

## ACCESS TO TAX RECORDS FOR STATISTICAL PURPOSES

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This paper gives a brief history of disclosure under the tax system as it applies to the use of tax returns for statistical purposes. Particular focus is given to the role of the Statistics of Income (SOI) Division of the Internal Revenue Service (IRS) in providing data both to the public and to other Federal statistical agencies.

Before beginning our discussion, it is important to point out that the research and contents of this paper are the sole product of its authors. As such, this paper does not constitute the view or the position of IRS or its Office of Chief Counsel.

### LEGISLATIVE HISTORY

Except for a few periods in our history, Congress has leaned in the direction of restricting the disclosure of information contained in income tax returns, even to the point of limiting its own access. These historic restrictions, and particularly those which Congress has imposed on its own members and committees, are significant in providing a background for understanding the current attitudes and sensitivities regarding release of tax return information for statistical purposes.

With the passage of the Sixteenth Amendment in 1912 and the Income Tax Act of 1913, the modern individual and corporation income tax formally came into being. Statistical uses of tax returns and return information [1] were not mentioned in this Act. It was not until the Revenue Act of 1916 that the Commissioner of Internal Revenue (with the approval of the Secretary of Treasury) was directed to publish statistics based on data from tax returns filed.

At first, the tax law restricted access to tax returns. However, by 1924 the proponents of public access had succeeded in enacting into law a requirement that provided not only for a public listing of taxpayers, both individual and corporate, and their incomes [2], but also for inspection (as necessary) of returns by the two Congressional revenue committees and by a special committee of either the U.S. Senate or House of Representatives.

In 1926, a reaction against public access resulted not only in an amendment eliminating the requirement for a public listing of incomes, but also another amendment which required a resolution of either House of Congress or a joint resolution, before a committee (other than the two revenue committees) could inspect tax returns. Thus, the Revenue Act of 1926 formulated the basic approach to disclosure now contained in the law.

Congress departed from this approach (albeit briefly) in 1934 by enacting the so-called "pink slip" provision under which basic income data were now to be made public at tax collectors'

offices. Each taxpayer when filing an income tax return was supposed to fill out an additional form requiring directory-type information that included the following six items: name and address, total gross income, total deductions, net income, total credit against net income for normal tax purposes, and tax payable. If the taxpayer failed to attach the additional information form, the then Bureau of Internal Revenue was to obtain the information from the return and charge the taxpayer (on a "pink slip") a \$5.00 penalty. Congress, however, repealed this provision before it became effective for the 1935 filing period [3].

In general, beginning with the Income Tax Act of 1913, all returns were open to inspection primarily upon executive order of the President. Figures A and B provide a brief chronology of major law changes and Presidential executive orders dealing with disclosure leading up to the Tax Reform Act of 1976.

In explaining the reason for the (then new) Tax Reform Act of 1976, the Congressional Joint Committee on Taxation noted that during the Watergate era of the early 1970's, a question

"...arose with respect to disclosure of tax information to the White House. Apparently, tax information had been obtained by the White House pertaining to a number of well-known individuals for use for non-tax purposes. In a ...sense, questions were raised with respect to whether tax returns and tax information should be used for any purposes other than tax administration." [4]

One of Watergate's direct results was a heightened Congressional sensitivity over use of tax return information. For example, at around the time of the Watergate hearings in 1973, the Department of Agriculture was in the process of requesting access to tax return information under an executive order in order to conduct a survey of farmers. A great concern about this order arose in the Congress, with the result that it was withdrawn and the Agriculture Department was unable to gain access.

It was not until 1976 that the era of Presidential authority allowing access to tax return information data came to an end. As a result of the Tax Reform Act, Congress specifically denied the President such authority and took upon itself the authority to specify the use of and restrictions applicable to the disclosure of tax returns and return information.

It was during this same era that the Privacy Act of 1974 was enacted [5]. The underlying purpose of that Act was to give citizens more control over what information was collected about them by the Federal Government as well as about how that information could be used and

Figure A. - SELECTED LEGISLATIVE MILESTONES IN THE HISTORY OF DISCLOSURE OF INFORMATION FROM FEDERAL TAX RETURNS, 1913-1976

Year	Revenue Law or Amendment	Extent of Disclosure Allowed	Year	Revenue Law or Amendment	Extent of Disclosure Allowed
1913	Income Tax Act of 1913 (section II.G.(d)(1))	All returns (public records) following a tax assessment were open to public inspection only upon order of the President, under rules and regulations prescribed by the Treasury Secretary and approved by the President.	1934	Revenue Act of 1934 (section 55) Cont'd	Provision was rescinded in 1935 and disclosure restrictions then reverted to those under 1932 Act.
1916	Revenue Act of 1916 (section 21)	1913 disclosure restrictions continued. However, the Commissioner of Internal Revenue was required to publish tax return information annually, in aggregated form as statistics.	1935	Revenue Act of 1934 Costigan Amendment (section 55)	Access to Federal tax returns provided to State tax officials for any State tax purpose.
1924	Revenue Act of 1924 (section 257)	1916 disclosure restrictions modified to permit public listings of taxpayer names and incomes.	1954	Internal Revenue Code (section 6103) (section 55)	The Secretary was required to publish lists containing name and address of each taxpayer.
1926	Revenue Act of 1926 (section 257)	1924 disclosure restrictions modified; public listing of only taxpayer names (but not incomes).	1954	Internal Revenue Code (section 6108)	The responsibility for publishing statistics was specifically placed with the Secretary and not with the Commissioner (as prescribed by the 1916 Act.) However, the Secretary has delegated such authority to the Commissioner.
1933	Revenue Act of 1932, amended, (section 55)	1926 disclosure provisions applied. However, returns filed under Title II of the 1926 Act following the 1933 National Industrial Recovery Act were open to public examination and inspection under rules and regulations promulgated by the President.	1976	Tax Reform Act of 1976 (section 6103)	Congress denied the President the authority to issue executive orders permitting access to tax records. Stricter disclosure rules were enacted. The Code section dealing with fact-of-filing a tax return was deleted.
1934	Revenue Act of 1934 (section 55)	Additional taxpayer information made public. Fore-runner of "directory information" (name, address, tax and selected financial data).	1976	Tax Reform Act of 1976 (section 6108)	Code section 6108 (Publication of Statistics of Income) and section 7515 (Special Statistical Studies and Compilations and other Services on Request) were combined to form sections 6108(a) and 6108(b), respectively. A new subsection (c) was added which required all statistical studies to be in anonymous form.

NOTE: Since the early 1800's and until the Tax Reform Act of 1976, all returns were called "public records". However, these public records were not "public" in the conventional sense. In fact, disclosure from these records, except for some short periods (and then only of limited information), has always been highly restricted.

Figure B - SELECTED EXECUTIVE ORDERS  
PERMITTING ACCESS TO TAX RETURN RECORDS

Year	Executive Order	Agency/Purpose
1931	Executive Order 5647	Access to Federal tax returns provided to State tax officials for State income tax purposes.
1932	Executive Order 5824	Access to Federal tax returns provided to State tax officials for State income and intangible tax purposes.
1955	Executive Order 10619 26 CFR 301.6103(a)-100	Administration of Title II (old age, etc. benefits) of the Social Security Act, as amended (42 U.S.C. Ch. 7). Now covered in Code section 6103(1)(1) and (5), (Tax Reform Act of 1976).
1959	Executive Order 10814 26 CFR 301.6103(a)-102	*Securities and Exchange Commission for use in sample design for statistics in the Quarterly Financial Report for Manufacturing Corporations (QFR), jointly produced with the FTC (see below). (15 U.S.C 78a-78jj and 31 U.S.C. 18b).
1961	Executive Order 10962 26 CFR 301.6103(a)-103	*Advisory Commission on Intergovernmental Relations for studying the coordination and simplification of tax laws.
1961	Executive Order 10911 26 CFR 301.6103(a)-104	Department of Commerce for Census and National Accounts purposes. Now covered in Code section 6103(j)(1), (Tax Reform Act of 1976).
1961	Executive Order 10907 26 CFR 301.6103(a)-105	*Renegotiation Board to identify businesses with Federal contracts subject to renegotiation.
1961	Executive Order 10908 26 CFR 301.6103(a)-106	*Federal Trade Commission (FTC) for use in sample design for statistics in the Quarterly Financial Report for Manufacturing, Mining and Trade Corporations (QFR) - 1914 FTC Act, 38 Stat. 717. Was Code section 6103(j)(2), (Tax Reform Act of 1976), prior to transfer of responsibility for the report (see footnote).
1965	Executive Orders 11682, 11176, and 11213 26 CFR 301.6103(a)-107	*Federal Reserve Board (for the 1964 Interest Equalization Tax Act).
1973	Executive Orders 11697 & 11709 26 CFR 301.6103(a)-108	Department of Agriculture for a directory of farmers to be used in surveys and for other statistical purposes; order subsequently withdrawn.

All these Executive Orders were repealed by the Tax Reform Act of 1976. The agencies indicated by an asterisk(\*) do not now have access to identifiable tax returns and tax return information. The responsibility to produce the QFR has been shifted (since January 1983) from the Federal Trade Commission to the Bureau of the Census. The Renegotiation Board is no longer in existence.

whether information about an individual was included in an agency's "system of records." The Act accomplished its purposes in five basic ways. Agencies were required to publicly report the existence of all systems of records maintained on individuals. The Act also required that the information contained in these systems be accurate, complete, relevant and up-to-date. Furthermore, it provided procedures whereby individuals could inspect the information about themselves in almost all Federal files and correct any inaccuracies. The Act specified that an individual's privacy must be protected and that information about an individual collected for one purpose could not be used for another without the individual's consent. And, finally, it required agencies to keep an accurate account of the disclosure of records and, with certain exceptions, to make these accounts available to individuals who were the subjects of the records.

It should be noted that the Privacy Act was passed when there was another related and important provision of law still on the books. Section 6103(f) of the Internal Revenue Code of 1954 (the current basic tax statute), required the IRS to make public whether a named taxpayer had filed a return. This inconsistency, over and above the fact that the Privacy Act covered only individuals while section 6103(f) covered both individuals and businesses, was not resolved until the passage of the Tax Reform Act of 1976, when the fact-of-filing provision was deleted [6].

#### STATISTICS OF INCOME PROGRAM

Since tax data had not been open to general public inspection, the 1916 Congressional initiative and directive to publish statistics based on tax returns was a major change to the restrictions on providing information to the public from tax returns [7]. In particular, the Revenue Act of 1916 stated:

"...The preparation and publication of statistics reasonably available with respect to the operation of the income tax law and containing classifications of taxpayers and of income...and any other facts deemed pertinent and valuable, shall be made annually by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury." [7]

This wording has been repeated, with a few modifications, in each major rewrite of the revenue laws since that time.

The initial volume of statistics was for the Income Year 1916 (actually it also contained a small amount of information for Income Years 1913 through 1915 [8]). All succeeding Statistics of Income publications were issued as public use documents. For the first 18 years, 1916-1933, only one report was published for each year. Individual and corporation returns were always covered and, beginning with 1917, periodically other selected returns as well.

Until the late 1920's these annual publications emphasized taxation aspects and where the returns were filed. In fact, a major portion of each report in these early days related to geography. Not only were there State tables showing the number of returns, net income, and tax, classified by industry or size of income, but, in the case of individuals, the number of returns in each county, city, and town. The latter tables continued to be published for 21 years [9].

During the early years of this statistical series, tabulations were few in number and relatively uncomplicated. With the passage of time and as the tax laws became more complex, the series began to reflect the needs of other users resulting in a greater degree of tabular complexity. Moreover, the series was increasingly redesigned to meet the needs of economists and financial analysts, quite apart from its initial purpose of providing data on the operation of the revenue laws for use by tax officials. In large part, this reflected the growing coverage and content of tax returns and the fact that additional segments of the population were required to pay taxes in response to law changes.

It is interesting to note that the footnote for the "personal income tax" tables for 1916 reads: "Classes grouped to conceal the net income and identity of the taxpayer where only one or two returns appear under a distribution" [10]. Yet, at the same time, at various places, the number of returns in the income classes shown is either one or two. (Different disclosure rules continued to be applied to frequency and amount data until the passage of the Tax Reform Act in 1976).

The SOI series still covers the annual reports on individual and corporate income tax returns. Data for partnerships, sole proprietorships, foreign income and taxes, sales of capital assets, tax-exempt organizations, estates and fiduciaries have in recent years been included in the quarterly SOI Bulletin.

The SOI series also covers the Individual (since 1960) and State (since 1977) Tax Model Files; other computer tape files, of estate, employee plan, and tax-exempt organization returns; and the Corporation Source Book (income statement and balance sheet items classified by detailed industries and by size of total assets).

Code section 6108 is the current authority for making public microdata files containing unidentifiable return information. In fact, during consideration of the 1976 Tax Reform Act, Senator Haskell introduced an amendment [11] (which was adopted) to the definition of return information which specified that "...such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer". He explained that the purpose of submitting such amending language:

"...is to ensure that statistical studies and other compilations of data now prepared by the Internal Revenue Service and disclosed by it to outside parties will continue to be subject to disclosure to the extent allowed under

present law. Thus the Internal Revenue Service can continue to release for research purposes statistical studies and compilations of data such as the tax model, which do not identify individual taxpayers."

The principal goal of the SOI Program, in addition to the publication of tax return-based statistics, is to provide tax return data for tax-related research and revenue estimation to the U.S. Department of Treasury's Office of Tax Analysis (OTA). At OTA's request, SOI provides information on such topics as high income individuals, crude oil windfall profit tax, Domestic International Sales Corporations (DISC's), international boycott participation, taxation of corporate income from U.S. possessions, and income of U.S. citizens working abroad.

The SOI Program includes not only the annual publications and tape files that serve as a principal source of data for OTA, but the special statistical research conducted for OTA in order to satisfy other OTA data needs. OTA, in turn, shares the results of its research with Congress.

More and more, however, in order for OTA and Congress to have all the relevant facts available in order to make the "right" decisions or recommendations, linkages for statistical, but not enforcement, purposes between tax return data and data from sources other than tax records are also needed. Some of these linkages the SOI Program cannot now provide; and, hence, OTA is somewhat limited by not having all the information it needs.

#### SOI AND DATA SHARING

Access to tax returns for statistical purposes is now mandated by Congress for use by certain specified Federal agencies. Special committees of Congress and OTA can have access to any and all returns and return information. However, Federal agencies aside from the Treasury can have only limited access and only for limited purposes. In fact, these purposes are now written directly into the tax Code. Further, all authorized data sharing by IRS is circumscribed by strict use guidelines, physical security requirements, and civil and criminal sanctions against abuse.

As far as Federal agencies are concerned, the most comprehensive statistical data sharing now authorized by the Internal Revenue Code is with the U.S. Department of Commerce's Bureaus of Census and Economic Analysis (see Code section 6103(j)). The Bureau of the Census uses the tax microdata for its Economic, Agricultural, and Population Censuses and other ongoing and current programs; the Bureau of Economic Analysis uses tax return information for the National Income and Product Accounts.

The SOI Division, under the authority provided by the Internal Revenue Code [12] has, for several years, been directly involved with various statistical offices within the Federal Government in providing limited access to returns and return information. Code section 6108(b) permits IRS to conduct various special

Figure C -- SELECTED EXAMPLES OF HOW TAX RETURN INFORMATION IS SHARED FOR STATISTICAL PURPOSES

Nature of Information	Disclosure Considerations
1. Statistics of Income tables (as published or as tabulated on a reimbursable basis, including the SOI Corporation Source Book tabulations).	Released to public since 1916 after review for disclosure. (Statistical disclosure rules have changed over the years to conform to changing legal requirements).
2. SOI unidentifiable Microdata Files (available on a reimbursable basis from IRS for recent years and from National Archives for historical data).	Released to public after precautions have been taken to prevent disclosure. In some cases (e.g. Individual Tax Model files), releases go back to 1960.
3. Identifiable Microdata Files.	If authorized by Code section 6103*, release permitted to specific agencies for specified purposes; also, under Code sections 6103(n) and 6108(a), access permitted but only for tax administration purposes. Such access could also result in a special statistical study (6108(b)), for the accessing party's use as long as such statistical study is in anonymous form (6108(c)) when made public.
4. Tabulations or microdata based on IRS records matched by IRS to a sample selected usually by another Federal agency (for example, to study earnings levels of Indochinese refugees).	Conducted under Code sections 6108(b) and 6108(c) on a reimbursable basis, tabulations or microdata may be released provided the information is not in such detail that identifying individual taxpayers is possible by the originating agency or by the public.

\* Code section 6103 also permits access to tax returns and return information for administrative purposes other than statistics.

statistical studies other than for use in tax administration. Figure C provides some examples of the types of existing data sharing arrangements.

It is important to emphasize that all IRS data obtained under section 6108 must be in anonymous form. In other words, all approved requests from Federal agencies for tax return data will be satisfied by IRS or, by its contractor (if for tax administration purposes), only in a form wherein tax return and return information are unidentifiable, directly or indirectly, and only if the IRS disclosure policy regarding tabulations is observed. Presently, this means not fewer than three returns in a table cell at the national level, or in the case of geographic tabulations below the State level, not fewer than 10 returns in a cell.

Up to now the discussion has been confined essentially to how other Federal agencies obtain access to IRS data. It is worthwhile, however, to consider the facet of IRS obtaining access, for statistical purposes, to other Federal records. In this regard, a major problem perceived by other agencies is the ramifications of the Internal Revenue Code section 7214(a)(8) [13]. That section states that Treasury employees must divulge any non-IRS information to which they are privy to IRS enforcement branches if there is reason to believe that there is noncompliance with the revenue laws.

So far as we know, this provision has never been interpreted by IRS to preclude it from entering into binding agreements with statistical agencies which would guarantee the confidentiality of their records. In fact, a number of data exchanges among the Census

Bureau, IRS, and SSA occurred in the 1950's and early 1960's which relied on such a reading [14]. In more recent years, concerns about this provision have been heightened and, notwithstanding an IRS assurance to the contrary, Census and most other Federal statistical agencies still require a more formal assurance, fearing that otherwise there still exists the possibility of release of such data to IRS enforcement officials.

#### CONCLUSIONS AND FUTURE INITIATIVES

The history of IRS disclosure provisions, both legal and statistical, provides us with a perspective for the future. The SOI Program, under certain circumstances and within the letter and spirit of the law, coordinates and facilitates access by other Federal agencies to tax return microdata for statistical purposes. In fact, as part of the Department of Treasury and in its role as a liaison between IRS and agencies in the Federal statistical community, the Program is indirectly charged with facilitating access to tax return microdata by certain specific agencies.

It seems that the future will be like the past in that we will continue to have to balance questions of data dissemination and privacy against the Public's need to know. Perhaps, in a few years, we should readdress the issues dealt with in this paper and reevaluate them in the context of the tax system as it exists then.

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The authors would again like to point out that this paper does not represent the official views of the Internal Revenue Service. The reader should be aware that the contents of this paper may be of substance from the statistician's point of view, but not necessarily from the lawyer's.

#### NOTES AND REFERENCES

[1] Research Institute of America, Inc., Federal Tax Coordinator 2d. Vol. 23-2, 10-1-81-211. Tax returns means the tax return form(s) as well as any schedules if attached. Tax return information means not only the returns and associated schedules, but all other written and oral communications, telephone conversations etc., related to the tax return.

[2] The use of such lists was upheld even when they showed the amount of income tax

paid. Publicity of tax paid was authorized by Section 257(b), Revenue Act of 1924, repealed by Revenue Act of 1926, section 1200(a). See also relevant sections of Public Law 94-455, Internal Revenue Code section 6103. Later, lists showing the name and the post office address of each person making an income tax return in a revenue district were developed annually and were open to inspection (Section 6103(f), as in effect prior to its amendment by Public Law 89-713, 11-2-66).

[3] The identifying information and data items specified in the 1934 legislation can be considered to be the forerunner of the current directory information concept. The IRS now provides name, address, and selected financial data to the Bureau of the Census for its conduct of the Economic and Agricultural Censuses and for the update of its Standard Statistical Establishment List (SSEL). The SSEL includes information (name, physical location, establishment and tax identification numbers, parent company affiliation, Standard Industrial Classification and other product and entity designations, legal form of organization, employment, business receipts, etc.) on all types of economic units (corporations, partnerships, sole proprietorships, cooperatives, non-profit organizations, government entities, etc.) and their constituent establishments.

[4] Joint Committee on Taxation Staff, General Explanation of the Tax Reform Act of 1976, H.R. 10612, 94th Congress, Public Law 94-455, 1976, pp. 314.

[5] Public Law 93-579.

[6] Compare Public Law 89-713, 11-2-66, Internal Revenue Code section 6103(f), fact-of-filing provision, with Public Law 94-455, 1-1-77, when this issue section was deleted making "fact-of-filing" a disclosure.

[7] This is the same provision as exists in current law except that the Internal Revenue Code of 1954 shifted the responsibility of preparing and publishing statistics from the Commissioner of Internal Revenue to the Secretary of the Treasury (who has redelegated such authority to the Commissioner).

[8] U.S. Department of Treasury, Internal Revenue Service, Statistics Division, Statistics of Income, 50th year, 1916-65, Historical Summary.

[9] In more recent years, data by county were published for 1972 and 1974. Statistics by postal ZIP Code area, introduced for 1966 and 1969, were resumed for 1979. Plans call for periodic ZIP Code tabulations for selected future years.

See Wilson, Robert A., "Postal ZIP Code Area Statistics from Internal Revenue Records", 1983 Proceedings, American Statistical Association, Section on Survey Research Methods.

- [10] See Statistics of Income--1918, for example, which reveals that the "fact-of-filing" a tax return (as evidenced by the frequency data) was not considered a disclosure (until 1976). The practice of providing frequencies, but not amounts, for table cells was similar to the still-continuing practice of providing counts of the number of establishments (but not associated amounts) in the Census Bureau's County Business Patterns (CBP) report. Because many of the CBP data are based on tax returns, a clear inconsistency exists between IRS and Census practice.
- [11] Haskell Amendment, Internal Revenue Code section 6103(b)(2)(B). Congressional Record, July 21, 1976, p. 24012.

[12] Internal Revenue Code sections 6103 and 6108, and applicable regulations thereunder.

[13] Internal Revenue Code section 7214(a)(8) "...who [any officer or employee of the United States], having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary...", shall be liable for extreme disciplinary action. Section 7214(a)(8) is the successor to section 4047(e)(9) of the 1939 Code.

[14] It should be noted that this was a time when the Federal statistical community was much smaller and more closely knit than at present. In fact, during this era, former Census Bureau employees headed up these data exchange efforts at IRS and SSA (Joseph Steinberg at SSA, and Ernest J. Engquist, Jr. and Jack Blacksinn at IRS).