a given individual has become a client are not matters that an attorney may refuse to disclose, even though the fact of having retained counsel may be used as evidence against the client.[168] The answers to such questions better enable the judge to determine the validity of the taxpayer's claim of privilege.[169]

Third Parties

The privilege has also been extended to non-lawyers, such as secretaries or stenographers, when acting as the attorney's agents.[170] However, in *Himmelfarb v. United States*[171] the court found that matters disclosed by the taxpayer to his attorney in the presence of the accountant employed by the attorney were not privileged, since the accountant's presence was not indispensable while that of an attorney's secretary might be.[172]

In *United States v. Kovel*,[173] however, the Second Circuit held the "presence of an accountant, whether hired by the lawyer or by the client, while the client is relating a complicated tax story to the lawyer, ought not destroy the privilege."[174] The court rejected the government's contention that the

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166. United States v. Kovel, 296 F.2d 918, 921 (2d Cir. 1961).

167. Colton v. United States, 306 F.2d 633 (2d Cir. 1962), *cert. denied*, 371 U.S. 951 (1963); United States v. Roundtree, 420 F.2d 845, 852 (5th Cir. 1969).

168. Colton v. United States, 306 F.2d 633 (2d Cir. 1962), *cert. denied*, 371 U.S. 951 (1963). Questions of a general nature such as the date and general nature of services rendered, or determining whether services were performed in a specific year must also be answered. Answers to questions as to the nature of services rendered need not be specific, but may be answered in such general terms as "litigation," "drafting of documents," "tax advice," et cetera. There is "no question that the giving of tax advice and the preparation of tax returns . . . are basically matters sufficiently within the professional competence of an attorney to make them prima facie subject to the attorney-client privilege." *Id.* at 637.

169. *Id.*

170. United States v. Kovel, 296 F.2d 918 (2d Cir. 1961); *see, e.g.*, 8 J. WIGMORE, EVIDENCE §2301 (McNaughton rev. 1961). Communications made by the client's agent to an attorney are also privileged if the other requirements are met. *Id.* §2317(1). In *Kovel* the decision did not deal with the theory that the taxpayer may be relating information to an accountant as his agent to transmit the information to an attorney. 296 F.2d 918, 922 n.4 (2d Cir. 1961).

171. 175 F.2d 924 (9th Cir.), *cert. denied*, 338 U.S. 860 (1949).

172. *Id.* at 939.

173. 296 F.2d 918 (2d Cir. 1961).

174. *Id.* at 922. The vital requirements of the privilege must still be met. The communications must be made in confidence and for the purpose of obtaining legal advice (as opposed to accounting services only) from the attorney, and not accounting advice from the accountant.

privilege remains only when the communication is related to one, other than the attorney, with a menial duty.[175]

The Ninth Circuit apparently overruled *Himmelfarb* in *United States v. Judson*.[176] There, a net worth statement and memorandum prepared by an accountant at an attorney's request were held privileged. Thus, information initially given to an independent accountant and later transferred to an attorney will usually not be privileged, while that taken to an attorney who subsequently gives it to an accountant for "interpretation" may be privileged.

The type documents within the scope of the privilege has not been clearly decided. The courts have generally held that financial transactions conducted by an attorney with or on behalf of his client,[177] tax returns prepared for the client by the attorney[178] or accounting services performed by the attorney when he is also an accountant[179] are not privileged.[180] Clearly, information that is to be included in the taxpayer's tax return is not intended to be confidential and therefore is not within the privilege.[181] However, the question of whether papers and summaries prepared by the client to aid the attorney in preparation of the client's tax return are privileged is in dispute.

In *United States v. Merrell*[182] the court held income and expense summaries given to the attorney were of a non-confidential nature and therefore

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175. *Id.* at 921. Decisions relating to communications to agents of the attorney had previously applied only to persons with menial duties such as secretaries, stenographers, or interpreters. In *Kovel* the attorney had directed the client to relate the story to an accountant, employed by the law firm and who specialized in tax law, so that the accountant could interpret the problem for the attorney, thereby enabling him to better represent the client. The court found no difference between these facts and an attorney using an interpreter to relate the story of a client speaking a foreign language. *Id.* at 922.

176. 322 F.2d 460 (9th Cir. 1963). The documents were found to have been prepared in the course of an attorney-client relationship for the purpose of advising and defending the client, and the accountant's role was to facilitate an accurate complete consultation between the client and the attorney. *See* United States v. Jacobs, 322 F. Supp. 1299 (C.D. Cal. 1971); Bauer v. Orser, 258 F. Supp. 338 (D.N.D. 1966).

177. Lowy v. Commissioner, 262 F.2d 809 (2d Cir. 1959); McFee v. United States, 206 F.2d 872 (9th Cir. 1953); Banks v. United States, 204 F.2d 666 (8th Cir.), *cert. denied*, 346 U.S. 857 (1953); Pollock v. United States, 202 F.2d 281 (5th Cir.), *cert. denied*, 345 U.S. 993 (1953).

178. United States v. Tellier, 255 F.2d 441 (2d Cir.), *cert. denied*, 358 U.S. 821 (1958); Olender v. United States, 210 F.2d 795 (9th Cir. 1954), *cert. denied*, 352 U.S. 982 (1957); United States v. Schlegel, 313 F. Supp. 177 (D. Neb. 1970); United States v. Merrell, 303 F. Supp. 490 (N.D.N.Y. 1969); Gretsky v. Miller, 160 F. Supp. 914 (D. Mass. 1958).

179. Olender v. United States, 210 F.2d 795 (9th Cir. 1954), *cert. denied*, 352 U.S. 982 (1957); *In re* Fisher, 51 F.2d 424 (S.D.N.Y. 1931); United States v. Chin Lim Mow, 12 F.R.D. 433 (N.D. Cal. 1952).

180. A taxpayer who has an attorney perform his accounting services for him or handle his business affairs is apparently not in an advantageous position. In *Colton v. United States* the court allowed the agents great latitude in discovering what matters were privileged or unprivileged. 306 F.2d 633 (2d Cir. 1962), *cert. denied*, 371 U.S. 951 (1963).

181. United States v. Schlegel, 313 F. Supp. 177 (D. Neb. 1970); United States v. Merrell, 303 F. Supp. 490 (N.D.N.Y. 1969).

182. 303 F. Supp. 490 (N.D.N.Y. 1969).

not within the privilege.[183] In *United States v. Schlegel*,[184] the District Court of Nebraska held that only information that is subsequently conveyed to the Government is non-confidential in nature. Furthermore, the fact that the attorney makes the final decision as to what items are included in the taxpayer's return should not decrease the scope of the privilege.[185] The *Schlegel* decision was grounded upon the desirability of having the taxpayer freely disclose information to his attorney.[186] The *Merrell* opinion, however, treats the transactions as if the information were taken to an accountant. The fact that non-lawyers (that is, accountants) deal with many questions arising under the Internal Revenue Code should not shrink the attorney-client privilege in the tax area.[187]

State statutes creating an accountant-client privilege are not applicable in federal tax fraud investigations.[188] Although it has been contended that the

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183. *Id.* at 493. "The workpapers of *Merrell*, by definition, consisted of information that was intended to be transcribed onto the tax returns, and cannot be of a confidential nature."

184. 313 F. Supp. 177 (D. Neb. 1970).

185. *Id.* at 179. *But see* Falsone v. United States, 205 F.2d 734 (5th Cir.), *cert. denied*, 346 U.S. 864 (1953). The *Schlegel* court felt the client intended only so much of the information as the attorney concludes should be sent to the Government to be of a non-confidential nature. The fact that the attorney decides what is finally included in the return should not alter the taxpayer's intent. Thus, those items that are not included in the return should be considered confidential.

186. If the client felt all information given to the attorney would be non-confidential, the taxpayer would tend to withhold information he deems detrimental. Thus, the client would be withholding information from the one man professionally qualified to evaluate it. This clearly violates the spirit of the attorney-client privilege. The court noted, however, the decision did *not* imply that the client's books and records, as opposed to his summaries of them, are covered by the privilege. United States v. Schlegel, 313 F. Supp. 177 (D. Neb. 1970).

187. In *Schlegel* the Government also contended the information was not privileged due to rule 503 of the Proposed Rules of Evidence for the United States District Courts and Magistrates, which states: "(d) Exceptions. There is no privilege under this rule . . . . (1) . . . . If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud . . . ." *Id.* at 180.

The delivery of two sets of information to the attorney, the second showing less earned income than the first, was held not sufficient to establish that Schlegel knew or reasonably should have known that inclusion in an income tax return of the lower set of income figures would be or would further a fraud or crime. The court rejected the advisory committee's note, which states: "[N]o preliminary finding that sufficient evidence aside from the communication has been introduced to warrant a finding that the services were sought to enable the commission of a wrong is required." *Id.* at 179.

The court instead held evidence other than the communication itself must be shown to establish the conditions of the exception. *Id.* at 180.

188. Commissioner v. Lustman, 322 F.2d 253 (3d Cir. 1963); Falsone v. United States, 205 F.2d 734 (5th Cir.), *cert. denied*, 346 U.S. 864 (1953); United States v. Bowman, 236 F. Supp. 548 (M.D. Pa. 1964), *aff'd*, 358 F.2d 421 (1966); Petition of Bordan Co., 75 F. Supp. 857 (N.D. Ill. 1948). The decisions are in disagreement as to why the privilege does not apply. *See* Cohen, *Accountants' Workpapers in Federal Tax Investigations*, 21 TAX L. REV 138 (1965).

Treasury Department's granting enrolled agents the right to practice before the Internal Revenue Service creates an accountant-client privilege, the courts have refused to judicially create an accountant-client privilege equivalent to the attorney-client privilege.[189]

CONCLUSION

The investigative power of the Internal Revenue Service is by nature inquisitorial and enables the Service to invade the privacy of every person in the United States. Due to the overriding necessity of collecting revenue, courts have generally been reluctant to curb the Service's investigative powers even when it is aimed at criminal prosecution. Furthermore, statutory limitations have generally proved to be of limited usefulness. The recent, self-imposed requirement to give the *Miranda* warnings at the outset of a criminal investigation is encouraging. Whether the courts will enforce the procedures remains to be seen, but the recent decisions of *Heffner* and *Leahey* indicate an increasing judicial awareness of the protections that must be afforded the taxpayer. Not only should a warning be given at the outset of a criminal investigation, but every taxpayer should, at the outset of an Internal Revenue Service examination be apprised of the potentialities of the investigation. This would not seriously hinder the Service in its investigations and it would give each unsuspecting victim a chance to make an intelligent decision whether to waive his constitutional rights. The Service vigorously prosecutes those cases that will receive the most notoriety, as fear of prosecution is the main deterrent to filing false returns. Thus, every taxpayer should enter this adversary situation armed with the knowledge of the possible outcome.

The courts need to abondon the "legitimate purpose" versus "improper purpose" test and focus on the bona fides of the individual investigation. If a special agent is present it cannot honestly be disputed that he is seeking incriminating evidence. As is so often stated, the courts should not permit such an abuse of their process. The time of referral to the Intelligence Division rather than the time of recommendation for prosecution should be the terminus for issuing a section 7602 summons, yet even this time should not be conclusive. Referral should be the guideline and the actual purpose the determinant.

Basing the privilege against self-incrimination on the sole issue of ownership versus possession degrades the nature of the privilege. An individual is forced to seek professional accounting and legal assistance because of the complexity of the tax law, having no intention for his records to be made public. When the complexity of the law compels a person to divulge in confidence to another what may eventually be incriminating evidence, and this confidential communication is not privileged, the person is compelled to incriminate himself. This is not to say that an extensive accountant-client

189. *E.g.*, Falsone v. United States, 205 F.2d 734 (5th Cir.), *cert. denied*, 346 U.S. 864 (1953).

privilege should exist. Routine accounting services are not intended as confidential and do not involve the seeking of legal advice. Yet those matters that are intended to be confidential and do not involve the rendering of professional services should be protected.

Thus, while the recent extension of the *Miranda* warnings to tax investigations is commendable, the courts have generally condoned the Service's inquisitorial investigations and continued to deny the taxpayer constitutional protections generally available in criminal investigations.

MIKE ROLLYSON

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Part 4—Economic Impact of Heroin Traffic

THE FORTUNE DIRECTORY

of the 500 Largest U.S. Industrial Corporations

Once again last year the record of the 500 largest industrials in the U.S. featured an ironic contrast between operating results and stock-market performance. The operating results were mostly dismal; gripped by recession, the 500 suffered the most severe earnings drop in seventeen years. On Wall Street, however, the stock market staged a welcome turnaround. The median ("total return to investors"—which combines dividend yield and price appreciation—was a breathtaking 51.23 percent in 1975. The year was a mirror image of 1973, when stocks collapsed while business boomed.

Sales of the 500 rose to $865 billion, an increase of only 3.9 percent over the previous year. That was the smallest year-to-year gain since 1961 (when sales rose only 2.2 percent). In real terms, sales of the 500 actually *declined* last year, since the U.S. government's index of the price of manufactured goods rose by 11 percent.

Exxon, which took over first place on the list last year, retained its lead easily; the company reported sales of $44.9 billion, which gave it a cushion of more than $9 billion over General Motors, again No. 2. Texaco moved past Ford into third place. The other big change among the top ten involved International Business Machines, which increased its sales by nearly 14 percent and passed both General Electric and Gulf Oil to become No. 7. Procter & Gamble increased its sales by 24 percent and moved up nine places to become No. 19; General Foods advanced thirteen places to become No. 44. Soaring sugar prices gave Great Western United the sharpest sales gain of all—a dazzling 99.5 percent—enabling it to return to the 500 (as No. 345) after a two-year absence.

Despite the poor overall sales record, two-thirds of the companies reported higher sales. So did all but five industry groups. Tobacco did best of all—with a median increase of 16.3 percent—because of cigarette price increases and the expansion of the low-tar market.

Among those registering declines, the metal manufacturers reported the heaviest drop, 15.6 percent. The company with the greatest sales decline (58.6 percent) was Kennecott Copper, which stopped consolidating the sales of its Peabody Coal subsidiary and dropped 138 places to become No. 257. Behind Kennecott's decision was a Federal Trade Commission ruling that ordered the company to divest itself of the coal company. Peabody, which had dropped off the list when it was acquired by Kennecott in 1968, returned as No. 270.

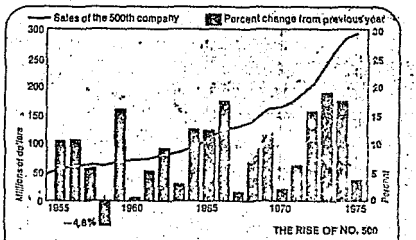
For the first time since 1963 there was no increase in membership of the billion-dollar club. The number of companies reporting sales of more than $1 billion remained at 203. The $5-billion club, however, grew by three members (to twenty-seven). The FORTUNE Directory excludes privately held companies that do not publish financial statements, such as Deering Milliken.

The not-so-obscene profits in oil

Profits of the 500 fell sharply, by 13.3 percent. The group's profit problems were heavily concentrated in the oil companies, which broke all sorts of records in 1974 but ran into big trouble last year. The group's earnings fell by 25 percent and accounted for more than half of the 500's overall profit decline. Elimination of the oil-depletion allowance at home, heavier taxes in most OPEC countries, and weak markets overseas were the major problems. Exxon's earnings fell by 20.8 percent, Texaco's by 47.7 percent, Gulf's by 34.3 percent.

The list of money losers rose to twenty-eight last year—up from twenty-one in 1974. Singer, which abandoned and wrote off its unprofitable business-machines division, suffered the single biggest loss in the history of the 500—a whopping $451.9 million. (The previous record was Anaconda's $356-million loss in 1971.) Chrysler was in the red for the second consecutive year, with a deficit of $259.5 million.

Not surprisingly, the profit-margin picture was dismal, too. The median return on sales for all industries was 3.9 percent, down from 4.3 percent the year before. The



THE RISE OF NO. 500

The cutoff for inclusion in the 500 rose by 3.9 percent last year, to $297.2 million (the sales volume of Economics Laboratory). The rise was well below the 6.9 percent annual average registered during the twenty-two years in which the list has been published.

mining group, which posted a return of 13 percent in 1974 and has now been the leader in profit margins for twelve consecutive years, slipped a bit, to 12.3 percent. Texasgulf led the list for the second year in a row with a margin of 23.2 percent.

The median return on stockholders' equity fell two percentage points, to 11.6 percent. Broadcasting and motion pictures, with a return of 19.4 percent, edged past mining and led the list. Lockheed Aircraft had the highest return on equity of any company, 60.2 percent. A major reason for Lockheed's leadership in this category is the fact that its equity base is so small in relation to the company's volume of business. The base was shrunk by those heavy losses on the C-5 and TriStar programs.

More than 90 percent of the 500 posted gains in total return to investors during 1975. The broadcasting and motion-picture group proved especially popular with investors and registered a median total return of 107.78 percent. American Bakeries topped all other companies with a spectacular 251.34 percent return. The list of leaders also included a host of apparel and textile companies—Blue Bell (211.61 percent), Levi Strauss (210.51 percent), Collins & Aikman (176.43 percent). Nashua, which makes computer disc packs and paper for office copiers, did worst. Its total return: minus 34.41 percent.

Last year's bull market also lifted total-return figures for the decade. After the bear markets of 1973 and 1974, the median return for the 1964-74 decade was down to 1.83 percent. The median for 1965-75 is back up to 3.08 percent. Fleetwood Enterprises, a manufacturer of mobile homes, had the best record for the decade, an average annual return of 43.05 percent.

The 500 trimmed its work force by 5.9 percent, or nearly a million employees. The four largest employers—General Motors, Ford, International Telephone & Telegraph, and General Electric—accounted for about a fifth of that drop all by themselves. Median sales per employee rose 8.7 percent.

Assets grew to $668 billion, a figure representing a gain of only 6.1 percent over the previous year. The total stockholders' equity of the 500 did not do much better, increasing by only 7.2 percent to $331 billion.

This year, for the first time, the directory of the 500 largest industrials includes industry code numbers. The numbers indicate which individual line of business accounts for the greatest volume of each company's industrial sales. Among the twenty-eight industry groups represented on the list, petroleum refining had the highest volume of sales ($200.5 billion). The food industry had the most companies—a total of seventy-one.

—SUSIE GHARIB NAZEM

Performance of the 500

	1975	1974	1973
Combined sales ($000)	865,233,382	833,089,679	667,105,711
Change in sales (%)	+3.9	+24.9	+19.6
Combined profits ($000)	37,849,994	43,642,945	38,680,461
Change in profits (%)	−13.3	+12.8	+39
Combined assets ($000)	668,478,042	630,271,081	555,462,284
Sales increases	338	472	490
Profit increases	231	347	425
Money losers	23	21	9
Median profit margin (%)	3.9	4.3	4.5
Median return on equity (%)	11.6	13.6	12.4
Median growth in earnings per share over previous decade (%)	6.59	9.45	9.67
Median total return (%)	+51.23	−22.35	−25.49
Median total return over previous decade (%)	3.05	1.83	5.22
Combined employment	14,412,992	15,318,046	15,532,083

The 500 Largest Industrial Corporations *(ranked by sales)*

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
1	1	Exxon (New York)	44,864,824*	32,839,398	1	2,503,013	1	17,024,411	1
2	2	General Motors (Detroit)	35,724,911	21,664,885	2	1,253,092	3	13,082,365	2
3	4	Texaco (New York)	24,507,454	17,262,448	3	830,583	4	8,674,817	4
4	3	Ford Motor (Dearborn, Mich.)	24,009,100	14,020,200	6	322,700	23	6,350,300	8
5	5	Mobil Oil (New York)	20,620,392*	15,050,287	5	809,877	5	6,840,997	5
6	6	Standard Oil of California (San Francisco)	16,822,077	12,898,150	7	772,509	7	6,485,062	6
7	9	International Business Machines (Armonk, N.Y.)	14,436,541	15,530,476	4	1,989,877	2	11,415,771	3
8	7	Gulf Oil (Pittsburgh)	14,268,000*	12,425,000	8	700,000	8	6,458,000	7
9	8	General Electric (Fairfield, Conn.)	13,399,100	9,763,500	11	580,800	11	4,069,200	12
10	11	Chrysler (Highland Park, Mich.)	11,699,305	6,266,728	17	(259,535)	492	2,409,209	22
11	10	International Tel. & Tel. (New York)	11,367,647	10,407,941	9	398,171	15	4,252,311	11
12	13	Standard Oil (Ind.) (Chicago)	9,955,248*	9,854,099	10	786,987	6	5,584,919	9
13	12	U.S. Steel (Pittsburgh)	8,167,269	8,148,174	12	559,614	12	4,850,143	10
14	14	Shell Oil (Houston)	8,143,445*	7,010,753	14	514,827	13	3,911,364	13
15	18	Atlantic Richfield (Los Angeles)	7,307,854*	7,364,787	13	350,395	17	3,663,558	16
16	16	Continental Oil (Stamford, Conn.)	7,253,801	5,184,581	20	330,854	22	2,134,882	25
17	17	E.I. du Pont de Nemours (Wilmington, Del.)	7,221,500	6,425,000	16	271,800	25	3,834,900	14
18	15	Western Electric (New York)	6,590,116	4,999,944	22	107,308	81	3,209,232	17
19	28	Procter & Gamble (Cincinnati)[1]	6,081,675	3,652,673	32	333,862	21	2,118,147	26
20	19	Westinghouse Electric (Pittsburgh)	5,862,747	4,866,286	23	165,224	45	2,001,692	27
21	22	Union Carbide (New York)	5,665,000	5,740,800	19	381,700	16	2,748,000	18
22	24	Tenneco (Houston)	5,599,709	6,584,204	15	342,936	18	2,400,079	23
23	23	Goodyear Tire & Rubber (Akron, Ohio)	5,452,473	4,173,675	29	161,613	48	1,816,051	34
24	26	International Harvester (Chicago)[2]	5,335,385	3,510,340	33	79,354	120	1,443,863	42
25	20	Occidental Petroleum (Los Angeles)	5,333,919	3,503,372	34	171,956	42	1,200,606	52
26	25	Phillips Petroleum (Bartlesville, Okla.)	5,133,557	4,544,929	25	342,568	19	2,424,299	21
27	34	Union Oil of California (Los Angeles)	5,086,427*	3,776,124	30	232,754	32	1,919,441	29
28	21	Bethlehem Steel (Bethlehem, Pa.)	4,977,229	4,591,541	24	241,951	30	2,611,986	19
29	36	Caterpillar Tractor (Peoria, Ill.)	4,963,683	3,386,635	37	398,735	14	1,760,745	36
30	32	Eastman Kodak (Rochester, N.Y.)	4,958,536	5,056,238	21	613,694	10	3,709,079	15
31	35	Rockwell International (Pittsburgh)[3]	4,943,400	2,888,100	47	101,600	90	1,126,900	56
32	27	Dow Chemical (Midland, Mich.)	4,888,114	5,846,731	18	615,662	9	2,450,556	20
33	33	Kraftco (Glenview, Ill.)	4,857,378	1,671,472	93	139,551	55	938,476	72
34	31	RCA (New York)	4,789,600	3,728,400	31	110,000	78	1,179,700	54
35	30	Esmark (Chicago)[2,5]	4,730,739	1,473,924	110	79,685	119	621,781	132
36	37	Sun Oil (St. Davids, Pa.)	4,389,129	4,383,519	27	220,054	34	2,391,300	24
37	29	LTV (Dallas)	4,312,463	1,962,813	76	13,142	374	360,463	215
38	42	Beatrice Foods (Chicago)[4]	4,191,764	1,658,170	94	134,764	59	871,451	81
39	41	Xerox (Stamford, Conn.)	4,094,032	4,455,649	26	244,307	29	1,906,957	30
40	46	United Technologies (Hartford)[3]	3,877,772	2,701,311	48	117,490	73	957,660	70
41	45	Greyhound (Phoenix)	3,733,291	1,427,964	114	81,220	115	614,969	133
42	40	Firestone Tire & Rubber (Akron, Ohio)[2]	3,724,150	3,180,801	44	134,296	61	1,528,699	39
43	39	Boeing (Seattle)	3,718,853	1,788,896	88	76,347	125	1,010,093	66
44	57	General Foods (White Plains, N.Y.)[4]	3,675,092	1,896,554	79	99,386	93	902,905	77
45	50	Ashland Oil (Russell, Ky.)[3]	3,637,126*	1,973,017	73	119,367	70	725,617	109
46	43	Monsanto (St. Louis)	3,624,700	3,450,900	35	306,300	24	1,976,700	28
47	44	W.R. Grace (New York)	3,529,163	2,523,803	52	166,678	43	1,075,013	59
48	49	R.J. Reynolds Industries (Winston-Salem, N.C.)	3,528,895*	3,294,322	40	338,673	20	1,899,580	32
49	53	Litton Industries (Beverly Hills)[3]	3,430,168	2,185,731	66	35,280	233	796,598	97
50	47	Lockheed Aircraft (Burbank, Calif.)	3,387,211	1,573,400	101	45,300	191	75,300	465

THE DEFINITIONS AND CONCEPTS UNDERLYING THE FIGURES IN THIS DIRECTORY ARE EXPLAINED ON PAGE 338.

N.A. Not available.

*Does not include excise taxes; see the explanation of "sales" on page 338.

**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

†Average for the year; see the reference to "employees" on page 338.

[1]Figures are for fiscal year ending June 30, 1975.

[2]Figures are for fiscal year ending October 31, 1975.

[3]Figures are for fiscal year ending September 30, 1975.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	SALES RANK	EQUITY %	EQUITY RANK	EARNINGS PER SHARE: '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	GROWTH RATE 1965-75 RANK	TOTAL RETURN TO INVESTORS: 1975 %	1975 RANK	1965-75 AVERAGE %	1965-75 AVERAGE RANK	INDUSTRY CODE
137,000†	12	5.6	142	14.7	128	11.19	14.04	4.80	8.83	175	45.06	269	6.43	154	29
681,000†	1	3.5	275	9.6	314	4.32	3.27	7.41	(5.25)	414	95.20	88	0.29	315	40
75,235	31	3.4	284	9.6	316	3.06	5.84	2.35	2.68	326	21.56	386	(0.23)	328	29
416,120†	2	1.3	424	5.1	418	3.46	3.86	6.33	(5.86)	418	39.62	294	3.34	219	40
71,300	36	3.9	243	11.8	235	7.95	10.28	3.15	9.70	153	40.70	291	4.75	187	29
38,801	98	4.6	197	11.9	229	4.55	5.71	2.34	6.88	222	41.02	288	2.89	236	29
288,647	5	13.8	10	17.4	60	13.35	12.47	3.53	14.23	74	37.35	306	7.36	136	44
52,100	58	4.9	173	10.8	278	3.60	5.47	2.06	5.74	252	25.97	362	1.78	268	23
375,000†	4	4.3	216	14.3	141	3.17	3.34	1.96	4.93	273	42.99	279	0.41	311	36
217,594†	6	—		—		(4.33)	(0.92)	5.53	—		39.69	293	(10.89)	442	40
376,000	3	3.5	276	9.4	323	3.20	3.63	1.79	5.98	246	62.83	189	(1.15)	345	36
46,808	75	7.9	62	14.1	150	5.36	6.86	1.55	13.21	80	2.59	447	9.93	81	29
172,796†	7	6.9	95	11.5	249	10.33	11.72	4.62	8.38	185	78.43	133	8.11	115	33
32,496	120	6.3	115	13.2	180	7.59	9.21	3.86	7.00	217	10.38	431	1.65	274	29
28,080	138	4.8	181	9.6	317	6.16	8.36	3.02	7.39	212	2.34	448	11.98	53	29
44,028	86	4.6	199	15.5	104	6.50	6.47	2.13	11.80	104	40.89	289	9.83	85	29
132,235	13	3.8	258	7.1	383	5.43	8.20	8.63	(4.53)	410	41.74	281	(2.55)	376	28
152,677	9	1.6	407	3.3	442	N.A.	N.A.	N.A.	—		—		—		36
51,400	60	5.5	145	15.8	95	4.05	3.85	1.53	10.22	142	11.66	428	12.64	47	43
166,048†	8	2.8	329	8.3	354	1.89	0.31	1.43	2.83	323	43.47	272	(4.57)	406	36
106,475	19	6.7	100	13.9	158	6.23	8.69	3.76	5.18	267	53.54	229	3.53	218	28
78,380	28	6.1	122	14.3	140	4.15	4.08	1.81	8.65	179	20.99	391	6.64	150	29
148,225†	10	3.0	321	8.9	334	2.24	2.18	1.53	3.89	301	77.47	139	2.91	235	30
104,170†	20	1.5	415	5.5	411	2.77	4.46	3.46	(2.20)	385	21.90	384	(1.42)	351	45
33,000	117	3.2	299	14.3	139	2.64	4.74	0.55**	16.98	48	17.65	400	6.73	146	10
30,506	129	6.7	102	14.1	147	4.50	5.30	1.91	8.95	169	29.13	346	10.70	72	29
15,668	250	4.6	198	12.1	224	6.81	8.92	3.30	7.51	210	8.79	435	1.47	283	29
112,749†	17	4.9	176	9.3	325	5.54	7.85	3.28	5.38	260	43.22	278	3.93	209	33
78,286	29	8.0	60	22.6	22	6.97	4.01	2.85	9.36	160	47.64	253	6.31	158	45
124,000	14	12.4	16	16.5	77	3.80	3.90	1.54	9.45	159	72.06	155	7.82	122	38
122,789	15	2.1	379	9.0	330	2.96	4.14	3.88*	(2.67)	389	30.98	336	0.43	310	41
53,121	56	12.6	14	25.1	16	6.65	6.03	1.20	18.68	40	69.23	166	16.40	28	28
47,845	71	2.9	325	14.9	125	5.01	3.41	2.41	7.59	207	27.36	352	4.19	203	20
113,000	16	2.3	364	9.3	324	1.40	1.45	1.70	(1.92)	382	87.25	104	(5.03)	411	36
33,600†	109	1.7	405	12.8	189	5.05	4.47	1.08	16.68	53	47.27	257	6.75	149	20
27,848	141	5.0	167	9.2	326	4.20	7.84	2.11	7.13	215	(17.55)	472	2.63	242	29
60,400	43	0.3	460	3.6	438	1.02	10.32**	1.84	(5.73)	417	14.10	412	(9.49)	437	20
64,000	39	3.2	300	15.5	107	1.71	1.55	0.64	10.33	140	70.04	164	9.13	96	20
93,532	23	6.0	126	12.8	191	3.07	4.18	0.94	12.56	91	0.73	455	(1.91)	362	38
138,072	11	3.0	316	12.3	217	7.78	6.62	4.61	5.37	261	48.28	251	(1.32)	350	41
53,438†	55	2.2	374	13.2	178	1.87	1.37	1.60**	1.57	343	38.17	301	1.31	287	20
111,000	18	3.6	267	8.8	341	2.36	2.71	1.51	4.57	280	74.57	146	3.93	208	30
72,600†	34	2.1	380	7.6	372	3.60	3.42	4.82	(2.88)	392	61.12	194	(6.86)	430	41
48,000	68	2.7	341	11.0	270	2.00	2.40	1.72	1.52	344	62.40	190	0.20	318	20
27,000	144	3.3	293	16.5	89	4.42	4.45	2.00	8.25	189	26.67	358	1.07	297	29
59,242	46	8.5	53	15.5	105	8.63	9.25	3.74	8.72	177	93.70	93	3.28	222	28
60,200	44	4.7	187	15.5	103	5.31	4.12	2.80	6.61	230	20.13	395	(3.32)	391	28
34,666	105	9.6	39	17.8	57	7.39	6.99	3.27	8.49	183	23.01	377	8.58	105	21
97,000	22	1.0	438	4.4	429	0.87	(1.29)	1.36	(4.37)	408	125.35	35	(12.85)	451	44
57,567	47	1.3	427	60.2	1	3.86	2.04	4.89	(2.34)	386	110.27	53	(16.69)	455	41

*Figure is for North American Aviation.
**Figures for 1975 include Dorlc (1974 rank: 977) from the date of its acquisition, April, 1975.
†Figures are for fiscal year ending February 28, 1975.
‡Name changed from United Aircraft in May, 1975. Figures for 1975 include Otis Elevator (1974 rank: 179) from the date of its acquisition, November, 1975.
§Figures are for fiscal year ending March 31, 1975.
¶Figures are for fiscal year ending July 31, 1975.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
51	49	Borden (New York)	3,367,243	1,656,472	95	92,884	101	863,560	84
52	54	McDonnell Douglas (St. Louis)	3,355,658	2,207,743	63	85,650	107	846,982	88
53	60	Cities Service (Tulsa)	3,200,700	3,233,500	43	137,700	58	1,631,800	37
54	38	Amerada Hess (New York)	3,179,169	2,785,459	54	126,403	64	1,043,105	63
55	55	Ralston Purina (St. Louis)[3]	3,149,691	1,377,314	122	99,548	92	674,256	118
56	58	Minnesota Mining & Manufacturing (St. Paul)	3,127,341	3,016,462	46	261,623	26	1,822,659	33
57	52	Continental Can (New York)	3,101,852	1,963,100	75	107,184	82	867,500	82
58	56	International Paper (New York)	3,080,900	3,331,509	36	218,000	35	1,501,600	40
59	51	Armco Steel (Middletown, Ohio)	3,046,738	2,605,971	49	116,661	74	1,330,743	45
60	69	Sperry Rand (New York)[3]	3,040,862	2,553,121	51	131,420	69	1,059,954	60
61	61	Getty Oil (Los Angeles)	2,983,582	3,239,863	42	256,688	27	1,902,201	31
62	74	Deere (Moline, Ill.)	2,955,264	2,440,829	64	179,073	41	1,169,729	53
63	59	Marathon Oil (Findlay, Ohio)	2,878,171*	2,005,425	72	128,117	65	1,011,702	65
64	73	Coca-Cola (Atlanta)	2,847,540	1,310,673	94	238,365	31	1,229,279	48
65	66	American Can (Greenwich, Conn.)	2,870,156	1,855,280	83	77,297	124	790,258	98
66	68	Colgate-Palmolive (New York)	2,860,491	1,443,631	111	118,960	72	770,539	102
67	67	Honeywell (Minneapolis)	2,760,068	2,573,914	50	77,826	123	990,153	67
68	70	CPC International (Englewood Cliffs, N.J.)	2,741,512	1,307,691	117	169,244	79	657,019	122
69	82	Gulf & Western Industries (New York)[5]	2,602,147	3,305,705	39	140,055	54	849,135	86
70	76	Bendix (Southfield, Mich.)[3]	2,598,700	1,[illegible]	103	79,600	118	731,600	107
71	75	TRW (Cleveland)	2,585,683	1,686,465	91	103,899	85	761,854	104
72	85	American Brands (New York)	2,[illegible]	[illegible]	57	148,527	49	1,108,145	57
73	65	Singer (New York)	2,568,000	1,797,100	82	(451 900)	493	306,200	238
74	92	Philip Morris (New York)	2,563,111*	3,154,520	45	211,638	36	1,227,781	49
75	79	Consolidated Foods (Chicago)[3]	2,535,827	1,036,815	160	12,743	377	577,851	144
76	86	Standard Oil (Ohio) (Cleveland)	2,491,161	4,070,443	28	126,556	66	1,461,279	41
77	88	Textron (Providence)	2,459,060	1,433,334	113	95,955	97	754,491	109
78	72	Weyerhaeuser (Tacoma, Wash.)	2,[illegible]	[illegible]	41	191,886	38	1,788,039	35
79	71	Champion International (Stamford, Conn.)	2,399,258	1,972,244	74	61,019	151	782,839	99
80	78	Georgia-Pacific (Portland, Ore.)	2,[illegible]	2,[illegible]	44	148,020	50	1,027,630	64
81	62	Republic Steel (Cleveland)	2,393,281	2,071,119	68	72,198	130	1,278,760	47
82	84	Allied Chemical (Morristown, N.J.)	2,[illegible]	[illegible]	61	116,194	75	1,044,854	61
83	89	PepsiCo (Purchase, N.Y.)	2,321,243	1,363,919	123	104,600	84	627,173	130
84	94	General Mills (Minneapolis)[12]	2,[illegible]	1,[illegible]	134	76,213	126	560,489	148
85	64	Aluminum Co. of America (Pittsburgh)	2,305,900	3,419,900	36	64,800	138	1,575,400	38
86	90	FMC (Chicago)	2,[illegible]	1,[illegible]	93	108,166	80	823,340	91
87	93	American Motors (Southfield, Mich.)[3]	2,282,199	1,010,349	167	(27,500)	485	357,071	216
88	87	Owens-Illinois (Toledo)	2,[illegible]	1,[illegible]	77	87,336	105	847,973	87
89	91	American Home Products (New York)	2,258,642	1,390,712	120	250,686	28	899,012	78
90	100	Raytheon (Lexington, Mass.)	2,[illegible]	1,[illegible]	161	70,973	131	464,193	172
91	63	National Steel (Pittsburgh)	2,241,167	2,410,478	56	58,041	161	1,208,693	51
92	99	Johnson & Johnson (New Brunswick, N.J.)	2,224,[illegible]	1,5[illegible]	106	163,818	39	1,150,837	55
93	81	Uniroyal (Middlebury, Conn.)	2,187,645	1,605,869	98	23,041	300	626,190	121
94	83	United Brands (Boston)	2,186,925	1,[illegible]	152	10,768	394	482,315	167
95	102	Warner-Lambert (Morris Plains, N.J.)	2,172,271	1,808,249	86	163,899	47	1,098,803	58
96	97	NCR (Dayton, Ohio)	2,165,607	2,184,722	65	72,491	129	798,287	95
97	121	Signal Companies (Beverly Hills)[14]	2,162,948	1,866,823	81	41,135	209	808,243	92
98	98	General Dynamics (St. Louis)	2,140,038	1,334,085	125	84,489	109	544,184	149
99	77	Inland Steel (Chicago)	2,107,418	1,866,543	82	83,350	111	970,585	68
100	103	Carnation (Los Angeles)	2,075,370	1,003,703	168	88,536	104	566,829	146

*Does not include excise taxes; see the explanation of "sales" on page 338.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
[3]Average for the year; see the reference to "employees" on page 338.
[14]Figure is for McDonnell Aircraft.
[12]Figure is for U.S. Plywood.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF SALES %	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY %	RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	EARNINGS PER SHARE GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	TOTAL RETURN TO INVESTORS 1965-75 AVERAGE %	RANK	INDUSTRY CODE
42,100†	89	2.8	335	10.8	280	3.01	2.72	2.03	4.02	295	37.92	303	0.18	320	20
62,830	42	2.6	345	10.1	299	2.27	2.77	1.36[a]	5.26	262	88.22	103	(0.61)	332	41
17,100	231	4.3	222	8.4	351	5.12	7.58	3.71	3.27	315	(4.87)	463	3.75	212	29
6,145†	428	4.0	235	12.3	214	3.34	5.19	1.24	10.42	138	10.93	430	3.13	224	29
55,000†	52	3.2	306	14.8	127	2.80	2.56	0.98	11.07	122	28.92	347	11.27	62	20
78,427	27	8.4	54	14.4	138	2.29	2.66	1.09	7.71	205	23.26	376	6.76	148	38
59,875†	45	3.5	280	12.4	212	3.64	4.07	2.14	5.46	259	12.68	418	4.67	191	34
50,841	62	7.1	88	14.5	132	4.93	5.95	2.02	9.33	161	67.13	168	10.85	69	26
48,818†	65	3.8	253	8.8	344	3.71	6.71	3.16	1.62	341	20.95	392	3.29	220	33
92,963	24	4.3	217	12.4	209	3.81	3.27	0.71	18.30	42	46.18	263	7.36	135	44
11,577	327	8.6	47	13.5	164	13.71	15.00	0.74	33.90	4	4.58	442	17.12	22	29
53,794	54	6.1	124	15.1	119	6.03	5.55	2.01	11.61	111	25.80	363	10.79	71	45
11,873	318	4.5	209	12.7	194	4.28	5.70	2.03	7.74	204	24.24	369	8.08	116	29
31,084	124	8.3	56	19.5	38	4.00	3.28	1.33	11.64	110	59.53	202	8.74	103	49
50,100†	63	2.7	343	9.8	305	4.17	5.19	3.62	1.42	345	16.46	406	0.17	321	34
42,000†	90	4.2	230	15.4	111	1.73	1.73	0.60	11.17	120	22.08	383	14.71	32	43
83,063	25	2.8	328	7.9	363	3.96	3.93	2.61	4.26	288	65.63	177	(5.81)	417	44
42,900	88	4.0	239	16.6	76	4.62	4.19	2.46	6.51	235	34.68	317	2.58	245	20
75,000	32	5.4	154	16.5	78	4.49	2.96	0.39	27.68	12	77.63	138	6.91	143	34
74,100	33	3.1	313	10.9	275	4.89	4.65	2.53	6.81	226	114.08	49	7.52	126	40
82,757	26	4.0	236	13.6	160	3.08	3.05	1.57	6.97	219	101.46	74	4.83	185	40
56,500	50	5.8	133	13.4	167	5.63	5.16	3.04	6.36	237	36.54	307	6.00	162	21
98,000	21	—	—	—	—	(27.69)	(0.89)	4.03	—	—	(14.78)	471	(12.82)	450	36
48,000	69	8.3	58	17.2	64	3.62	3.15	0.59	19.89	32	12.24	423	24.40	8	21
78,000	30	0.5	454	2.2	453	0.27	2.41	1.36	(14.93)	434	82.47	120	1.67	272	20
20,550	201	5.1	164	8.7	347	3.42	4.03**	2.05	5.25	263	16.64	405	11.70	55	29
64,000	40	3.9	247	12.7	193	2.58	2.83	1.33	6.85	223	73.24	152	3.00	230	41
46,595	76	7.9	61	10.7	281	1.51	2.17	0.68	8.30	187	38.54	298	16.61	26	26
47,728	72	2.5	353	7.8	365	1.82	3.24	1.51[a]	1.88	335	83.37	118	1.21	292	26
33,560	111	6.3	118	14.4	136	2.45	2.85	0.94	10.05	146	75.07	145	13.64	40	26
39,430†	94	3.1	312	5.6	409	4.46	10.55	4.90	(0.94)	373	27.67	351	2.28	256	33
33,400	113	5.0	170	11.1	265	4.17	5.43	3.02	3.28	314	23.53	374	1.07	296	28
49,000	64	4.5	207	16.7	75	4.41	3.69	1.96	8.45	184	76.00	143	7.62	127	49
47,969	70	3.3	291	13.6	162	3.19	3.18	1.32	9.22	165	50.59	242	9.67	89	20
44,100†	85	2.8	331	4.1	433	1.85	5.14	2.28	(2.07)	383	33.78	320	0.19	319	33
46,572	77	4.7	188	13.1	182	3.24	2.40	1.95	5.21	266	98.25	77	(3.03)	384	45
33,045	116	—	—	—	—	(0.92)	0.94	0.27	—	—	65.51	179	(4.45)	403	40
66,934	38	3.8	252	10.3	293	6.02	5.74	4.41**	3.16	318	58.79	204	1.03	300	32
46,393	78	11.1	23	27.9	11	1.58	1.42	0.52	11.75	106	3.08	445	11.26	63	42
52,692	57	3.2	307	15.3	112	4.69	3.85	1.22	14.41	71	85.95	108	10.86	68	36
33,348†	115	2.6	348	4.8	425	3.10	9.44	5.56	(5.67)	415	22.72	379	1.31	288	33
53,800	53	8.3	57	16.0	91	3.18	2.80	0.58	18.55	41	12.02	424	17.46	21	38
55,542†	51	1.1	436	3.7	437	0.68	1.65	1.34	(6.56)	422	36.42	309	(3.84)	397	30
48,000	67	0.5	456	2.2	452	0.80	(4.25)	0.49[a]	5.02	270	61.65	192	0.15	323	20
57,500	48	7.5	79	14.9	122	2.08	1.98	0.80	10.03	148	43.37	274	8.14	113	42
72,000	35	3.3	288	9.1	329	2.99	3.67	1.41	7.81	202	63.12	186	(2.89)	381	44
40,800	92	1.9	390	5.1	417	1.89	7.66	2.13	(1.19)	375	17.47	401	(1.44)	352	40
63,800	41	3.9	244	15.5	102	7.94	5.06	4.51	5.82	251	95.48	86	(1.76)	359	37
32,639†	119	4.0	240	8.6	349	4.43	7.96	3.75	1.68	338	34.85	316	5.64	168	33
21,871	189	4.3	223	15.6	99	4.76	4.27	1.17	15.06	63	23.84	372	13.86	38	20

*Figures are for fiscal year ending May 31, 1975.
**Figure is for AMK.
†Figures for 1975 include Universal Oil Products (1974 rank: 243) from the date of its acquisition, May, 1975.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
101	146	Dresser Industries (Dallas)[2]	2,011,600	1,424,400	116	123,900	67	646,300	124
102	144	Pullman (Chicago)	2,006,977	886,451	185	39,350	215	323,232	229
103	106	Nabisco (East Hanover, N.J.)	1,970,829	1,014,389	165	59,038	159	407,122	188
104	80	Burlington Industries (Greensboro, N.C.)[3]	1,958,092	1,566,525	104	39,769	214	895,047	79
105	111	CBS (New York)	1,938,867	1,193,110	136	122,903	69	644,640	125
106	107	American Cyanamid (Wayne, N.J.)	1,928,444	1,722,174	89	147,675	52	1,044,276	62
107	96	B.F. Goodrich (Akron, Ohio)	1,901,202	1,596,825	99	25,555	284	736,960	106
108	101	Celanese (New York)	1,900,000	1,908,000	78	50,000	173	768,000	103
109	113	PPG Industries (Pittsburgh)	1,886,600	1,869,000	80	89,000	102	910,900	75
110	125	Bristol-Myers (New York)	1,827,669	1,183,344	140	141,696	53	698,140	114
111	128	Archer Daniels Midland (Decatur, Ill.)[4]	1,822,878	482,826	280	34,952	235	208,165	308
112	123	Norton Simon (New York)[5]	1,815,169	1,355,721	124	82,758	112	725,327	110
113	131	Iowa Beef Processors (Dakota City, Neb.)[6]	1,805,340	229,684	440	23,237	297	107,557	442
114	120	Standard Brands (New York)	1,799,895*	947,265	172	66,895	134	428,057	182
115	129	Kerr-McGee (Oklahoma City)	1,798,580	1,387,882	121	131,080	63	807,894	93
116	112	Central Soya (Fort Wayne, Ind.)[6]	1,789,288	408,214	318	21,047**	314	206,070	312
117	109	Crown Zellerbach (San Francisco)	1,758,120	1,523,084	107	74,490	128	777,689	100
118	115	General Tire & Rubber (Akron, Ohio)[17]	1,751,958	1,427,300	115	62,368	146	709,127	112
119	116	Teledyne (Los Angeles)	1,714,972	1,141,883	146	101,706	89	491,309	166
120	140	Combustion Engineering (Stamford, Conn.)	1,711,151	1,054,485	158	44,592	196	364,934	212
121	142	Ingersoll-Rand (Woodcliff Lake, N.J.)	1,708,298	1,673,154	92	119,177	71	799,774	94
122	191	Amstar (New York)[1]	1,686,997	441,456	301	39,035	217	230,413	292
123	95	Reynolds Metals (Richmond, Va.)	1,679,262	2,204,138	64	60,017	156	830,599	90
124	134	Burroughs (Detroit)	1,675,646	2,434,951	55	164,409	46	1,308,137	46
125	130	Pfizer (New York)	1,665,458	2,019,379	70	147,715	51	930,495	73
126	139	H.J. Heinz (Pittsburgh)[18]	1,662,701	1,114,252	145	66,567	136	502,795	162
127	143	Anheuser-Busch (St. Louis)	1,644,979	1,202,116	135	84,723	108	593,642	140
128	108	Borg-Warner (Chicago)	1,639,000	1,192,500	137	44,500	197	689,100	115
129	117	American Standard (New York)	1,622,262	1,018,663	164	44,761	193	405,884	189
130	114	Kaiser Aluminum & Chemical (Oakland, Calif.)	1,578,125	2,101,760	67	94,705	100	797,458	96
131	156	Babcock & Wilcox (New York)	1,564,995	1,135,397	148	42,317	204	374,379	205
132	110	Eaton (Cleveland)	1,558,294	1,254,084	132	47,043	181	608,937	136
133	136	Campbell Soup (Camden, N.J.)[9]	1,545,555	849,164	194	86,973	106	666,400	120
134	105	Lykes-Youngstown (New Orleans)	1,517,839	1,630,454	97	56,890	163	717,331	111
135	162	Farmland Industries (Kansas City, Mo.)[10]	1,507,805	930,489	175	N.A.[11]		284,651	253
136	145	IC Industries (Chicago)[22]	1,504,835	2,242,701	60	48,600	176	925,911	74
137	169	Pittston (New York)	1,504,222	890,246	181	200,146	37	495,826	165
138	104	Ogden (New York)	1,491,264	925,953	176	47,028	182	281,359	256
139	152	Merck (Rahway, N.J.)	1,489,658	1,573,693	100	228,778	33	949,991	71
140	138	Kimberly-Clark (Neenah, Wis.)	1,483,738	1,305,243	128	102,544	88	729,744	108
141	141	Associated Milk Producers (San Antonio)	1,477,851	184,948	469	N.A.[21]		61,023	474
142	122	Whirlpool (Benton Harbor, Mich.)	1,467,566	764,939	206	58,853	160	432,062	179
143	137	Boise Cascade (Boise, Idaho)	1,458,050	1,569,517	102	63,890	140	866,241	83
144	158	Allis-Chalmers (West Allis, Wis.)	1,443,259	980,949	170	29,393	267	443,644	175
145	148	Clark Equipment (Buchanan, Mich.)	1,424,580	915,986	179	46,618	186	408,139	187
146	133	Hercules (Wilmington, Del.)	1,413,111	1,316,252	126	32,459	246	664,910	121
147	204	North American Philips (New York)	1,409,842	887,870	183	31,363	251	354,728	217
148	160	Gillette (Boston)	1,406,906	1,025,932	162	79,954	117	471,784	170
149	150	Studebaker-Worthington (New York)	1,396,237	883,643	186	29,873	265	333,289	226
150	135	St. Regis Paper (New York)	1,394,754	1,394,239	119	95,913	98	772,759	101

N.A. Not available.

*Does not include excise taxes; see the explanation of "sales" on page 338.

**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

‡Average for the year; see the reference to "employees" on page 338.

‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

[1-5]Figures as for Hunt Foods & Industries.

[6-10]Figures are for fiscal year ending August 31, 1975.

[17-22]Figures are for fiscal year ending November 30, 1975.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	SALES RANK	EQUITY %	EQUITY RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
51,000	61	6.2	121	19.2	44	8.29	4.60	2.07	14.88	66	47.48	254	11.21	64	45
26,300	149	2.0	387	12.2	222	3.61	3.79	2.01	6.03	243	12.77	417	5.86	164	37
47,000	74	3.0	319	14.5	133	3.70	2.85	2.80	2.83	324	85.43	109	1.59	278	20
71,000	37	2.0	384	4.4	428	1.43	3.65	2.78	(6.43)	421	96.22	84	0.17	322	28
29,177	134	6.3	114	19.1	46	4.30	3.80	2.19	6.98	218	58.40	205	5.92	163	42
37,820	99	7.7	77	14.1	146	3.09	3.24	2.11	3.89	300	27.11	353	(0.82)	338	28
44,898	83	1.3	423	3.5	441	1.65	3.50	2.95	(5.68)	416	41.62	282	(2.62)	378	30
37,000	101	2.6	344	6.5	393	3.30	6.78	5.10	(4.26)	405	83.60	116	(1.71)	357	28
34,900†	104	4.7	189	9.8	306	4.28	4.51	2.74	4.56	281	51.43	238	4.27	200	22
29,186	133	7.8	71	20.3	33	4.44	3.76	1.44	11.92	101	41.16	285	5.73	166	48
3,940	469	1.9	389	16.8	71	2.10	1.79	0.20	26.51	13	115.97	45	27.70	2	20
25,000†	157	4.6	200	11.4	253	1.84	1.59	0.55[15]	12.84	87	113.63	50	13.61	41	20
6,610	420	1.3	429	21.6	24	8.05	5.94	1.79**	16.22	54	92.85	92	(7.01)	431	20
20,600	200	3.7	263	15.6	98	2.40	2.03	0.94	9.83	151	39.19	295	10.53	77	20
10,305	345	7.3	86	16.2	84	5.15	4.64	1.29	14.85	67	(0.35)	457	13.23	43	29
9,349	355	1.2	432	10.2	296	1.37**	2.06	0.79	5.66	256	73.52	149	6.32	157	20
30,853	127	4.2	226	9.6	315	3.01	5.06	2.02	4.07	294	66.74	214	5.60	170	26
39,285	96	3.6	271	8.8	339	2.82	3.53	2.12	2.89	321	83.54	117	1.57	281	30
45,400	81	5.9	128	20.7	27	6.09	1.29	0.37	32.32	9	122.34	40	5.65	167	36
45,938	80	2.6	347	12.2	220	4.16	3.50	1.87	8.32	186	30.85	338	3.28	221	34
45,299	82	7.0	90	14.9	123	6.42	5.62	3.30	6.88	221	8.99	434	6.48	152	45
7,018†	410	2.3	361	16.9	68	9.46	7.75	3.81	9.52	157	54.49	225	8.12	114	20
33,400†	114	3.6	269	7.2	382	3.29	6.23	2.93	1.17	347	60.87	195	(4.59)	407	33
51,611	59	9.8	37	12.6	203	4.14	3.66	0.59	21.51	26	11.69	426	21.63	10	44
39,200	97	8.9	42	15.9	94	2.10	1.93	0.90	8.84	174	(13.51)	469	3.07	229	42
31,381	123	4.0	238	13.2	176	4.40	4.25**	1.46	11.65	109	33.31	324	11.47	58	20
13,301	282	5.2	162	14.3	142	1.88	1.42	0.60	12.10	97	43.29	277	14.18	35	49
37,700	100	2.7	338	6.5	396	2.31	2.66	2.42	(0.46)	367	59.63	201	3.13	223	40
48,100	66	2.8	334	11.0	269	2.54	2.40	1.81	3.45	311	110.09	55	1.74	269	34
23,261†	176	6.0	125	11.9	232	4.78	5.29	2.10	8.57	182	129.29	31	0.50	308	33
40,975	91	2.7	342	11.3	258	3.49	2.82	2.38	3.90	299	43.86	271	(4.92)	408	34
43,346	87	3.0	317	7.7	368	2.66	5.19	2.35‡[19]	1.25	346	62.84	188	4.62	192	40
30,947	125	5.6	140	13.1	186	2.61	2.56	1.53	5.49	258	26.31	360	2.97	233	20
29,300	132	3.7	261	7.9	361	5.73	12.31	0.71[20]	23.22	19	9.17	432	5.47	171	33
6,570	423	—		—		N.A.	N.A.	N.A.	—		—		—		28
39,857	93	3.2	298	5.2	414	2.65	3.56	2.03	2.70	325	60.70	196	1.12	295	33
17,896	219	13.3	12	40.4	6	5.47	2.94	0.30	33.69	6	78.78	132	25.44	5	10
33,000†	118	3.2	309	16.7	74	4.62	4.52	1.56	11.47	115	22.42	381	1.20	293	33
26,800	146	15.4	4	24.1	18	3.03	2.79	0.92	12.66	90	6.44	438	8.92	101	42
27,810	142	6.9	93	14.1	151	4.41	4.10	1.72	9.87	150	55.74	216	7.03	140	26
3,502	475	—		—		N.A.	N.A.	N.A.	—		—		—		20
23,400	172	4.0	237	13.6	161	1.63	0.69	1.06	4.40	283	80.15	124	9.93	83	36
28,977	135	4.4	215	7.4	377	2.16	3.55	1.49	3.78	307	130.50	29	0.24	317	26
26,744†	147	2.0	383	6.6	389	2.33	1.77	2.33	0.00	359	88.56	102	(7.99)	436	45
25,783	152	3.3	295	11.4	251	3.43	3.68	2.12	4.93	272	16.20	409	1.65	275	45
23,500	171	2.3	363	4.9	421	0.77	2.21	1.11	(3.59)	400	17.91	399	5.41	176	28
30,896	126	2.2	369	8.8	335	2.81	2.83	2.30[23]	2.02	333	63.32	184	1.04	299	36
33,500	112	5.7	136	16.9	66	2.66	2.92	1.49	5.97	248	37.44	305	1.87	266	34
22,904	181	2.1	377	9.0	332	8.14	1.92	2.46[24]	12.71	89	118.54	43	4.60	193	45
28,000	140	6.9	94	12.4	208	4.27	4.76	1.76	9.27	162	84.71	112	8.31	110	26

[18]Figures are for fiscal year ending April 30, 1975.
[19]Figure is for Eaton Manufacturing.
[20]Figure is for Lykes.
[21]Cooperatives provide only "net margin" figures, which are not comparable to the net-income figures in these listings.
[22]Name changed from Illinois Central Industries in May, 1975.
[23]Figure is for Consolidated Electronics Industries.
[24]Figure is for Worthington.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
151	163	Quaker Oats (Chicago)[3]	1,389,013	765,062	205	31,037	255	400,747	192
152	126	Texas Instruments (Dallas)	1,387,621	941,477	174	62,142	148	585,288	141
153	127	U.S. Industries (New York)	1,341,616	941,646	173	10,479	398	498,439	164
154	193	Agway (De Witt, N.Y.)[1]	1,329,425	511,756	273	N.A.[21]		152,282	382
155	175	Grumman (Bethpage, N.Y.)	1,328,622	522,104	272	23,547	295	146,288	390
156	149	Motorola (Schaumburg, Ill.)	1,311,771	1,001,460	169	41,127	210	610,991	134
157	234	International Minerals & Chemical (Libertyville, Ill.)[1,25]	1,302,900	1,087,500	154	166,000	44	457,900	173
158	159	Avon Products (New York)	1,295,062	815,538	198	139,004	56	524,322	157
159	165	SCM (New York)[1]	1,287,454	704,078	222	27,886	271	289,379	251
160	164	Dart Industries (Los Angeles)	1,280,307	1,190,067	138	78,988	121	683,776	117
161	124	NL Industries (New York)	1,279,317	1,059,496	156	45,597	189	520,001	158
162	192	Del Monte (San Francisco)[12]	1,279,274	727,504	201	47,245	179	305,196	239
163	161	Olin (Stamford, Conn.)	1,260,590	1,013,569	168	59,411	158	535,793	153
164	172	Emerson Electric (St. Louis)[1,26]	1,250,299	865,563	192	96,187	96	598,424	137
165	132	Mead (Dayton, Ohio)	1,244,637	1,091,215	152	52,778	170	531,474	155
166	155	Jim Walter (Tampa, Fla.)[16]	1,237,251	1,309,174	127	69,961	133	435,241	178
167	176	Eli Lilly (Indianapolis)	1,233,741	1,433,897	112	181,273	40	957,948	69
168	199	White Consolidated Industries (Cleveland)	1,229,852	848,192	193	46,878	184	312,609	236
169	147	White Motor (Cleveland)	1,228,678	726,491	216	(69,374)	491	172,220	353
170	187	Control Data (Minneapolis)	1,218,240	1,822,823	89	41,476	207	831,067	89
171	174	Interco (St. Louis)[1]	1,217,895	573,748	252	53,603	167	405,556	190
172	200	Kellogg (Battle Creek, Mich.)	1,213,620	680,446	227	103,026	87	403,228	191
173	202	Pillsbury (Minneapolis)[12]	1,197,426	670,835	231	30,917	257	222,372	297
174	178	Scott Paper (Philadelphia)	1,191,883	1,284,669	130	64,807	137	669,060	119
175	182	Northwest Industries (Chicago)	1,187,500	1,184,142	139	101,125	91	582,838	142
176	180	Walter Kidde (Clifton, N.J.)	1,155,876	854,887	191	43,181	200	369,615	208
177	188	Dana (Toledo)[18]	1,136,450	822,184	197	62,174	147	431,354	180
178	211	Diamond Shamrock (Cleveland)	1,129,348	1,161,595	141	114,268	76	535,066	154
179	210	Hauhlein (Farmington, Conn.)[1]	1,124,204*	742,923	213	61,496	149	324,568	228
180	183	Land O'Lakes (Minneapolis)	1,121,036	311,709	375	N.A.[21]		140,532	398
181	157	J.P. Stevens (New York)[1]	1,122,974	755,586	210	19,898	322	413,125	185
182	170	Crane (New York)	1,119,494	722,201	217	63,608	141	267,337	265
183	201	Squibb (New York)	1,111,028	1,169,022	142	98,170	95	635,589	126
184	181	Johns-Manville (Denver)	1,107,012	1,037,380	155	38,413	220	580,512	143
185	166	Genesco (Nashville)[9]	1,095,972	507,425	275	(14,297)	479	208,644	307
186	153	Fruehauf (Detroit)	1,094,419	889,512	182	25,115	287	345,796	219
187	205	Williams Companies (Tulsa)	1,090,057	1,519,888	108	123,794	68	629,498	128
188	118	Anaconda (New York)	1,087,778	2,007,453	71	(39,786)	490	1,210,918	50
189	184	Pennzoil (Houston)	1,078,315	2,026,603	69	106,822	83	573,413	145
190	217	Koppers (Pittsburgh)	1,075,469	679,715	229	60,325	154	368,302	210
191	206	American Broadcasting (New York)	1,064,648	697,311	223	17,096	346	338,882	223
192	209	Oscar Mayer (Madison, Wis.)[3]	1,054,643	309,861	378	26,951	277	192,130	328
193	168	Martin Marietta (Rockville, Md.)	1,053,366	1,139,040	147	55,367	164	609,264	135
194	196	Rohm & Haas (Philadelphia)	1,046,046	1,077,037	151	22,977	301	526,970	156
195	198	Ethyl (Richmond, Va.)	1,029,220	875,809	187	61,004	152	435,981	177
196	171	Colt Industries (New York)	1,022,759	866,274	189	52,127	171	375,087	204
197	173	Charter (Jacksonville, Fla.)	1,021,599	550,000	262	6,000‡	432	141,800	397
198	229	Foster Wheeler (Livingston, N.J.)	1,020,867	441,023	303	14,132	367	108,116	440
199	186	Kaiser Industries (Oakland, Calif.)	1,016,212	1,292,903	129	78,846	122	632,365	127
200	222	Levi Strauss (San Francisco)[17]	1,015,215	496,276	276	64,742	139	265,191	269

N.A. Not available.
*Does not include excise taxes; see the explanation of "sales" on page 338.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
‡Average for the year; see the reference to "employees" on page 338.
§Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY SALES %	RANK	%	RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
25,100	154	2.2	368	7.7	366	1.45	1.91	0.87	5.24	265	108.17	59	7.36	134	20
56,682	49	4.5	202	10.6	283	2.71	3.92	1.23	8.27	195	41.33	285	9.16	95	36
35,100	102	0.8	447	2.1	454	0.20	0.44	1.02	(15.03)	435	58.01	207	(3.21)	386	45
12,615	299	--		-		N.A.	N.A.	N.A.	-		--		--		20
28,000	139	1.8	397	16.1	87	3.08	4.38**	2.75	1.14	348	52.84	234	(3.84)	398	41
47,000	73	3.1	310	6.7	387	1.46	2.52	1.31	1.09	349	22.93	378	1.14	294	36
10,455	343	12.7	13	36.3	8	10.17	4.44**	1.60	20.32	30	1.01	453	2.60	244	28
25,000	156	10.7	27	24.5	12	2.40	1.96	0.93	11.08	119	26.56	359	1.67	263	43
26,300	150	2.2	376	9.6	311	3.04	3.02	1.30	8.87	173	30.15	341	(11.35)	446	28
28,612	136	6.2	126	11.6	247	3.96	2.83	1.67	7.74	211	133.28	25	(1.30)	348	30
23,300	174	3.6	270	8.8	343	1.89	3.23	2.51	(2.80)	391	21.73	385	(3.27)	388	28
32,000	121	3.7	266	15.5	106	3.41	3.76	1.71	8.71	178	29.28	344	2.66	241	20
23,000	179	4.7	190	11.2	266	5.03	7.15**	5.11	(0.16)	363	114.41	48	7.27	137	28
33,630	108	7.7	75	16.1	88	1.76	1.66	0.69	11.03	119	43.37	275	11.47	59	36
24,000	164	4.2	225	9.9	300	3.07	4.90	1.73	5.90	249	49.58	246	2.34	252	26
23,100	178	5.7	138	16.1	88	4.05	3.65	0.74	17.76	45	65.32	181	19.14	15	26
23,535	169	14.7	5	18.9	49	2.62	2.59	0.65	14.96	65	(22.28)	475	10.99	66	42
77,300	143	3.8	255	15.0	121	9.72	3.69	0.69	29.67	2	124.58	36	10.64	74	36
14,746	258	—		—		(8.52)	2.60	3.50	—		(0.28)	456	(12.55)	449	40
34,261	105	3.4	283	5.0	420	2.44	0.15**	1.10	8.29	198	65.85	176	(7.27)	434	44
39,400	95	4.4	211	13.2	177	4.60	4.23	1.52	11.71	108	111.65	51	10.61	75	31
17,000	236	8.5	51	25.0	15	1.40	0.98	0.49	11.07	121	45.73	268	11.39	61	20
27,000	145	2.6	349	13.9	156	5.50	5.04	2.36	8.83	176	119.72	42	9.71	87	20
20,093	203	5.4	149	9.2	309	1.97	2.00	1.19	1.63	359	21.27	388	(5.55)	414	26
30,600	128	8.5	50	17.4	61	11.56	18.56**	4.38**	10.19	144	81.87	121	1.53	282	23
35,000	103	3.7	242	11.7	233	4.39	3.85	1.90	8.29	194	163.78	69	(5.95)	419	45
20,600	199	5.5	146	14.4	135	4.26	4.20	1.78	9.12	166	150.80	15	10.46	78	40
19,261	346	10.1	35	21.4	25	5.62	5.78	2.48	10.15	143	155.74	13	9.93	80	28
25,912	151	5.5	147	18.9	48	2.90	2.57	0.76	14.33	72	137.76	22	12.53	49	49
6,800	416	—				N.A.	N.A.	N.A.			—		—		20
44,400	84	1.8	398	4.8	423	1.71	3.39	2.80	(4.81)	412	62.96	187	(0.93)	342	22
22,856	183	5.7	137	23.8	19	19.59	10.83	1.28	25.08	15	65.79	170	17.88	19	33
34,000	107	8.8	43	15.4	110	2.18	1.98	1.22††	5.98	247	18.63	396	3.88	210	42
24,000	162	3.5	278	6.6	393	2.01	3.86**	2.01	0.15	359	25.40	365	2.53	247	32
46,000†	79	—		—		(1.41)	1.07	2.47	—		79.02	129	(14.22)	453	23
21,227	194	2.3	360	7.3	391	2.11	1.91	3.09	(3.52)	398	47.66	252	(0.11)	326	40
6,785	418	11.4	19	19.7	36	5.11	4.07	0.80	20.37	29	(19.62)	474	11.10	65	28
22,744	184	—				(1.80)	11.19**	3.74	--		32.43	328	(3.77)	394	33
9,433	354	9.9	36	18.6	51	3.04	3.67	1.02	11.54	113	11.21	429	2.07	262	10
17,549†	224	5.6	141	16.4	92	4.98	4.68	1.27	14.64	69	92.69	79	13.70	39	28
9,000	362	1.6	408	5.0	419	0.99	2.92	1.12	(1.23)	378	54.16	228	0.98	302	48
12,133	310	2.6	352	14.9	142	2.82	3.14	0.73	14.99	64	76.70	142	--		20
21,700	192	5.3	160	9.1	327	2.35	3.58	1.46	4.87	275	33.71	321	3.08	228	41
19,188	210	2.2	372	4.4	450	1.80	5.83	2.81	(4.90)	407	28.17	349	0.78	305	28
17,070	234	5.9	129	14.0	153	6.09	7.41	2.67	8.60	181	33.67	323	1.05	298	28
21,800	190	5.1	163	13.9	157	7.07	10.05	1.75	15.65	69	29.62	342	6.11	161	34
8,000	388	0.6	451	4.2	431	0.22‡	2.14	(0.03)	—		11.81	425	20.72	12	29
16,645	239	1.4	419	13.1	184	3.67	3.30	0.97	14.23	73	50.91	240	10.94	67	34
21,700	193	7.8	69	12.5	207	2.79	1.22**	(0.40)	—		89.30	100	(0.69)	335	33
29,675	131	6.4	113	24.4	17	5.90	3.20	0.78	22.43	23	210.51	3	—		23

†Figures for 1975 include Commercial Solvents (1974 rank: 667) from the date of its merger into International Minerals & Chemical, May, 1975.

‡Figures for 1975 include A.B. Chance (1974 rank: 864), acquired May, 1975.

††Figure is for Chicago & North Western Railway.

‡‡Figure is for Beech-Nut Life Savers.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
201	227	Pet (St. Louis)[5]	1,008,507	477,443	285	23,158	298	258,917	273
202	197	AMF (White Plains, N.Y.)	1,004,697	779,470	200	32,133	247	297,698	245
203	151	Asarco (New York)	1,004,638	1,501,631	109	25,438	285	861,078	85
204	215	Geo. A. Hormel (Austin, Minn.)[2]	995,593	224,488	444	13,366	373	126,879	414
205	236	Northrop (Los Angeles)	988,123	464,197	289	24,732	289	185,297	331
206	213	American Petrofina (Dallas)	986,036	601,611	247	40,186	212	363,765	213
207	226	Hewlett-Packard (Palo Alto, Calif.)[2]	981,167	767,708	203	83,582	110	561,000	147
208	212	United Merchants & Manufacturers (New York)[1]	978,083	1,055,689	157	(18,467)	482	270,835	263
209	247	Container Corp. of America (Chicago)[25]	964,690	862,240	190	74,596	127	445,281	174
210	214	GAF (New York)	964,421	705,433	221	30,946	256	379,031	201
211	167	AMAX (Greenwich, Conn.)	962,090	2,480,120	53	134,370	60	1,364,570	44
212	224	Sterling Drug (New York)	957,146	736,389	214	82,099	113	506,097	161
213	233	Stauffer Chemical (Westport, Conn.)	949,836	966,696	171	98,705	94	511,235	160
214	185	National Distillers & Chemical (New York)	942,639*	1,024,197	163	62,409	145	595,344	139
215	249	Abbott Laboratories (North Chicago, Ill.)	940,660	925,517	177	70,670	132	413,032	186
216	190	Corning Glass Works (Corning, N.Y.)	938,959	921,447	178	31,137	253	542,314	150
217	203	Alco Standard (Valley Forge, Pa.)[3]	931,955	423,561	311	31,158	252	201,524	316
218	231	Murphy Oil (El Dorado, Ark.)	931,035	1,165,276	143	40,135	213	339,582	222
219	207	Carrier (Syracuse, N.Y.)[2]	929,856	763,470	207	13,465	372	336,185	225
220	240	Jos. Schlitz Brewing (Milwaukee)	922,987*	670,235	232	30,896	258	326,519	227
221	239	Time Inc. (New York)	910,659	759,814	209	45,051	192	397,573	194
222	218	Zenith Radio (Chicago)	900,507	491,581	278	30,763	259	271,544	262
223	242	Upjohn (Kalamazoo, Mich.)	890,771	874,241	189	66,747	135	442,397	176
224	238	Owens-Corning Fiberglas (Toledo)	884,936	743,575	212	41,803	205	392,965	196
225	228	Anderson, Clayton (Houston)[3]	878,905	412,308	314	31,520	250	276,020	260
226	220	McGraw-Edison (Elgin, Ill.)	874,627	559,793	258	37,686	222	368,998	209
227	241	Sherwin-Williams (Cleveland)[18]	866,853	553,127	261	28,588	269	296,424	246
228	225	Armstrong Cork (Lancaster, Pa.)	859,412	730,720	215	36,594	226	472,592	169
229	258	Sunbeam (Chicago)[2]	852,726	606,953	246	23,071	299	266,825	266
230	255	Castle & Cooke (Honolulu)	843,051	660,454	233	38,160	221	303,271	241
231	181	Union Camp (Wayne, N.J.)	835,931	926,132	166	88,731	103	479,566	168
232	222	Joseph E. Seagram & Sons (New York)[3]	835,379*	1,563,828	105	29,136	268	706,738	113
233	256	International Multifoods (Minneapolis)[2]	828,200	295,337	394	14,111	368	122,285	422
234	194	Wheeling-Pittsburgh Steel (Pittsburgh)	826,732	675,537	229	563	462	365,638	211
235	248	Crown Cork & Seal (Philadelphia)	825,007	538,950	267	41,611	206	292,681	249
236	232	U.S. Gypsum (Chicago)	820,426	760,595	208	20,456	261	469,358	171
237	245	Brunswick (Skokie, Ill.)	817,969	651,224	235	18,126	339	308,200	237
238	331	Tesoro Petroleum (San Antonio)[3]	815,785	583,713	250	42,926	201	223,055	295
239	262	Gold Kist (Atlanta)[3]	815,151	325,745	362	N.A.[21]		118,642	428
240	253	Polaroid (Cambridge, Mass.)	812,703	834,315	195	62,590	144	689,017	116
241	279	MCA (Universal City, Calif.)	811,484	624,546	243	95,513	99	375,433	203
242	270	Timken (Canton, Ohio)	804,491	655,208	235	61,323	150	499,569	163
243	260	Times Mirror (Los Angeles)	799,482	642,383	238	47,240	180	423,336	183
244	265	National Can (Chicago)	799,087	415,992	312	18,731	335	170,948	357
245	235	Westvaco (New York)[2]	797,455	719,501	219	39,090	216	380,152	198
246	230	Budd (Troy, Mich.)	794,089	527,649	270	9,609	408	199,825	318
247	266	Schering-Plough (Kenilworth, N.J.)	793,275	767,594	204	138,891	57	596,702	138
248	208	Allegheny Ludlum Industries (Pittsburgh)	791,992	638,264	242	30,081	263	319,870	233
249	244	Chromalloy American (New York)	791,400	565,439	255	21,707	308	198,229	322
250	237	Cummins Engine (Columbus, Ind.)	789,231	624,002	244	491	463	233,353	289

N.A. Not available.

*Does not include excise taxes; see the explanation of "sales" on page 338.

**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

†Average for the year; see the reference to "employees" on page 338.

††Figures are for fiscal year ending January 31, 1975.

[25]Figure is for Wheeling Steel.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF SALES %	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY %	RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
17,700	220	2.3	365	8.9	333	3.37	2.93	1.77	6.65	228	58.02	206	(0.85)	339	20
28,300†	137	3.2	302	10.8	279	1.71	1.19	1.17	3.87	302	110.17	54	4.81	186	37
13,500†	273	2.5	355	3.0	447	0.95	4.71	1.79	(6.14)	419	4.04	444	(0.93)	341	33
8,656	366	1.3	425	10.5	286	2.78	3.62	0.91	11.82	103	16.69	404	12.51	50	20
23,300	175	2.5	356	13.3	168	4.32	3.24	1.41	11.85	102	52.22	236	6.40	155	41
3,055	479	4.1	233	11.0	268	3.77	8.13	0.66	19.04	34	21.08	390	20.11	14	29
30,200	130	8.5	49	14.9	124	3.02	3.08	0.58	17.94	43	57.59	210	17.51	20	38
32,000	122	—		—		(3.12)	5.18	3.11	—		24.10	370	(1.88)	361	22
20,875	196	7.7	72	16.8	72	N.A.	N.A.	N.A.	—		—		—		26
20,231	202	3.2	301	8.2	357	2.06	2.13	1.10	6.47	236	55.35	219	(6.69)	428	38
13,340	280	14.0	9	9.8	301	4.43	5.82	2.68	5.15	268	59.35	203	8.26	112	10
26,715	148	8.6	48	16.2	85	1.39	1.35	0.63	8.23	192	(19.05)	473	2.33	253	42
13,079	287	10.4	30	19.3	39	9.70	7.87	3.13	11.98	99	104.21	66	9.89	84	28
13,594	272	6.6	105	10.5	288	2.51	3.61	1.18	7.84	200	22.46	380	5.44	174	28
23,699	168	7.5	80	17.1	65	2.57	2.00	0.94	10.58	134	65.43	180	7.64	125	42
33,500†	110	3.3	290	5.7	407	1.76	2.73	2.33	(2.77)	390	49.67	245	(5.40)	413	32
12,000	315	3.3	289	15.5	109	2.79	2.35	0.49	19.00	35	104.11	67	15.59	30	45
3,970	467	4.3	220	11.8	240	3.20	4.90	0.72	16.09	55	9.08	433	5.43	175	29
23,209†	177	1.4	416	4.0	434	0.53	0.33	0.81	(4.15)	404	73.03	153	2.11	261	45
7,427	401	3.3	287	9.5	318	1.06	1.69	0.56	6.59	231	32.04	330	11.60	56	49
12,100	311	4.9	172	11.3	255	4.52	5.01	4.98	(0.96)	374	160.32	11	(1.00)	344	27
22,928†	180	3.4	282	11.3	256	1.64	0.70	1.80	(0.93)	372	140.24	18	(4.93)	409	36
17,600	221	7.5	82	15.1	118	2.26	2.34	1.31	5.60	256	(14.40)	470	3.55	216	42
16,553†	241	4.7	186	10.6	282	2.81	2.33	1.45	6.84	224	71.94	157	4.49	196	32
8,000†	389	3.6	268	11.4	252	5.02	3.93	1.50**	12.84	86	73.73	148	11.44	60	20
24,000	163	4.3	221	10.2	297	2.32	1.06	2.45	(0.54)	368	109.02	58	(0.38)	329	36
20,892	195	3.3	292	9.6	310	5.11	5.24	3.67	3.37	313	(0.84)	458	(0.43)	330	28
22,903	182	4.3	224	7.7	367	1.40	1.45	1.58	(1.20)	376	7.87	436	0.44	309	22
25,100	155	2.7	340	8.6	348	1.62	2.25	1.52	0.64	356	85.11	111	(2.19)	366	36
23,951	165	4.5	204	12.6	201	2.23	2.52	1.52**	3.91	298	35.70	312	7.78	124	20
14,106	264	10.6	29	18.5	52	5.87	6.13	1.58	14.02	75	89.07	101	15.33	31	26
12,500	303	3.5	277	4.1	432	N.A.	N.A.	N.A.	—		—		—		49
7,466	400	1.7	402	11.5	248	3.88	3.27	1.70	8.60	180	46.78	259	7.53	130	20
15,401†	253	0.1	464	0.2	465	(0.68)	19.23	(2.94)[33]	—		0.93	454	(4.17)	400	33
15,626	251	5.0	165	14.2	143	2.43	2.20	0.69	13.42	78	12.51	421	4.59	194	34
18,700†	213	3.7	265	6.5	394	1.65	1.70	2.11	(2.43)	387	30.17	340	(0.64)	334	32
24,700	158	2.2	370	5.9	404	0.97	2.06	(4.22)	—		26.74	357	1.90	264	45
4,000	465	5.3	159	19.2	41	4.04	5.76	0.05	55.15	1	(2.41)	459	11.54	57	29
7,500[31]	396	—		—		N.A.	N.A.	N.A.	—		---		—		20
13,387	279	7.7	74	9.1	328	1.91	0.86	0.92	7.58	209	68.16	167	(5.60)	415	38
12,500	304	11.8	17	25.4	14	11.01	6.85	2.21	17.42	47	133.46	24	8.35	108	48
22,609	185	7.6	78	12.3	216	5.49	5.01	4.58	1.83	337	57.96	208	2.96	234	45
16,057	245	5.9	130	11.2	263	1.40	1.73	0.73	6.73	227	83.12	119	2.97	232	27
12,807†	293	2.3	360	11.0	272	2.37	2.58	0.98	9.23	164	16.10	411	0.87	303	34
15,144	255	4.9	174	10.3	294	3.51	5.70	1.86	6.56	232	73.82	147	7.22	138	26
19,500†	205	1.2	431	4.8	424	1.52	1.71	1.96	(2.51)	388	46.03	264	(2.84)	380	40
16,000	246	17.5	2	23.3	20	2.57	2.30	0.45[32]	18.77	39	1.84	450	18.98	17	42
16,783	238	3.8	257	9.4	320	5.02	8.15	4.64	0.79	355	35.98	311	(1.16)	346	33
21,900	188	2.7	336	11.0	273	1.87	2.31	0.95	7.01	216	23.64	373	(1.58)	356	34
17,971	218	0.1	465	0.2	464	(0.21)	3.35	2.52	--		26.14	361	(4.20)	401	40

[31]Figure is a FORTUNE estimate.
[32]Figure is for Schering.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
251	189	Commonwealth Oil Refining (San Antonio)	783,764	573,487	253	(24,197)	484	179,146	340
252	195	Phelps Dodge (New York)	783,788	1,652,142	96	46,391	187	893,263	80
253	246	Diamond International (New York)	779,072	531,169	269	49,192	175	369,811	207
254	287	A.E. Staley Manufacturing (Decatur, Ill.)[7]	776,789	347,951	354	50,362	172	167,132	362
255	177	Evans Products (Portland, Ore.)	774,297	565,291	256	12,656	380	217,948	299
256	259	Gould (Rolling Meadows, Ill.)[1]	772,867	641,657	240	37,062	224	299,082	243
257	119	Kennecott Copper (New York)	768,554	2,223,697	62	21,741	307	1,410,422	43
258	250	Ellra (New York)[1]	766,591	535,123	259	36,544	227	258,049	244
259	251	Alrco (Montvale, N.J.)	765,656	714,680	220	42,673	202	322,075	231
260	285	Universal Leaf Tobacco (Richmond, Va.)[1]	760,467	237 198	434	13,992	370	103,414	446
261	264	Brown Group (St. Louis)[2]	752,149	363,194	343	13,116	375	195,633	324
262	291	Revlon (New York)	749,773	752,442	211	62,622	143	379,850	199
263	269	Lever Brothers (New York)	747,500	298,600	391	11,300	391	181,100	339
264	267	St. Joe Minerals (New York)	729,380	555,936	260	81,667	114	360,531	214
265	312	Clorox (Oakland, Calif.)[1]	721,505	265,157	410	21,150	312	135,540	406
266	280	Pennwalt (Philadelphia)	713,736	540,945	265	33,446	241	265,874	268
267	216	Whittaker (Los Angeles)[2]	712,562	508,907	274	3,005	452	183,255	335
268	288	G.D. Searle (Skokie, Ill.)	711,800	897,813	180	80,542	116	398,507	193
269	261	MBPXL (Wichita)[2]	708,766	99,381	492	5,718	436	45,174	481
270	•	Peabody Coal (New York)[13]	705,932	1,105,827	150	40,792	211	905,033	76
271	308	Air Products & Chemicals (Allentown, Pa.)[3]	699,012	776,262	202	54,244	166	301,200	242
272	221	Paccar (Bellevue, Wash.)	689,872	308 473	341	20,643	318	233,673	288
273	336	Utah International (San Francisco)[7]	686,258	1,045,636	159	111,581‡	77	540,637	152
274	273	Libbey-Owens-Ford (Toledo)	684,105	573,065	254	31,895	249	384,312	197
275	254	Akzona (Asheville, N.C.)	681,724	656,177	234	7,867	421	315,443	235
276	281	USM (Boston)	678,946	538,990	266	10,174	402	266,239	267
277	284	Liggett & Myers (Durham, N.C.)	675,992*	642,200	239	36,185	228	376,910	202
278	319	Chesebrough-Pond's (Greenwich, Conn.)	674,593	478,592	284	47,922	177	282,822	255
279	263	Warner Communications (New York)	669,774	804,209	195	9,118	413	274,379	261
280	294	Campbell Taggart (Dallas)	667,797	253,603	418	18,627	337	118,662	427
281	277	General Host (New York)	667,581	205,680	461	9,388**	411	61,923	473
282	300	Richardson-Merrell (Wilton, Conn.)[1]	658,691	620,813	245	44,624	195	348,209	218
283	271	Kane-Miller (Tarrytown, N.Y.)	657,504	176,455	472	10,190	401	78,066	469
284	278	Black & Decker Manufacturing (Towson, Md.)[1]	653,896	643,656	230	35,408	231	342,822	220
285	283	Avco (Greenwich, Conn.)[17]	650,696	1,250,396	133	60,835**	153	514,258	159
286	286	Interlake (Chicago)	650,509	480,113	283	31,375	237	264,046	271
287	268	Great Northern Nekoosa (Stamford, Conn.)	647,117	697,473	224	42,472	203	379,299	200
288	298	Reliance Electric (Cleveland)[7]	643,092	409,435	317	34,984	234	192,501	327
289	272	Lear Siegler (Santa Monica, Calif.)[1]	642,456	376,605	334	19,324	327	171,804	354
290	223	American Beef Packers (Omaha)[12]	631,759	52,967	497	(32,828)	488	(10,350)	500
291	276	Lone Star Industries (Greenwich, Conn.)	611,462	548,791	264	19,314	328	264,282	270
292	299	Clark Oil & Refining (Milwaukee)	600,415	303,925	380	5,237	441	100,508	450
293	252	Cerro (Chicago)[16]	599,169	720,696	218	(2,410)	468	341,195	221
294	334	Hoover (North Canton, Ohio)	593,747	391,489	328	11,903	385	199,071	321
295	306	Knight-Ridder Newspapers (Miami)	593,630	480,506	282	32,748	244	337,158	224
296	319	Eastern Gas & Fuel Associates (Boston)	591,885	674,963	230	57,958	162	283,852	254
297	326	SmithKline (Philadelphia)	588,728	580,128	251	63,592	142	315,692	234
298	321	Addressograph Multigraph (Cleveland)[9]	584,246	441,140	302	4,908	443	209,259	306
299	344	Trans Union (Lincolnshire, Ill.)	578,826	1,396,184	118	16,845	347	242,130	282
300	282	ConAgra (Omaha)[1]	573,544	126,310	481	4,071	447	38,781	486

N.A. Not available.
• Indicates that a corporation was not among the 500 or the second 500 in 1974.
*Does not include excise taxes; see the explanation of "sales" on page 338.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
†Average for the year; see the reference to "employees" on page 338.
‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	SALES RANK	EQUITY %	EQUITY RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
2,700	483	—		—		(1.75)	0.60	1.04	—		57.88	209	(3.60)	393	29
13,900	267	5.9	127	5.2	416	2.26	5.92	3.29	(3.69)	402	31.45	332	5.02	192	33
19,000	211	6.3	116	13.3	171	4.23	4.41	2.77	4.32	285	57.24	212	4.21	202	26
3,762†	471	6.5	110	30.1	10	9.46	2.84	1.82	17.92	41	140.44	17	13.58	42	20
12,300	307	1.6	406	5.8	406	0.74	(2.69)	1.94**	(9.19)	425	95.47	87	(4.23)	402	26
20,696	198	4.8	180	12.4	210	3.84	3.51	1.81	7.81	201	77.82	137	7.57	128	36
17,100†	232	2.8	327	1.5	458	0.66	6.36**	3.08	(14.28)	433	(9.96)	465	2.30	254	33
23,512	170	4.8	184	12.3	219	4.86	4.70	1.81	19.20	143	65.88	175	7.38	133	36
13,183	285	5.6	143	13.2	175	3.76	2.92	2.51	4.12	293	79.04	128	(2.47)	373	28
12,500†	305	1.8	393	13.5	164	5.94	4.80	2.91	7.27	203	55.67	218	9.60	90	21
24,200	160	1.7	399	6.7	388	1.80	2.42	2.15	(1.76)	381	40.37	292	0.38	312	31
19,500	206	8.4	55	16.5	79	4.35	3.76	1.75†	9.51	156	66.64	197	11.99	52	43
6,700	419	1.5	412	6.2	400	N.A.	N.A.	N.A.	—		—		—		43
11,600†	326	11.2	21	22.7	21	4.06	4.47	1.2-	12.50	93	106.81	62	17.10	23	10
6,200	426	2.9	323	15.6	100	0.95	0.88	N.A.	—		92.62	95	—		28
14,300	263	4.7	194	12.6	202	3.44	2.81	2.28	4.20	290	66.09	173	(1.57)	355	28
12,600	300	0.4	458	1.6	457	0.10	0.44	0.33	(11.25)	427	121	32	1.89	265	45
19,400	208	11.3	20	20.2	34	1.56	1.41	0.58	10.45	133	13.63	414	(0.06)	325	42
3,000	480	0.8	446	12.7	196	3.12	2.20	N.A.	—		73.47	150	—		20
14,400†	262	5.8	134	4.5	427	N.A.	N.A.	N.A			—		—		10
13,000	289	7.8	68	18.0	56	4.02	2.95	0.71	18.93	37	47.04	258	16.09	29	28
7,954	392	3.0	320	8.8	237	2.50	2.83	1.93	2.17	317	65.57	178	—		40
5,150	447	16.3	3	20.6	28	3.54‡	3.08	0.43	23.47	18	21.52	387	26.89	3	10
18,314	215	4.7	195	8.3	353	2.43	2.40	3.66	(4.01)	403	69.93	165	(2.29)	369	32
15,791†	249	1.2	434	2.5	449	0.63	2.68	1.94	(10.64)	426	86.13	107	1.63	276	28
22,191	187	1.5	414	3.8	436	2.02	4.29	2.77	(3.11)	394	103.48	56	2.87	238	45
6,800	417	5.4	155	9.6	313	4.25	3.30	2.63	4.92	274	26.74	356	5.12	178	21
25,434	252	7.1	87	16.9	67	3.61	2.75	1.08	10.79	130	56.05	174	10.83	70	43
5,100	450	1.4	422	3.3	443	0.47	2.54	0.68[34]	(3.63)	401	107.99	60	3.55	217	48
17,132	229	2.8	333	15.7	97	1.21	3.48	1.34	12.13	96	122.64	38	16.47	27	20
9,229	356	1.4	417	15.2	114	5.74**	9.17**	(2.49)‡	—		124.43	37	(2.96)	382	20
15,000	256	6.8	59	12.8	149	1.60	1.96	0.88	7.94	192	57.02	213	4.06	206	42
5,100	448	1.5	411	13.1	185	3.90	3.43	0.41	25.26	16	73.33	151	9.48	91	20
17,200	228	5.4	151	10.3	292	0.95	1.10	0.31	9.93	154	12.62	419	13.13	44	45
23,302	173	9.3	40	11.8	237	3.87**	(3.23)	1.98	6.93	220	95.10	89	(13.84)	452	41
10,502	342	5.3	157	13.0	187	6.35	6.92	2.00	12.25	95	43.41	273	6.92	142	33
12,150	309	6.6	108	11.2	262	6.20	8.95	2.38[35]	10.05	147	63.16	185	8.05	118	26
17,585	223	5.4	148	18.2	55	3.20	2.67	1.13	10.97	125	91.38	96	5.14	177	36
17,123	230	3.0	318	11.2	260	1.24	1.17	0.71	5.73	253	80.00	126	(2.38)	371	36
363	500	—		—		(17.03)	2.50	N.A	—		—		—		20
12,876	291	3.2	308	7.3	380	1.74	2.22	1.74	0.00	360	55.84	215	3.12	226	32
5,015	452	0.9	412	5.2	415	0.74	(1.00)	1.25	(5.11)	413	31.03	335	2.46	250	29
8,000	387	—		—		(0.30)	2.01	3.80	—		54.89	220	(0.46)	331	33
23,713	167	2.0	385	6.0	403	0.59	0.66	0.96	(0.64)	370	22.13	382	5.76	165	36
13,855	268	5.5	144	9.7	307	2.02	2.18	0.68	11.50	114	105.45	64	—		27
10,700	339	9.8	38	20.4	29	4.09	3.15	0.68	19.65	33	54.61	223	10.12	79	10
13,722	274	10.8	26	20.1	35	4.28	3.91	2.89	4.01	296	32.97	326	0.99	301	42
20,800	197	0.8	443	2.3	451	0.61	0.04	2.31	(12.47)	430	133.19	26	(15.59)	454	44
10,641	340	2.9	324	7.0	385	1.63	3.30	1.65	(0.12)	361	(2.88)	460	4.74	188	37
4,201	462	0.7	448	10.5	287	1.14	(3.88)	1.17	(0.26)	364	164.43	10	(2.37)	370	20

[33]Peabody Coal's figures became available last year when Kennecott Copper, the company's owner, decided that it would no longer fully consolidate Peabody's figures. The decision came in the wake of a Federal Trade Commission order requiring divestiture of the company.

[34]Figure is for Kinney Services.

[35]Figure is for Great Northern Paper.

[36]Merged with Marmon Group (Northeast), February, 1976, to form Cerro-Marmon.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
301	329	Blue Bell (Greensboro, N.C.)[3]	568,638	302,390	388	25,781	283	164,165	363
302	328	Hershey Foods (Hershey, Pa.)	568,275	298,388	392	32,962	243	195,847	323
303	330	GATX (Chicago)[37]	567,629	1,282,680	131	44,739	194	429,756	181
304	323	ACF Industries (New York)	566,965	691,034	225	30,724	260	254,073	276
305	363	Chicago Bridge & Iron (Oak Brook, Ill.)	564,401	491,741	277	41,165	208	222,719	296
306	362	Baxter Laboratories (Deerfield, Ill.)	564,085	685,006	226	44,472	198	373,766	206
307	313	Carborundum (Niagara Falls, N.Y.)	563,064	470,717	288	27,187	276	248,067	279
308	315	Mohasco (Amsterdam, N.Y.)	560,337	361,669	344	10,246	400	171,312	355
309	305	A.O. Smith (Milwaukee)	559,792	313,088	373	(8,817)	476	153,739	379
310	343	Sybron (Rochester, N.Y.)	557,740	444,517	300	25,385	286	213,982	303
311	408	Joy Manufacturing (Pittsburgh)[3]	555,299	425,027	310	38,500	219	254,020	277
312	342	Rexnord (Milwaukee)[3]	553,853	349,913	352	25,050	288	174,248	347
313	310	Certain-teed Products (Valley Forge, Pa.)	552,980	428,874	309	19,494	325	216,386	300
314	296	Sperry & Hutchinson (New York)	550,884	609,615	248	10,150‡	403	224,533	294
315	311	Norton (Worcester, Mass.)	548,332	447,889	298	20,890	315	255,432	275
316	358	General Signal (New York)	547,733	367,711	342	24,530	291	207,374	309
317	293	Springs Mills (Fort Mill, S.C.)	543,091	410,845	316	6,572	425	276,412	259
318	290	Bemis (Minneapolis)	541,639	309,554	379	8,646	417	162,139	365
319	302	Arnet (New York)[3]	541,463	283,176	400	26,304	281	172,802	352
320	301	Kayser-Roth (New York)[3,39]	540,613	401,993	322	(10,569)	478	161,284	367
321	346	Morton-Norwich Products (Chicago)[3]	538,425	459,945	291	17,535	343	237,458	285
322	316	Fuqua Industries (Atlanta)	536,813	397,376	325	(17,627)	480	132,399	408
323	332	McGraw-Hill (New York)	536,475	453,720	295	33,121	242	245,745	280
324	292	Hammermill Paper (Erie, Pa.)	535,364	440,664	304	16,383	351	218,828	298
325	295	National Gypsum (Buffalo)	534,462	485,097	279	22,228	304	323,178	230
326	389	Digital Equipment (Maynard, Mass.)[3]	533,744	565,069	257	46,000	188	394,385	195
327	314	Witco Chemical (New York)	527,734	300,824	389	13,862	371	147,444	389
328	275	Scovill Manufacturing (Waterbury, Conn.)	526,779	384,383	331	(33,196)	489	143,205	396
329	297	West Point-Pepperell (West Point, Ga.)[16]	525,999	360,019	345	19,755	323	234,305	287
330	385	Pabst Brewing (Milwaukee)	525,015*	314,616	371	20,695	317	234,974	286
331	289	Indian Head (New York)[27]	522,611	325,543	363	4,317	446	167,395	361
332	•	Adolph Coors (Golden, Colo.)	521,587	558,345	259	59,520	157	422,140	184
333	337	Harsco (Harrisburg, Pa.)	521,558	397,770	346	35,647	230	206,274	311
334	322	Cluett, Peabody (New York)	519,355	277,507	402	11,359	384	153,405	380
335	369	Cook Industries (Memphis)[12]	517,728	641,467	241	21,810	306	114,679	433
336	317	Newmont Mining (New York)[41]	516,524	1,129,552	149	52,888	169	648,331	123
337	350	Outboard Marine (Waukegan, Ill.)[3]	513,359	395,444	327	20,036	320	226,713	293
338	307	M. Lowenstein & Sons (New York)	512,600	351,071	350	(17,671)	481	136,898	403
339	527	Baker International (Orange, Calif.)[3,42]	509,777	438,249	306	45,407	190	213,460	304
340	360	Amsted Industries (Chicago)[3]	508,748	258,330	416	34,500	236	178,840	341
341	368	Sundstrand (Rockford, Ill.)	508,698	522,974	271	21,970	305	174,097	348
342	345	Potlatch (San Francisco)	504,294	473,652	287	37,467	223	296,098	247
343	340	I-T-E Imperial (Spring House, Pa.)	503,664	384,279	332	17,417	344	199,182	320
344	371	R.R. Donnelley & Sons (Chicago)	501,564	410,899	315	35,316	232	304,140	240
345	536	Great Western United (Denver)[3]	501,352	330,979	359	53,456	168	110,428	436
346	335	Harris (Cleveland)[3]	500,987	370,103	339	852	461	183,382	333
347	400	Anchor Hocking (Lancaster, Ohio)	493,564	325,083	365	21,704	309	193,405	326
348	394	Cessna Aircraft (Wichita)[3]	491,577	320,394	368	18,974	332	151,845	383
349	353	Ward Foods (Wilmette, Ill.)	489,203	145,830	479	4,021**	448	20,932	492
350	341	Hart Schaffner & Marx (Chicago)[3]	486,833	288,799	399	8,310	420	171,062	356

N.A. Not available.
• Indicates that a corporation was not among the 500 or the second 500 in 1974.
*Does not include excise taxes; see the explanation of "sales" on page 338.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
†Average for the year; see the reference to "employees" on page 338.
‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
[37]Name changed from General American Transportation in July, 1975.
[39]Figure is for Ritter Pfaudler.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	SALES RANK	EQUITY %	EQUITY RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
24,000	161	4.5	203	15.7	96	4.19	3.26	1.34	12.08	98	211.61	2	12.57	48	23
7,150	408	5.8	132	16.8	69	2.53	1.70	2.02	2.28	329	99.74	76	(0.86)	340	20
11,800	321	7.9	65	10.4	291	3.50	4.54	2.41	3.80	305	4.79	441	(1.54)	354	37
11,843	319	5.4	150	12.1	225	5.35	5.07	3.73	3.67	308	24.55	367	3.09	227	37
12,000	314	7.3	85	18.5	53	4.20	2.91	0.88	16.92	49	(10.07)	466	20.28	13	34
25,700	153	7.9	64	11.9	230	1.44	1.22	0.18	23.11	20	16.26	408	21.22	11	42
17,075†	233	4.8	179	11.0	271	7.00	6.88	3.69	6.61	229	78.39	134	4.13	204	32
16,956	237	1.8	394	6.0	402	1.54	0.93	1.74	(1.21)	377	97.14	80	0.79	304	22
12,733†	295	—		—		(1.80)	0.10	1.75	—		33.05	325	(0.98)	343	40
16,500	243	4.6	201	11.9	233	2.09	1.85	1.50[34]	3.37	312	38.62	297	1.37	285	38
12,469	306	6.9	91	15.2	115	3.51	1.76	1.50	8.87	172	54.75	221	8.94	100	45
13,304	281	4.5	205	14.4	137	4.04	2.78	1.98	7.39	211	71.57	159	3.95	207	45
9,136	358	3.5	273	9.0	331	1.36	(0.70)	0.89	4.33	284	139.28	19	6.58	151	32
16,600	240	1.8	392	4.5	426	0.94‡	1.35	2.17	(8.03)	423	54.28	227			22
18,560	214	3.8	256	8.2	356	3.85	4.68	3.29	1.56	342	34.35	319	(0.64)	333	32
14,408	260	4.5	208	11.8	238	3.18	2.71	1.53	7.59	208	47.42	256	6.16	160	45
19,400†	209	1.2	430	2.4	450	0.75	1.56	2.48	(11.27)	428	29.22	345	—		22
13,391	278	1.6	409	5.3	413	1.54	3.91	1.22	2.36	328	13.58	415	4.36	198	28
8,000	386	4.9	177	15.2	113	1.90	2.06	0.48	14.75	68	147.88	16	4.71	189	36
23,850	166	—		—		(1.90)	1.70	2.29	—		—		—		23
12,300	308	3.3	296	7.4	376	1.40	1.97	1.14[40]	2.08	332	21.08	389	(3.41)	392	42
15,838	248	—		—		(2.11)	1.01	(0.30)‡	--		38.42	295	(2.48)	374	47
11,801	320	6.2	119	13.5	166	1.35	1.20	0.93	3.80	306	125.99	34	(4.57)	405	27
10,100	348	3.1	314	7.5	374	2.21	5.18	2.04	0.80	354	46.47	260	(0.80)	337	26
12,538	302	4.2	229	6.9	386	1.36	1.63	1.25	0.85	352	48.40	250	2.12	260	32
19,000	212	8.6	46	11.7	244	3.85	3.80	0.10	44.06	2	169.71	8	—		44
5,000	453	2.6	346	9.4	321	2.46	4.44	1.62	4.27	287	27.78	350	4.08	205	28
14,875	257	—		—		(5.03)	1.77	1.39	--		54.57	224	1.72	270	36
21,800	191	3.8	259	8.4	352	4.15	5.20	4.83	(1.51)	379	103.35	70	1.35	286	22
5,200†	443	3.9	241	8.8	338	2.42	2.02	1.13‡	7.91	199	35.67	313	2.98	231	49
9,500	353	0.8	444	2.6	448	0.67	3.77	1.73	(9.05)	424	—		—		32
7,200	406	11.4	18	14.1	148	1.68	1.16	N.A.	—		—		—		49
13,400	277	6.8	96	17.3	63	4.04	2.87	1.83	8.24	190	96.77	82	4.30	199	34
24,390	159	2.3	362	7.8	364	1.20	(1.24)	1.68	(3.31)	397	130.03	30	(6.64)	422	23
6,200	427	4.2	228	19.0	47	5.29	10.11	N.A.	—		54.67	222	—		20
12,000	316	10.2	31	8.2	358	2.05	4.55	1.43	3.67	310	29.46	343	5.04	181	33
13,851†	269	3.9	246	8.8	336	2.42	2.02	1.35	6.01	245	164.75	9	7.52	123	45
16,350	244	—		—		(5.34)	2.35	2.13	—		30.86	337	(2.65)	378	22
11,625	325	8.9	41	21.3	26	3.43	1.68	0.51	21.00	27	34.56	318	24.87	6	45
10,400	344	6.8	97	19.3	40	12.93	6.68	4.27	11.72	107	71.61	158	7.88	121	33
13,455	276	4.3	219	12.6	199	3.29	2.87	1.16	10.99	124	46.32	261	2.45	251	45
10,242	347	7.4	83	12.7	197	5.03	6.20	1.16	15.80	57	106.35	63	13.89	37	26
14,019	265	3.5	279	8.7	345	2.10	2.50	1.64[43]	2.50	327	41.15	287	2.55	16	36
11,700†	322	7.0	89	11.6	245	1.87	1.52	1.06	5.84	250	11.66	427	(1.52)	353	27
2,930	481	10.7	28	48.4	3	23.23	1.95	1.21[44]	34.38	3	33.71	322	7.48	132	20
13,200	284	0.2	461	0.5	462	0.14	2.92	2.05	(23.54)	440	139.12	20	2.29	255	36
17,000	235	4.4	212	11.2	261	3.20	2.38	1.47	8.09	197	71.96	156	4.99	183	32
13,500	274	3.9	249	12.5	206	2.47	2.81	1.50	5.11	269	90.60	97	3.68	213	41
6,700	364	0.8	445	19.2	43	1.06**	0.32**	0.38	10.80	129	94.00	91	(5.00)	410	20
19,500	207	1.7	401	4.9	422	0.97	1.36	1.32	(3.03)	393	36.02	310	(6.42)	424	23

[39]Acquired by Gulf & Western Industries in October, 1975, after the close of both companies' fiscal years.
[40]Figure is for Norwich Pharmacal.
[43]Figures for 1975 include Foote Mineral (1974 rank: 846), acquired September, 1974.
[42]Figures for 1975 include Reed Tool (1974 rank: 893), merged November, 1975. Name changed from Baker Oil Tools in January, 1976.
[43]Figures is for I-T-E Circuit Breaker.
[44]Figure is for Colorado Milling & Elevator.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
351	409	Stokely-Van Camp (Indianapolis)[12]	484,262	239,109	432	10,860	393	123,628	419
352	274	Cyclops (Pittsburgh)	483,561	303,987	386	(6,843)	474	137,907	402
353	351	A-T-O (Willoughby, Ohio)	480,482	299,801	390	12,194	382	115,551	432
354	361	Macmillan (New York)	477,347	451,118	296	2,994	453	241,958	283
355	370	Federal Co. (Memphis)[12]	476,691	124,231	483	8,473	418	80,972	461
356	399	Crown Central Petroleum (Baltimor	475,253	206,303	459	5,504	438	71,666	469
357	364	Libby, McNeill & Libby (Chicago)[2]	474,790	353,677	348	9,819	407	151,759	384
358	407	Cooper Industries (Houston)	473,195	369,195	340	31,134	254	177,150	342
359	•	CF Industries (Long Grove, Ill.)[3]	468,138	456,068	293	N.A.[21]		170,173	358
360	392	Rohr Industries (Chula Vista, Calif.)[3]	468,106	313,802	372	(7,621)	475	74,927	466
361	339	Peavey (Minneapolis)[3]	467,612	206,178	460	15,203	359	107,863	441
362	397	Midland-Ross (Cleveland)	466,369	351,036	351	21,069	313	181,719	338
363	379	Thomas J. Lipton (Englewood Cliffs, N.J.)	465,463	249,361	422	24,635	290	167,776	360
364	380	Chemetron (Chicago)	464,268	371,309	338	30,369	262	209,454	305
365	318	Stanley Works (New Britain, Conn.)	464,158	374,465	336	19,054	331	203,315	314
366	390	Riviana Foods (Houston)[3]	463,693	223,261	445	11,850	386	96,041	452
367	384	Cone Mills (Greensboro, N.C.)	462,291	273,453	404	24,243	294	176,433	343
368	396	Fairmont Foods (Houston)[3]	461,229	144,067	480	6,150	429	65,053	471
369	375	Pitney-Bowes (Stamford, Conn.)	460,900	404,596	319	25,952	282	167,844	359
370	366	Square D (Park Ridge, Ill.)	460,364	312,093	374	35,857	229	207,189	310
371	382	Champion Spark Plug (Toledo)	458,196	402,223	321	46,741	185	293,201	248
372	402	Becton, Dickinson (Rutherford, N.J.)[3]	456,039	450,536	297	33,762	239	287,628	252
373	373	Bell & Howell (Chicago)	455,378	432,340	308	(5,757)	472	175,620	344
374	359	Inmont (New York)	451,550	306,431	383	11,649	388	147,615	388
375	391	Westmoreland Coal (Philadelphia)	451,520	213,713	452	60,172	155	151,677	385
376	374	Cincinnati Milacron (Cincinnati)	450,188	375,374	335	9,946	405	157,015	373
377	354	National Service Industries (Atlanta)[16]	448,303	229,070	441	17,625	342	155,187	376
378	401	Purex (Lakewood, Calif.)[3]	447,336	263,868	412	18,892	333	147,697	387
379	304	Texasgulf (New York)	444,645	1,155,738	144	103,224	86	628,127	129
380	395	Spencer Foods (Spencer, Iowa)[3]	444,308	52,653	499	1,793	459	13,510	498
381	352	Southwest Forest Industries (Phoenix)	442,912	400,717	323	2,001	457	139,571	399
382	357	Hoerner Waldorf (St. Paul)[7]	441,157	348,375	353	28,245	270	199,551	319
383	431	Oil Shale (Los Angeles)	437,922	169,071	476	(3,633)	471	29,110	490
384	349	Flintkote (White Plains, N.Y.)	435,255	439,775	305	12,440	381	230,478	291
385	418	Willamette Industries (Portland, Ore.)	434,573	396,461	326	34,322	238	215,230	301
386	377	Simmons (Atlanta)	434,348	260,640	413	10,266	399	156,817	374
387	372	Saxon Industries (New York)	434,262	325,104	364	5,828	433	103,927	444
388	499	Shelter-Globe (Toledo)[3]	430,412	241,416	427	14,788	362	109,632	438
389	587	SuCrest (New York)[12]	430,402[19]	105,331	490	4,347**[17]	445	9,972	499
390	417	Trane (La Crosse, Wis.)	427,071	331,546	357	15,016	361	183,048	337
391	419	Ex-Cell-O (Troy, Mich.)[3]	423,545	311,358	376	19,957	321	203,469	313
392	452	Gardner-Denver (Dallas)	423,140	371,480	337	32,542	245	244,699	281
393	412	Interstate Brands (Kansas City, Mo.)	422,042	110,735	486	6,336	426	53,645	477
394	387	General Instrument (New York)[5]	419,654	326,450	329	11,776	387	160,645	369
395	426	Lubrizol (Wickliffe, Ohio)	419,089	305,381	385	46,892	183	230,811	290
396	405	American Bakeries (Chicago)	417,243	109,504	487	5,739	434	43,698	483
397	355	UV Industries (New York)	416,997	446,708	299	24,376	293	184,716	332
398	420	Miles Laboratories (Elkhart, Ind.)	413,762	345,755	355	15,268	357	145,833	391
399	406	Parker-Hannifin (Cleveland)[3]	411,152	268,811	408	19,344	326	124,005	418
400	•	Consolidated Aluminum (St. Louis)	411,121	482,699	281	(26,402)	486	144,441	394

N.A. Not available.
• Indicates that a corporation was not among the 500 or the second 500 in 1974.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
†Average for the year, see the reference to "employees" on page 338.
‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
[5]Figure is for Hoerner Boxes.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	SALES RANK	EQUITY %	EQUITY RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
6,000	432	2.2	367	8.8	342	3.09	2.93	1.64	6.54	233	40.89	290	1.57	280	20
7,483	399	—		—		(3.80)	8.94	5.08	—		(12.03)	468	(4.47)	404	33
17,340	226	2.5	354	10.6	284	1.61	1.45	0.34	16.82	50	117.98	44	(3.29)	390	45
18,256	216	0.6	450	1.2	460	0.20	1.22	0.86	(13.57)	432	32.14	329	(11.06)	443	27
7,500	398	1.8	396	10.5	289	2.93	4.32	1.16	9.71	152	150.81	14	9.34	92	20
1,065	496	1.2	433	7.7	369	3.24	5.97	1.31	9.48	158	1.89	449	4.97	184	29
6,143	429	2.1	378	6.5	395	1.00	1.38**	0.40	9.60	155	93.28	94	(6.45)	425	20
11,262	331	6.6	106	17.6	59	6.05	4.87	2.22	10.56	135	102.92	71	10.59	76	45
1,594†	492	—		—		N.A.	N.A.	N.A.	—		—		—		28
13,100†	286	—		—		(1.91)	1.94	1.60	—		(33.51)	476	(11.45)	448	41
3,960	468	3.3	297	14.1	149	2.68	3.67	0.26	26.27	14	50.43	243	—		20
9,983	350	4.5	206	11.6	246	3.53	3.50	2.66	2.87	322	79.54	127	2.23	258	45
5,619†	437	5.3	156	14.7	129	N.A.	N.A.	N.A.	—		—		—		20
9,200	357	6.5	109	14.5	134	7.60	5.52	5.30**	3.67	309	31.38	333	(1.73)	358	28
14,546†	259	4.1	232	9.4	322	2.[illegible]	2.57	1.29	6.54	234	80.05	125	7.90	120	34
8,200	380	2.6	351	12.3	213	1.97	1.76	0.66	11.56	112	75.23	144	8.29	111	20
14,400	261	5.2	161	13.7	159	7.94	5.02	2.71	11.35	116	157.25	12	8.08	117	22
8,284	378	1.3	428	9.5	319	1.40	[illegible]†	1.51	(0.75)	371	48.53	249	(0.19)	327	20
17,246	227	5.6	139	15.5	108	1.95	1.9[illegible]	1.07	6.19	240	31.28	334	(1.95)	363	44
16,000	247	7.8	67	17.3	62	1.50	1.55	1.21	2.17	331	52.41	235	1.95	263	36
13,000	290	10.2	33	15.9	93	1.24	1.26	.52	9.08	167	38.73	296	9.33	93	36
15,300	254	7.4	84	11.7	242	1.94	1.69	0.[illegible]	13.23	79	43.35	276	8.51	106	38
12,656	297	—		—		(1.00)	2.72	1.51	—		70.92	162	(6.52)	426	38
8,501	370	2.6	350	7.9	362	1.45	1.77	2.09	(3.59)	399	60.21	198	(5.91)	418	28
4,933	455	13.3	11	39.7	7	8.82	5.30	0.51	[illegible]	7	132.61	27	24.49	7	10
12,552	301	2.2	371	6.3	399	2.69	3.20	2.85	(0.58)	[illegible]	16.19	410	(2.50)	375	45
17,600	222	3.9	242	11.4	254	1.27	1.60	0.73	5.69	2[illegible]	57.36	211	1.28	289	36
7,500	397	4.2	227	12.8	192	1.68	1.46	1.07	4.61	279	105.44	65	0.31	314	43
4,874	456	23.2	1	16.4	81	3.37	4.84	0.60	18.84	38	[illegible]2.84	416	1.68	271	10
1,800	490	0.4	459	13.3	174	1.70	2.08	1.26	3.04	319	[illegible]	90	(11.13)	444	20
8,500	372	0.5	457	1.4	459	0.06	1.67	0.49	(18.94)	438	53.42	[illegible]	(0.76)	336	26
8,300	375	6.4	112	14.2	145	1.99	2.35	0.72[45]	10.70	132	90.59	98	5.63	169	25
1,445	493	—		—		(0.20)	0.48	N.A.	—		16.85	403	(11.[illegible]	442	2[illegible]
9,049	395	2.9	326	5.4	412	1.93	2.34	1.96	(0.15)	362	61.22	193	2.83	239	32
7,200	405	7.9	63	15.9	92	2.79	3.06	N.A.	—		96.26	83	—		26
13,850	270	2.4	359	6.5	391	1.51	1.90	1.37	0.98	351	70.49	163	6.39	156	25
6,821	415	1.3	426	5.6	410	0.75	0.34	0.17	16.00	56	66.71	171	4.40	197	26
12,655	298	3.4	281	13.5	165	2.22	1.73	0.85[46]	10.08	145	183.25	5	1.61	277	40
1,300	494	1.0	439	43.6	4	2.39**[47]	(7.75)	1.02	8.89	171	41.62	283	3.60	214	20
9,839	352	3.5	274	9.2	355	2.70	1.73	2.25	1.84	336	50.70	241	(7.46)	435	45
10,865†	336	4.7	191	9.8	304	2.51	2.33	2.38	0.53	357	51.23	239	(2.12)	365	45
11,053	333	7.7	76	13.3	172	1.74	1.43	0.95	6.24	238	38.09	302	9.76	86	45
11,500	328	1.5	413	11.8	241	2.71	1.14	1.76	4.41	282	134.19	23	0.11	324	20
22,300	186	2.8	332	7.3	378	1.46	1.78	0.67	8.10	196	64.38	183	(11.33)	445	36
3,588	473	11.2	22	20.3	30	2.31	2.49	0.49	16.77	51	2.86	446	19.06	16	28
9,900	351	1.4	420	13.1	183	3.25	(1.12)	1.16	10.85	127	251.34	1	(2.24)	367	20
11,700	324	5.8	131	13.2	179	5.45	7.19	1.59**	13.11	82	31.48	331	3.85	211	36
8,449	374	3.7	264	10.5	285	2.87	3.00	1.97	3.83	303	45.82	266	(3.22)	387	42
11,092	332	4.7	192	15.6	101	3.31	3.15	1.50	8.24	191	77.85	136	2.18	259	36
5,000	454	—		—		N.A.	N.A.	N.A.	—		—		—		33

**Figure is for Globe Wernicke Industries.
47Figure is a FORTUNE estimate.

CONTINUED

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The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
401	415	Rath Packing (Waterloo, Iowa)[3]	410,794	52,837	498	(6,554)	473	14,592	497
402	•	H.P. Hood (Boston)[3]	410,498	125,654	482	(3,043)	470	47,123	478
403	404	Cabot (Boston)[1]	410,096	477,314	286	(8,898)	477	240,397	284
404	348	AMP (Harrisburg, Pa.)	409,551	414,977	313	27,767	272	250,696	278
405	414	New York Times (New York)	408,879	240,688	429	12,754	376	145,092	393
406	347	Reichhold Chemicals (White Plains, N.Y.)	407,858	237,100	435	15,948	355	129,635	412
407	422	Questar (Toledo)	406,526	293,267	396	2,253	456	125,140	417
408	423	Green Giant (Chaska, Minn.)[3]	405,828	263,895	411	8,801	414	101,143	448
409	378	Dan River (Greenville, S.C.)	404,384	308,399	381	(2,949)	469	144,432	395
410	398	Savannah Foods & Industries (Savannah, Ga.)	401,632	103,270	488	16,292**	353	37,957	487
411	383	Dayco (Dayton, Ohio)[2]	401,479	271,133	406	8,790	415	72,323	468
412	427	Cutler-Hammer (Milwaukee)	400,930	267,961	409	15,335	358	129,581	413
413	416	VF (Wyomissing, Pa.)	396,364	233,652	437	26,456	279	161,514	366
414	424	Congoleum (Milwaukee)[48]	395,860	229,852	439	9,558	409	120,316	424
415	410	Cannon Mills (Kannapolis, N.C.)	395,198	309,923	377	18,733	334	267,706	264
416	432	Hobart (Troy, Ohio)	393,819	298,020	393	19,293	329	156,005	375
417	303	Tecumseh Products (Tecumseh, Mich.)	393,352	235,448	436	19,672	324	199,928	317
418	356	Hygrade Food Products (Detroit)[2]	388,566	73,264	494	5,294	440	41,823	485
419	411	Norris Industries (Los Angeles)	387,402	196,024	464	17,991	340	118,810	426
420	367	Louisiana-Pacific (Portland, Ore.)	386,700	549,690	263	16,710	348	277,260	258
421	365	Alumax (San Mateo, Calif.)	383,806	461,938	290	20,702	316	278,526	257
422	429	Kellwood (St. Louis)[2]	383,560	250,322	421	418	464	56,327	476
423	425	Koehring (Milwaukee)[27]	383,347	280,449	401	3,615	450	103,649	445
424	448	Superior Oil (Houston)	382,149	886,782	184	55,342	165	541,828	151
425	327	Revere Copper & Brass (New York)	382,059	457,512	292	(31,278)	487	136,809	404
426	514	Harnischfeger (Brookfield, Wis.)[2]	373,801	319,495	370	23,474	296	139,495	400
427	437	Emhart (Farmington, Conn.)	371,099	294,463	395	22,630	303	190,342	329
428	338	McLouth Steel (Detroit)	365,828	328,888	360	5,730	435	174,642	346
429	522	Ball (Muncie, Ind.)	365,291	225,069	443	14,060	369	100,654	449
430	388	Cyprus Mines (Los Angeles)	365,254	600,219	249	11,122†	392	320,704	232
431	562	Envirotech (Menlo Park, Calif.)[3]	364,664	241,197	428	6,858	423	91,036	455
432	552	Cameron Iron Works (Houston)[1]	361,894	399,272	324	36,653	225	145,487	392
433	386	Vulcan Materials (Birmingham, Ala.)	360,023	329,757	361	27,742	273	173,655	350
434	469	American Hoist & Derrick (St. Paul)[27]	359,162	269,044	407	11,405	389	85,782	459
435	403	Signode (Glenview, Ill.)	357,565	272,208	405	17,099	345	173,739	349
436	554	Kawneer Industries (Bryn Mawr, Pa.)[49]	357,420	357,146	347	27,719	274	183,375	334
437	454	Gannett (Rochester, N.Y.)	355,354	331,196	358	38,548	218	256,902	274
438	435	Dairylea Cooperative (Pearl River, N.Y.)[3]	355,118	79,338	493	N.A.[21]		31,772	488
439	487	Brockway Glass (Brockway, Pa.)	354,643	245,528	424	17,822	341	148,326	386
440	428	Federal-Mogul (Southfield, Mich.)	354,200	274,154	403	4,007	449	131,465	410
441	439	Collins & Aikman (New York)[6]	354,124	213,389	453	2,508	455	122,743	421
442	529	Bucyrus-Erie (South Milwaukee, Wis.)	353,137	454,284	294	29,876	264	214,555	302
443	478	Amtel (Providence)	349,425	173,989	474	6,022	431	45,186	480
444	613	Hughes Tool (Houston)	347,983	377,510	333	43,422	199	259,570	272
445	430	Eagle-Picher Industries (Cincinnati)[27]	347,081	218,692	446	18,683	336	131,768	409
446	468	Thiokol (Newtown, Pa.)	345,071	208,497	458	14,338	366	120,933	423
447	444	H.H. Robertson (Pittsburgh)	343,972	194,757	465	16,405	350	88,000	456
448	506	Hyster (Portland, Ore.)[18]	342,273	233,895	387	10,133	404	138,371	401
449	•	MAPCO (Tulsa)	342,178	434,191	307	49,314	174	163,123	364
450	450	Bluebird (Philadelphia)[3]	341,513	68,404	495	3,565	451	29,531	489

N.A. Not available.
• Indicates that a corporation was not among the 500 or the second 500 in 1974.
**Reflects an extraordinary credit of at least 10 percent, see the explanations of "net income" and "earnings per share" on page 338.
†Average for the year; see the reference to "employees" on page 338.
‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
[48]Name changed from Bath Industries in April, 1975.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF SALES %	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY %	RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
3,988	466	—		—		(5.49)	(0.51)**	(3.13)	—		13.82	413	(10.86)	441	20
3,885	470	—		—		(3.83)	4.57	2.28	—		—		—		20
5,560	439	—		—		(1.67)	5.05	1.56	—		24.07	371	1.82	267	28
12,847	292	6.8	98	11.1	267	0.75	1.25	0.34	8.23	193	12.54	420	14.26	34	36
6,600	422	3.1	311	8.8	340	1.15	1.82	0.79**	3.83	304	54.38	226	—		27
4,305	461	3.9	245	12.3	215	2.32	3.59	0.69	12.89	85	18.14	397	2.62	243	28
10,996	334	0.6	453	1.8	456	0.23	(0.35)	0.96	(13.31)	431	49.22	247	(6.04)	420	40
6,600	421	2.2	375	8.7	346	2.47	2.74	1.54	4.84	276	24.92	366	(3.01)	383	20
18,000	217	—		—		(0.58)	1.20	2.55	—		72.84	154	(10.00)	439	22
1,279	495	4.1	234	42.9	5	8.92**	(7.60)	1.57	18.97	36	7.48	437	5.47	172	20
10,723	338	2.2	373	12.2	223	2.70	2.25	1.62	5.24	264	4.92	440	2.49	249	30
13,900	266	3.8	254	11.8	236	4.02	4.47	2.67	4.18	292	60.11	199	(3.77)	395	36
17,500†	225	6.7	101	16.4	82	2.71	2.61	0.84	12.43	94	76.89	141	9.70	88	23
10,519†	341	2.4	358	7.9	360	1.25	0.07	0.29	15.73	58	195.01	4	11.77	54	22
20,000	204	4.7	185	7.0	384	2.03	1.67	0.26	22.82	21	47.44	255	0.35	313	22
11,498	330	4.9	175	12.4	211	1.70	1.68	0.94	6.10	241	96.08	85	0.66	306	45
7,518	395	5.0	168	9.8	303	3.60	5.25	2.27	4.72	278	48.77	248	5.45	173	45
3,500	476	1.4	421	12.7	195	5.21	5.86	1.11**	16.72	52	20.82	393	5.07	180	20
9,000	360	4.6	196	15.1	116	4.50	2.78	0.63	21.73	25	120.58	41	12.67	46	34
8,300	376	4.3	218	6.0	401	0.64	2.16	N.A.	—		53.14	232	—		26
5,600	438	5.4	152	7.4	375	N.A.	N.A.	N.A.	—		—		—		33
16,500	242	0.1	462	0.7	461	0.12	2.57	1.36	(21.56)	439	59.62	99	0.27	316	23
6,865	414	0.9	440	3.5	439	0.71	1.25	4.00	(15.88)	437	80.50	123	(10.78)	440	45
3,341	478	14.5	6	10.2	295	13.79	16.89**	9.12**	4.22	289	(4.01)	462	1.26	290	10
6,910†	413	—		—		(5.59)	3.04	2.10	—		45.79	267	(6.35)	422	33
8,200	381	6.3	117	16.8	70	6.45	3.78	2.37	10.53	137	96.92	81	6.76	147	45
10,810	337	6.1	123	11.9	231	3.65	3.52	2.13	5.53	257	51.94	237	4.54	195	45
4,800	458	1.6	410	3.3	445	1.07	4.21	2.03	(6.20)	420	53.10	233	1.59	279	33
8,000	390	3.8	250	14.0	154	3.03	2.05	0.74	15.14	62	71.38	160	—		34
5,200	444	3.0	315	3.5	440	1.03‡	4.68	1.63**	(4.49)	409	1.76	451	2.68	240	10
8,610	367	1.9	391	7.5	373	1.71	1.52	N.A.	—		78.80	131	—		45
8,657	365	10.1	34	25.2	15	15.07	10.11	1.16	29.23	10	4.55	443	—		45
5,533†	440	7.7	73	16.0	90	4.87	5.30	2.07	8.93	170	38.19	300	8.89	102	10
7,341	402	3.2	303	13.3	173	3.14	2.35	1.21	10.01	149	64.56	182	3.59	215	45
5,770	436	4.8	18*	9.8	302	2.36	3.31	1.29	6.23	239	24.52	368	9.07	97	34
5,153	446	7.8	70	15.1	117	2.90	2.99	1.50**	6.81	225	12.36	422	3.13	225	28
13,490	275	10.8	24	15.0	120	1.82	1.58	0.56	12.51	92	46.32	262	—		27
1,950	487	—		—		N.A.	N.A.	N.A.	-		—		—		20
10,900	335	5.0	166	12.0	228	3.72	2.50	1.22	11.79	105	101.81	73	6.96	141	32
11,975	317	1.1	435	3.0	446	0.54	1.83	2.92	(15.53)	436	(3.02)	461	(3.82)	396	40
8,500	371	0.7	449	2.0	455	0.22	1.21	0.75	(11.54)	429	176.43	6	5.09	179	22
7,328	404	8.5	52	13.9	155	1.53	1.16	0.85	6.05	242	16.91	402	14.30	33	45
4,047	464	1.7	400	13.3	170	0.99	1.83	0.35	10.96	126	1.20	452	6.87	145	45
8,300	377	12.5	15	16.7	73	3.41	1.97	N.A.	—		17.95	398	—		45
8,200	379	5.4	153	14.2	144	3.81	3.72	1.23	11.97	100	101.13	75	9.23	94	45
8,173	382	4.2	231	11.9	234	2.52	3.21	1.04	9.25	163	30.82	339	(1.30)	349	41
7,129	409	4.8	183	18.6	50	6.05	2.68	2.28	10.25	141	70.96	161	6.43	153	34
8,606	368	3.0	322	7.3	379	1.70	2.60	1.36	2.26	330	35.62	314	(2.45)	372	45
2,197	485	14.4	7	30.2	9	2.64	2.21	0.32	23.49	17	32.86	327	25.45	4	10
1,825	489	1.0	437	12.1	226	0.66	0.58	0.04	32.36	8	86.17	106	7.18	139	20

**Figures for 1975 include Millmaster Onyx from the date of its acquisition, April, 1975. Name changed from Kewanee Oil in July, 1975.

The 500 Largest Industrials

RANK '75	RANK '74	COMPANY	SALES ($000)	ASSETS ($000)	ASSETS RANK	NET INCOME ($000)	NET INCOME RANK	STOCKHOLDERS' EQUITY ($000)	STOCKHOLDERS' EQUITY RANK
451	505	Twentieth Century-Fox Film (Los Angeles)	340,589	322,994	367	22,680**	302	115,959	431
452	517	Wm. Wrigley Jr. (Chicago)	340,497	214,614	451	27,485	275	154,418	377
453	504	Arvin Industries (Columbus, Ind.)	340,306	228,267	442	4,773	444	74,846	467
454	413	Handy & Harman (New York)	338,444	146,531	478	12,706	379	56,381	475
455	455	Warnaco (Bridgeport, Conn.)	337,941	218,468	447	356	465	86,852	457
456	474	Keystone Consolidated Industries (Peoria, Ill.)†	337,625	210,282	431	11,365	390	112,116	435
457	519	Tektronix (Beaverton, Ore.)††	336,645	306,616	382	26,329	280	202,321	315
458	449	Inland Container (Indianapolis)	335,171	256,992	414	29,469	266	154,121	378
459	484	Bausch & Lomb (Rochester, N.Y.)	333,883	258,579	415	16,174	354	123,027	420
460	443	Federal Paper Board (Montvale, N.J.)	333,692	290,508	388	16,631	349	152,753	381
461	436	Insilco (Meriden, Conn.)	332,771	352,845	349	14,728	363	117,480	430
462	440	Wheelabrator-Frye (Hampton, N.H.)	332,181	242,142	426	14,562	364	119,429	425
463	533	Columbia Pictures Industries (New York)†	332,064	305,484	384	10,511**	397	19,848	493
464	515	Hanna Mining (Cleveland)	331,644	383,967	330	47,350	178	292,675	250
465	324	NVF (Yorklyn, Del.)	331,247	319,576	369	12,741	378	112,530	434
466	434	Mattel (Hawthorne, Calif.)††	329,306	178,691	471	(19,896)‡	483	16,921	495
467	459	General Refractories (Bala-Cynwyd, Pa.)	329,023	255,886	417	9,271	412	108,573	439
468	511	Gerber Products (Fremont, Mich.)††	328,140	186,583	468	16,339	352	130,621	411
469	466	American Chain & Cable (Bridgeport, Conn.)	327,760	245,183	425	6,707**	424	102,529	447
470	325	General Cable (Greenwich, Conn.)	326,632	341,481	356	21,660	310	194,685	325
471	512	Curtiss-Wright (Wood-Ridge, N.J.)	326,358	323,004	366	14,341	365	189,280	330
472	447	Dover (New York)	326,356	189,962	467	24,494	292	133,714	407
473	457	Ferro (Cleveland)	323,730	212,286	454	15,186	360	126,275	415
474	442	Idle Wild Foods (Worcester, Mass.)††	323,169	44,180	500	1,880	458	19,514	494
475	477	Talley Industries (Mesa, Ariz.)††	321,585	210,779	455	8,731	416	76,153	464
476	456	Jonathan Logan (North Bergen, N.J.)	320,791	252,026	419	6,234	428	159,354	370
477	476	Seaboard Allied Milling (Chestnut Hill, Mass.)††	320,514	100,511	491	1,601	460	27,466	491
478	518	International Systems & Controls (Houston)†	318,438	175,129	472	6,259	427	42,181	484
479	446	Roper (Kankakee, Ill.)	317,453	208,568	452	5,383	439	70,459	470
480	463	Briggs & Stratton (Wauwatosa, Wis.)†	316,266	153,193	477	18,269	338	125,832	416
481	470	Phillips-Van Heusen (New York)††	316,231	181,799	470	(1,296)	467	86,836	458
482	496	Hanes (Winston-Salem, N.C.)	314,750	170,274	475	10,619	396	97,500	451
483	507	Nalco Chemical (Oak Brook, Ill.)	313,934	215,746	449	32,068	248	157,969	372
484	545	Masco (Taylor, Mich.)	310,962	292,892	397	33,674	240	175,058	345
485	492	Varian Associates (Palo Alto, Calif.)†	310,444	245,676	423	7,705	422	135,759	405
486	498	Washington Post (Washington, D.C.)	309,335	250,599	438	12,042	383	110,154	437
487	497	United Refining (Warren, Pa.)	307,542	120,829	484	5,551	437	44,082	482
488	462	Wallace Murray (New York)	306,568	209,370	456	8,397	419	104,848	443
489	473	Belco Petroleum (New York)	306,292	404,551	320	21,216	311	173,024	351
490	563	Foxboro (Foxboro, Mass.)	305,310	250,318	420	20,068	319	158,940	371
491	465	Nashua (Nashua, N.H.)	304,891	214,808	450	2,790	454	84,183	460
492	472	Northwestern Steel & Wire (Sterling, Ill.)†	304,261	238,200	433	26,826	278	183,234	336
493	481	Fieldcrest Mills (Eden, N.C.)	303,336	199,465	463	9,927	406	95,316	453
494	539	Peabody Galion (New York)†	302,725	218,459	448	10,703	395	94,943	454
495	494	Flavorland Industries (Omaha)††	301,771	56,073	496	(399)	466	16,850	496
496	483	Fleetwood Enterprises (Riverside, Calif.)††	300,515	106,611	489	5,075	442	79,185	462
497	546	Wean United (Pittsburgh)	298,457	190,371	466	6,106**	430	62,871	472
498	516	Perkin-Elmer (Norwalk, Conn.)†	297,435	240,652	430	19,054	330	161,213	368
499	460	Monfort of Colorado (Greeley, Colo.)††	297,371	117,294	485	9,439	410	46,493	479
500	570	Economics Laboratory (St. Paul)†	297,207	204,883	462	15,687	356	117,593	429
		TOTALS	865,233,382	668,478,042		37,849,994		331,340,247	

N.A. Not available.
**Reflects an extraordinary credit of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
†Average for the year; see the reference to "employees" on page 338.
‡Reflects an extraordinary charge of at least 10 percent; see the explanations of "net income" and "earnings per share" on page 338.
††Figure is for Equity Corp.
†††Figure is FORTUNE estimate.

EMPLOYEES NUMBER	RANK	NET INCOME AS PERCENT OF STOCKHOLDERS' EQUITY: SALES %	RANK	%	RANK	EARNINGS PER SHARE '75($)	'74($)	'65($)	GROWTH RATE 1965-75 %	RANK	TOTAL RETURN TO INVESTORS 1975 %	RANK	1965-75 AVERAGE %	RANK	INDUSTRY CODE
5,100	449	6.7	103	19.6	37	3.00**	1.39**	1.99	4.19	291	107.56	61	(1.96)	364	48
5,170	445	8.1	59	17.8	58	6.98	4.61	3.34	7.65	206	78.85	130	8.71	104	20
8,497	373	1.4	418	6.4	398	0.80	.72	1.11	(3.22)	395	76.97	140	2.23	257	40
2,650	484	3.8	260	22.5	23	5.38	5.30	1.25	15.71	59	(9.37)	464	4.69	190	33
13,025	288	0.1	463	0.4	463	0.00	1.40	2.53	—		25.60	364	(5.73)	416	23
7,000	411	3.4	286	10.1	298	6.05	5.52‡	4.09	3.99	297	16.42	407	(2.57)	377	33
12,664	296	7.8	66	13.0	188	3.04	2.47	0.91	12.82	88	131.27	28	2.89	237	38
4,583	460	8.8	45	19.1	45	6.94	5.98	1.99	13.83	76	102.85	72	10.64	73	26
12,100	312	4.8	178	13.1	181	2.78	2.15	1.02	10.55	136	50.18	244	8.33	109	38
7,000	412	5.0	169	10.9	277	4.93	6.43	1.73	11.04	123	66.93	169	6.26	159	26
7,332	403	4.4	210	12.5	204	1.51	1.54	1.10	3.22	316	60.01	200	(2.26)	368	28
5,787	435	4.4	214	12.2	221	1.83	1.60	(0.19)§§	—		87.14	105	9.93	82	45
2,800	482	3.2	305	53.0	2	1.37**	(.29)	0.40	13.10	83	126.35	33	(6.40)	423	48
3,366	477	14.3	8	16.2	86	5.76	2.32	1.92	10.81	128	84.66	113	7.52	131	10
5,915	434	3.8	251	11.3	257	1.29	4.60	0.20	20.49	28	41.79	280	8.50	107	33
12,050†	313	--		—		(1.18)‡	(0.32)	0.39§§	—		—		—		47
8,730	363	2.8	330	8.5	350	2.38	3.13**	2.02	1.65	339	36.26	309	(9.54)	438	32
7,706†	393	5.0	171	12.5	205	2.00	1.35	1.70	1.64	340	114.91	46	0.51	307	20
7,982	391	2.0	381	6.5	392	2.79**	3.26	3.90	(3.29)	396	122.38	39	2.49	248	34
5,200	442	6.6	104	11.1	264	1.52	1.90	1.59	(0.45)	366	45.88	265	(7.23)	433	33
6,082	430	4.4	213	7.6	371	1.62	1.13	0.80	7.31	213	85.24	110	(4.00)	399	34
8,100	384	7.5	81	18.3	54	5.48	5.01	1.59	13.17	81	78.08	135	13.90	36	45
7,620†	394	4.7	193	12.0	227	3.16	4.03	1.34	8.96	168	53.33	231	8.94	99	28
1,000	497	0.6	452	9.6	312	1.65	3.77	N.A.	—		—		—		20
9,000	361	2.7	339	11.5	250	1.29	1.22	0.07	33.83	5	44.01	270	6.89	144	38
11,500	329	1.9	388	3.9	435	1.21	1.18	1.93	(4.56)	411	173.07	7	(5.22)	412	23
576	499	0.5	455	5.8	405	1.19	1.96	0.43	10.72	131	41.54	284	7.57	129	20
3,630	472	2.0	386	14.8	126	3.10	2.38	2.04	4.27	286	61.86	191	17.97	18	34
6,000	431	1.7	403	7.6	370	2.06	(2.14)	2.57	(2.19)	384	97.75	78	1.22	291	45
6,378	424	5.8	135	14.5	131	2.53	3.58	1.55	5.02	271	26.80	356	12.06	51	45
13,300	283	—		—		(0.33)	1.41	1.44	—		110.87	52	(6.73)	429	23
12,745	294	3.4	285	10.9	276	2.66	(1.01)	3.16	(1.71)	380	139.10	21	(3.28)	389	22
3,518	474	10.2	32	20.3	32	1.60	1.36	0.41	14.59	70	81.65	122	12.73	45	28
4,850	457	10.8	25	19.2	42	1.32	1.10	0.21	20.18	31	55.73	217	23.02	9	34
9,993	349	2.5	357	5.7	408	1.11	1.08	0.83	2.95	320	84.23	114	(7.20)	432	36
4,700	459	3.9	248	10.9	274	2.55	3.04	1.59	4.84	277	28.43	348	—		27
1,903	488	1.8	395	12.6	200	3.05	2.49	2.81	0.82	353	84.18	115	—		29
8,100	383	2.7	337	8.0	359	2.18	2.08	2.24	(0.27)	365	109.41	57	(6.09)	421	34
1,621	491	6.9	92	12.3	218	2.83	5.76	0.97	11.30	117	26.99	354	(1.85)	360	10
9,090	359	6.6	107	12.6	198	3.95	2.02	2.20	6.03	244	20.75	394	(3.19)	385	38
6,249	425	0.9	441	3.3	444	0.60	2.68	0.93	(4.29)	406	(34.41)	477	1.43	284	26
4,153	463	8.8	44	14.6	130	3.57	4.55	1.01	13.46	77	(10.18)	467	16.77	25	33
11,700	323	3.3	294	10.4	290	2.75	0.39	2.28	1.89	334	114.89	47	(1.19)	347	22
7,180	407	3.5	272	11.3	259	1.58	1.48	0.13	28.37	11	35.17	315	8.94	98	45
779	498	—		—		(0.48)	2.77	2.22	—		—		4.26	201	20
6,000	433	1.7	404	6.4	397	0.45	0.24	0.06	22.32	24	66.56	172	43.05	1	37
5,208	441	2.0	382	9.7	308	1.71**	0.76**	N.A.	—		37.67	304	—		45
8,527	369	6.4	111	11.8	239	1.08	0.98	0.32	12.93	84	23.31	375	7.90	119	38
2,135	486	3.2	304	20.3	31	1.90	(0.40)	0.36	17.46	46	103.83	68	—		20
5,073	451	5.3	158	13.3	169	1.24	1.10	0.29	15.64	61	5.87	439	16.87	24	43
14,412,992															

WHO DID BEST

NOTES TO THE FORTUNE DIRECTORY

SALES include service and rental revenues but exclude dividends, interest, and other non-operating revenues. All companies on the list must have derived more than 50 percent of their sales from manufacturing and/or mining. Sales of subsidiaries are included when they are consolidated; sales from discontinued operations are included when these figures are published. All figures are for the year ending December 31, 1975, unless otherwise noted. Sales figures do not include excise taxes collected by the manufacturer, and so the figures for some corporations—most of which sell gasoline, liquor, or tobacco—may be lower than those published by the corporations themselves. When they are at least 5 percent lower for this reason, there is an asterisk (*) next to the sales figure.

ASSETS are those employed in the business at the company's year-end.

NET INCOME is shown after taxes and after extraordinary credits or charges when any are shown on the income statement. A double asterisk (**) signifies an extraordinary credit reflecting at least 10 percent of the net income shown, a double dagger (‡) an extraordinary charge of at least 10 percent.

STOCKHOLDERS' EQUITY is the sum of capital stock, surplus, and retained earnings at the company's year-end.

EMPLOYEES: The figure shown is a year-end total except when it is followed by a dagger (†), in which case it is an average for the year.

EARNINGS PER SHARE: For most companies the figures shown for 1975 and 1974 are the "primary" earnings given in annual reports; these reflect not only the common shares outstanding but all "common-stock equivalents," a concept that includes any debentures, preferred stock, or warrants whose market value is governed primarily by price movements of the common. Some companies report only fully diluted earnings—i.e., they assume conversion into common stock of all convertible securities, even those primarily valued as debt instruments; in these cases the fully diluted earnings are given. Earnings for 1975 and 1974 are weighted averages of outstanding shares, which all companies now report. Weighted averages are used for 1965 where these are available; where they are not, figures are based on a simple average of 1964 and 1965 year-end shares outstanding. Per-share earnings for 1974 and 1965 are adjusted for stock splits and stock dividends. They are not restated for mergers, acquisitions, or accounting changes made after 1965. A double asterisk (**) signifies an extraordinary credit reflecting at least 10 percent of the net income shown, a double dagger (‡) an extraordinary charge of at least 10 percent. Results are listed as not available (N.A.) where the companies are cooperatives, joint ventures, or wholly owned subsidiaries of other companies. The growth rate is the average annual growth, compounded. No growth rate is given if the company had a loss in either 1965 or 1975.

TOTAL RETURN TO INVESTORS includes both price appreciation and dividend yield, i.e., to an investor in the company's stock. The figures shown assume sales at the end of 1975 of stock owned at the end of 1965 or 1974. It has been assumed that any proceeds from cash dividends, the sale of rights and warrant offerings, and stock received in spin-offs were reinvested at the end of the year in which they were received. Returns are adjusted for stock splits, stock dividends, recapitalizations, and corporate reorganizations as they occur; however, no effort has been made to reflect the cost of brokerage commissions or of taxes. Results are listed as not available (N.A.) where shares are not publicly traded or traded on only a limited basis. Where companies have more than one class of shares outstanding, only the more widely held and actively traded has been considered.

Total-return percentages shown are the returns received by the hypothetical investor described above. The ten-year figures are annual averages, compounded. Where corporations were substantially reorganized—e.g., because of mergers—the predecessor companies used in calculating total returns are the same as those cited in the footnotes dropped from the earnings-per-share figures.

INDUSTRY CODE numbers used in the directory indicate which industry represents the greatest volume of industrial sales for each company. The numbers refer to the industry groups below, all of which are based on categories established by the U.S. Office of Management and Budget. They are the same industry groups as those shown in the tables beginning on this page. The median figures in those tables refer only to results of companies among the 500; however, no attempt has been made to calculate medians in groups with less than four companies.

CODE NO.	INDUSTRY
10	Mining, crude-oil production
20	Food
21	Tobacco
22	Textiles, vinyl flooring
23	Apparel
25	Furniture
26	Paper, fiber, and wood products
27	Publishing, printing
28	Chemicals
29	Petroleum refining
30	Rubber, plastic products
31	Leather
32	Glass, concrete, abrasives, gypsum
33	Metal manufacturing
34	Metal products
36	Electronics, appliances
37	Shipbuilding, railroad and transportation equipment
38	Measuring, scientific, photographic equipment
40	Motor vehicles
41	Aerospace
42	Pharmaceuticals
43	Soaps, cosmetics
44	Office equipment (includes computers)
45	Industrial and farm equipment
46	Jewelry, silverware
47	Musical instruments, toys, sporting goods
48	Broadcasting, motion-picture production and distribution
49	Beverages

TOTAL RETURN TO INVESTORS, 1975

THE TEN HIGHEST

	SALES RANK	
American Bakeries	396	251.34%
Blue Bell	301	211.61
Levi Strauss	200	210.51
Congoleum	414	195.01
Shelter-Globe	388	183.25
Collins & Aikman	441	176.43
Jonathan Logan	476	173.07
Digital Equipment	326	169.71
Outboard Marine	337	164.75
ConAgra	300	164.43

THE FIVE LOWEST

Nashua	491	—34.41%
Rohr Industries	360	—33.51
Eli Lilly	167	—22.28
Williams Companies	187	—19.62
Sterling Drug	212	—19.05

THE INDUSTRY MEDIANS

Broadcasting, motion-picture production and distribution	107.78%
Apparel	89.62
Textiles, vinyl flooring	84.53
Rubber, plastic products	74.57
Paper, fiber, and wood products	66.71
Office equipment (includes computers)	64.38
Electronics, appliances	63.32
Food	61.65
Glass, concrete, abrasives, gypsum	58.79
Metal products	55.73
Motor vehicles	54.43
Publishing, printing	54.38
Industrial and farm equipment	53.35
Aerospace	52.84
Beverages	51.41
Measuring, scientific, photographic equipment	44.01
Chemicals	41.74
Metal manufacturing	34.32
Mining, crude-oil production	32.85
Tobacco	26.74
Soaps, cosmetics	26.56
Shipbuilding, railroad and transportation equipment	24.55
Petroleum refining	16.85
Pharmaceuticals	16.26
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.
All industries	51.23

(AND WORST) AMONG THE 500

TOTAL RETURN TO INVESTORS, 1965-75

THE TEN HIGHEST

	SALES RANK	
Fleetwood Enterprises	496	43.05%
Archer Daniels Midland	111	27.70
Utah International	273	26.89
MAPCO	449	25.45
Pittston	137	25.44
Baker International	339	24.87
Westmoreland Coal	375	24.49
Philip Morris	74	24.40
Masco	484	23.02
Burroughs	124	21.63

THE FIVE LOWEST

Lockheed Aircraft	50	—16.69%
Addressograph Multigraph	298	—15.58
Genesco	185	—14.22
Avco	285	—13.84
Litton Industries	49	—12.85

THE INDUSTRY MEDIANS

Soaps, cosmetics	11.99%
Beverages	10.17
Tobacco	8.58
Mining, crude-oil production	8.26
Measuring, scientific, photographic equipment	6.76
Paper, fiber, and wood products	5.63
Petroleum refining	5.20
Food	5.07
Shipbuilding, railroad and transportation equipment	4.74
Metal products	4.45
Industrial and farm equipment	4.25
Pharmaceuticals	4.06
Chemicals	2.61
Glass, concrete, abrasives, gypsum	2.53
Broadcasting, motion-picture production and distribution	2.27
Electronics, appliances	1.95
Rubber, plastic products	1.57
Metal manufacturing	1.45
Textiles, vinyl flooring	.26
Motor vehicles	—.11
Aerospace	—1.30
Publishing, printing	—1.52
Office equipment (includes computers)	—2.86
Apparel	—5.48
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.
All industries	+3.08

RETURN ON STOCKHOLDERS' EQUITY

THE TEN HIGHEST

	SALES RANK	
Lockheed Aircraft	50	60.2%
Columbia Pictures Industries	463	53.0
Great Western United	345	48.4
SuCrest	389	43.6
Savannah Foods & Industries	410	42.9
Pittston	137	40.4
Westmoreland Coal	375	39.7
International Minerals & Chemical	157	36.3
MAPCO	449	30.2
A.E. Staley Manufacturing	254	30.1

THE INDUSTRY MEDIANS

	1975	1974
Broadcasting, motion-picture production and distribution	19.4%	17.1%
Mining, crude-oil production	16.3	23.2
Pharmaceuticals	16.2	17.1
Soaps, cosmetics	15.6	16.4
Beverages	14.2	15.1
Tobacco	13.5	12.5
Metal products	13.1	14.0
Food	13.1	13.7
Chemicals	12.6	15.6
Measuring, scientific, photographic equipment	12.6	11.3
Industrial and farm equipment	11.9	12.1
Petroleum refining	11.9	16.8
Aerospace	11.9	13.0
Electronics, appliances	11.2	11.2
Publishing, printing	11.2	13.5
Paper, fiber, and wood products	10.8	15.7
Shipbuilding, railroad and transportation equipment	10.8	11.6
Office equipment (includes computers)	10.4	11.7
Rubber, plastic products	8.8	9.8
Glass, concrete, abrasives, gypsum	8.3	9.3
Metal manufacturing	8.1	14.6
Motor vehicles	5.8	7.6
Textiles, vinyl flooring	5.4	6.0
Apparel	4.4	6.7
Musical instruments, toys, sporting goods	N.A.	N.A.
Leather	N.A.	N.A.
Furniture	N.A.	N.A.
Jewelry, silverware	N.A.	N.A.
All industries	11.8	13.8

RETURN ON SALES

THE TEN HIGHEST

	SALES RANK	
Texasgulf	379	23.2%
Schering-Plough	247	17.5
Utah International	273	16.3
Merck	139	15.4
Eli Lilly	167	14.7
Superior Oil	424	14.5
MAPCO	449	14.4
Hanna Mining	464	14.3
AMAX	211	14.0
Int'l Business Machines	7	13.6

THE INDUSTRY MEDIANS

	1975	1974
Mining, crude-oil production	12.3%	13.0%
Pharmaceuticals	8.6	8.8
Measuring, scientific, photographic equipment	6.6	4.6
Tobacco	5.8	7.3
Paper, fiber, and wood products	5.6	6.7
Publishing, printing	5.5	6.1
Soaps, cosmetics	5.4	6.4
Beverages	4.9	4.5
Broadcasting, motion-picture production and distribution	4.8	6.5
Chemicals	4.7	5.8
Petroleum refining	4.6	6.5
Industrial and farm equipment	4.5	3.8
Metal products	4.1	3.7
Office equipment (includes computers)	3.9	4.4
Glass, concrete, abrasives, gypsum	3.8	4.2
Metal manufacturing	3.8	6.0
Electronics, appliances	3.7	3.9
Shipbuilding, railroad and transportation equipment	3.2	2.8
Rubber, plastic products	3.0	2.8
Aerospace	2.6	3.0
Food	2.3	2.5
Textiles, vinyl flooring	1.9	3.1
Apparel	1.8	1.9
Motor vehicles	1.7	2.6
Musical instruments, toys, sporting goods	N.A.	N.A.
Leather	N.A.	N.A.
Furniture	N.A.	N.A.
Jewelry, silverware	N.A.	N.A.
All industries	3.9	4.3

CHANGES IN SALES

THE TEN BIGGEST INCREASES

	SALES RANK	
Great Western United	345	99.5%
Baker International	339	94.7
SuCrest	389	92.5
Hughes Tool	444	65.2
Amstar	122	61.1
Tesoro Petroleum	238	59.7
Envirotech	431	52.9
International Systems & Controls	478	52.7
International Minerals & Chemical	157	51.8
Sheller-Globe	388	50.1

THE TEN BIGGEST DECREASES

Kennecott Copper	257	53.8%
NVF	465	37.9
General Cable	470	37.0
Anaconda	188	35.0
Tecumseh Products	417	31.1
Evans Products	255	30.2
American Beef Packers	290	29.6
Consolidated Aluminum	400	28.9
Revere Copper & Brass	425	26.2
McLouth Steel	428	26.1

THE INDUSTRY MEDIANS

	INCREASES
Tobacco	16.3%
Soaps, cosmetics	16.0
Broadcasting, motion-picture production and distribution	16.0
Beverages	13.6
Pharmaceuticals	12.1
Aerospace	11.5
Office equipment (includes computers)	11.1
Measuring, scientific, photographic equipment	11.0
Industrial and farm equipment	10.2
Shipbuilding, railroad and transportation equipment	9.7
Petroleum refining	8.0
Metal products	7.7
Publishing, printing	7.6
Mining, crude-oil production	7.5
Food	6.9
Chemicals	5.3
Motor vehicles	2.8
Apparel	2.0
Rubber, plastic products	1.3
	DECREASES
Metal manufacturing	15.6%
Paper, fiber, and wood products	4.1
Textiles, vinyl flooring	3.5
Glass, concrete, abrasives, gypsum	.5
Electronics, appliances	.1
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.

CHANGES IN PROFITS

THE INDUSTRY MEDIANS

	INCREASES
Broadcasting, motion-picture production and distribution	39.3%
Tobacco	20.6
Beverages	16.8
Industrial and farm equipment	15.1
Soaps, cosmetics	12.1
Food	11.8
Office equipment (includes computers)	11.7
Measuring, scientific, photographic equipment	11.0
Pharmaceuticals	9.2
Metal products	7.1
Shipbuilding, railroad and transportation equipment	6.8
	DECREASES
Metal manufacturing	44.8%
Apparel	29.0
Textiles, vinyl flooring	23.5
Petroleum refining	22.7
Paper, fiber, and wood products	17.1
Rubber, plastic products	12.8
Aerospace	12.0
Motor vehicles	11.7
Publishing, printing	10.3
Glass, concrete, abrasives, gypsum	9.0
Mining, crude-oil production	7.6
Chemicals	5.0
Electronics, appliances	2.1
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.

THE MONEY LOSERS

COMPANY	SALES RANK	LOSS
Singer*	73	$451,900,000
Chrysler*	10	259,535,000
White Motor	169	69,374,000
Anaconda	188	39,786,000
Scovill Manufacturing	328	33,156,000
American Beef Packers	290	32,828,000
Revere Copper & Brass	425	31,278,000
Consolidated Aluminum	400	28,402,000
American Motors	87	27,500,000
Commonwealth Oil Refining	251	24,197,000
Mattel*	466	19,896,000
United Merchants & Manufacturers	208	18,467,000
M. Lowenstein & Sons	338	17,671,000
Fuqua Industries	322	17,627,000
Genesco	185	14,297,000
Kayser-Roth	320	10,569,000
Cabot	403	8,898,000
A. O. Smith	309	8,817,000
Rohr Industries	360	7,621,000
Cyclops	352	6,843,000
Rath Packing	401	6,554,000
Bell & Howell	373	5,757,000
Oil Shale	383	3,633,000
H.P. Hood	402	3,043,000
Dan River	409	2,949,000
Cerro	293	2,410,000
Phillips-Van Heusen	481	1,295,000
Flavorland Industries	495	399,000

*Also lost money in 1974.

SALES PER DOLLARS OF STOCKHOLDERS' EQUITY

THE TEN HIGHEST

	SALES RANK	
Lockheed Aircraft	50	$44.98
SuCrest	389	43.16
Spencer Foods	380	32.89
Rath Packing	401	28.15
Associated Milk Producers	141	24.22
Ward Foods	349	23.37
Mattel	466	19.46
Flavorland Industries	495	17.91
Iowa Beef Processors	113	16.73
Columbia Pictures Industries	463	16.73

THE FIVE LOWEST

Peabody Coal	270	$ .78
Texasgulf	379	.71
Superior Oil	424	.71
AMAX	211	.71
Kennecott Copper	257	.54

THE INDUSTRY MEDIANS

Food	$5.49
Aerospace	3.84
Apparel	3.43
Motor vehicles	3.39
Shipbuilding, railroad and transportation equipment	3.37
Metal products	3.26
Broadcasting, motion-picture production and distribution	2.98
Electronics, appliances	2.91
Textiles, vinyl flooring	2.76
Office equipment (includes computers)	2.73
Petroleum refining	2.71
Soaps, cosmetics	2.70
Industrial and farm equipment	2.68
Rubber, plastic products	2.58
Beverages	2.56
Chemicals	2.32
Glass, concrete, abrasives, gypsum	2.26
Paper, fiber, and wood products	2.17
Tobacco	2.09
Metal manufacturing	2.00
Publishing, printing	1.97
Measuring, scientific, photographic equipment	1.92
Pharmaceuticals	1.89
Mining, crude-oil production	1.83
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.
All Industries	2.73

SALES PER EMPLOYEE

THE TEN HIGHEST

	SALES RANK	
American Beef Packers	290	$1,740,383
Seaboard Allied Milling	477	556,448
Amerada Hess	54	517,424
Archer Daniels Midland	111	462,659
Crown Central Petroleum	356	446,247
Standard Oil of California	6	433,548
Associated Milk Producers	141	422,002
Flavorland Industries	495	387,383
SuCrest	389	331,078
Exxon	1	327,480

THE FIVE LOWEST

Dan River	409	$22,466
Baxter Laboratories	306	21,949
Cluett, Peabody	334	21,294
Cannon Mills	415	19,760
General Instrument	394	18,819

THE INDUSTRY MEDIANS

Petroleum refining	$242,413
Broadcasting, motion-picture production and distribution	92,538
Mining, crude-oil production	91,380
Food	83,505
Beverages	82,433
Tobacco	60,837
Chemicals	60,132
Soaps, cosmetics	59,116
Metal manufacturing	55,646
Paper, fiber, and wood products	52,832
Shipbuilding, railroad and transportation equipment	48,104
Metal products	45,661
Publishing, printing	45,460
Motor vehicles	43,941
Pharmaceuticals	43,774
Industrial and farm equipment	42,245
Aerospace	42,221
Glass, concrete, abrasives, gypsum	40,158
Rubber, plastic products	39,387
Measuring, scientific, photographic equipment	35,732
Electronics, appliances	35,686
Office equipment (includes computers)	32,570
Textiles, vinyl flooring	29,280
Apparel	23,801
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.
All industries	50,273

ASSETS PER EMPLOYEE

THE TEN HIGHEST

	SALES RANK	
Amerada Hess	54	$388,195
Standard Oil of California	6	332,418
Murphy Oil	218	293,520
CF Industries	359	286,115
Getty Oil	61	279,853
Superior Oil	424	265,424
Atlantic Richfield	15	262,279
Belco Petroleum	489	249,569
Union Oil of California	27	241,009
Exxon	1	239,704

THE FIVE LOWEST

Blue Bell	301	$12,600
Cluett, Peabody	334	11,578
American Bakeries	396	11,061
Genesco	185	11,031
Interstate Brands	393	9,629

THE INDUSTRY MEDIANS

Petroleum refining	$196,927
Mining, crude-oil production	114,898
Broadcasting, motion-picture production and distribution	70,434
Beverages	69,026
Tobacco	65,298
Metal manufacturing	57,272
Chemicals	54,212
Paper, fiber, and wood products	47,587
Pharmaceuticals	40,923
Soaps, cosmetics	36,885
Publishing, printing	36,468
Food	36,463
Industrial and farm equipment	33,893
Shipbuilding, railroad and transportation equipment	33,705
Glass, concrete, abrasives, gypsum	32,780
Metal products	30,625
Office equipment (includes computers)	30,111
Motor vehicles	29,754
Rubber, plastic products	28,913
Measuring, scientific, photographic equipment	28,938
Electronics, appliances	25,239
Aerospace	23,954
Textiles, vinyl flooring	21,254
Apparel	14,991
Musical instruments, toys, sporting goods	N.A.
Leather	N.A.
Furniture	N.A.
Jewelry, silverware	N.A.
All industries	37,926

Reprints of this year's FORTUNE *Directory will be available soon. The directory will include the* FORTUNE *500 (from this issue), the Second 500 (to be published next month), and the non-industrial "fifty largest" lists (to be published in the July issue). Single copies of the directory are priced at $5.00; 25 to 99 copies at $4.50 each; 100 or more copies at $3.50 each. Please address inquiries and payments to Fortune Directories, Room 18-28, Time & Life Building, Rockefeller Center, New York, N.Y. 10020.*

ARRIVALS AND DEPARTURES

NEWCOMERS TO THE 500

	1975 SALES RANK
Baker International	339
Ball	429
CF Industries	359
Cameron Iron Works	432
Consolidated Aluminum	400
Coors (Adolph)	332
Economics Laboratory	500
Envirotech	431
Foxboro	490
Hood (H.P.)	402
Hughes Tool	444
International Systems & Controls	478
Kewanee Industries	436
MAPCO	449
Masco	484
Peabody Galion	494
SuCrest	389
Tektronix	457

RETURNED TO THE 500*

	1975 SALES RANK
Arvin Industries (1972: 496)	453
Bucyrus-Erie (1971: 489)	442
Columbia Pictures Industries (1972: 441)	463
Curtiss-Wright (1973: 491)	471
Gerber Products (1973: 461)	468
Great Western United (1972: 442)	345
Hanna Mining (1971: 467)	464
Harnischfeger (1967: 473)	426
Hyster (1972: 491)	448
Kaico Chemical (1971: 493)	483
Peabody Coal (1967: 303)	270
Perkin-Elmer (1972: 498)	498
Twentieth Century-Fox Film (1973: 493)	451
Wean United (1972: 493)	497
Wrigley (Wm.) Jr. (1972: 494)	452

*Figures in parentheses indicate year and sales rank the last time the company was listed.

DISPLACED FROM THE 500

	1974 SALES RANK
Allied Products	475
Avery Products	485
Bangor Punta	451
Brewer (C.)[1]	461
Bunker Ramo	467
Butler Manufacturing	469
Ceco	471
Cenco	491
Champion Home Builders	488
Coastal States Gas[1]	154
Copperweld	458
Di Giorgio[1]	333
ESB[2]	381
Fairchild Camera & Instrument	421
Feddeys	445
Fibreboard	483
General Cinema[1]	482
Houdaille Industries	464
Howmet[3]	393
Loews[1]	320
Masonite	438
Microdot	490
Olinkraft	493
Otis Elevator[4]	179
Penn-Dixie Industries	453
Porter (H.K.)	433
Scott & Fetzer	495
Skyline	480
Southdown	486
Southern Industries	441
Tyler	500
U.S. Shoe[1]	376
Universal Oil Products[4]	243

[1]Company is no longer classified as an industrial.
[2]Company was acquired by International Nickel Co. of Canada.
[3]Company was merged into Pechiney Ugine Kuhlmann.
[4]Company was acquired by another company on the 500.

ALPHABETICAL INDEX OF THE 500 LARGEST INDUSTRIALS

Most of the figures in this FORTUNE *500 Directory were prepared by research associate Linda Snyder, who is responsible for the columns reporting on companies' sales, assets, net income, stockholders' equity, employees, net income as a proportion of sales and of stockholders' equity, and the industry code numbers. Sydney Ladensohn Stern prepared all the earnings-per-share figures. The figures on the total return to investors were prepared by Claudine Knight.*

Kaiser Industries 199
Kane-Miller 283
Kayser-Roth 320
Kellogg 172
Kellwood 422
Kennecott Copper 257
Kerr-McGee 115
Kewanee Industries 436
Keystone Consolidated Industries 456
Kidde (Walter) 176
Kimberly-Clark 140
Knight-Ridder Newspapers 295
Koehring 423
Koppers 190
Kraftco 33

LTV 37
Land O'Lakes 180
Lear Siegler 289
Lever Brothers 263
Levi Strauss 200
Libbey-Owens-Ford 274
Libby, McNeill & Libby 357
Liggett & Myers 277
Lilly (Eli) 167
Lipton (Thomas J.) 383
Litton Industries 49
Lockheed Aircraft 50
Lone Star Industries 291
Louisiana-Pacific 420
Lowenstein (M.) & Sons 338
Lubrizol 395
Lykes-Youngstown 134

MAPCO 449
MAPXL 269
MCA 241
Macmillan 354
Marathon Oil 63
Martin Marietta 193
Masco 484
Mattel 466
McDonnell Douglas 52
McGraw-Edison 226
McGraw-Hill 323
McLouth Steel 428
Mead 165
Merck 139
Midland-Ross 362
Miles Laboratories 398
Minnesota Mining & Manufacturing 56
Mobil Oil 5
Mohasco 308
Monfort of Colorado 499
Monsanto 46
Morton-Norwich Products 321
Motorola 156
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National Distillers & Chemical 214
National Gypsum 325
National Service Industries 377
National Steel 91
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Newmont Mining 336
Norris Industries 419
North American Philips 147
Northrop 205
Northwest Industries 175
Northwestern Steel & Wire 492
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Phillips-Van Heusen 481
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Rohm & Haas 194
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Savannah Foods & Industries 410
Saxon Industries 387
Schering-Plough 247
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Scott Paper 174
Scovill Manufacturing 328
Seaboard Allied Milling 477
Seagram (Joseph E.) & Sons 232
Searle (G. D.) 268
Shell Oil 14
Sheller-Globe 388
Sherwin-Williams 227
Signal Companies 97
Signode 435
Simmons 386
Singer 73
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Southwest Forest Industries 381
Spencer Foods 380
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Sunbeam 229
Sundstrand 341
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Tenneco 22
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END