

103

TAXPAYERS WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

Y 4. W 36: 103-53

Taxpayers Who Fails to File Federal...

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

OCTOBER 26, 1993

Serial 103-53

Printed for the use of the Committee on Ways and Means

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TAXPAYERS WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

TUESDAY, OCTOBER 26, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to call, at 2 p.m., in room B-318, Rayburn House Office Building, Hon. J.J. Pickle (chairman of the subcommittee) presiding.

[The press releases announcing the hearing follow:]

(1)

FOR IMMEDIATE RELEASE
THURSDAY, MARCH 25, 1993

PRESS RELEASE #6
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1135 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN,
SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A HEARING ON TAXPAYERS
WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing on taxpayers who fail to file Federal income tax returns, and Internal Revenue Service's (IRS) new program to identify non-filers and help get such taxpayers back into the tax system. The hearing has been scheduled for Thursday, April 15, 1993, beginning at 9:30 a.m., in the main Committee hearing room, 1100 Longworth House Office Building. Pending Senate confirmation, the new IRS Commissioner Designee Margaret Richardson has been invited to testify at the hearing.

BACKGROUND

On September 30, 1992, IRS implemented a nationwide non-filer program designed to bring approximately 10 million individuals and businesses who have failed to file tax returns back into the system. According to IRS estimates, more than \$10 billion in tax revenues is lost annually due to the non-filing of Federal tax returns. In a recent pilot test of the non-filer program, IRS found that more than 60 percent of non-filers were self-employed individuals who dealt in cash, or wage-earners who had little tax withheld from their paychecks.

Under IRS's non-filer program, 2,000 revenue agents and tax auditors have been reassigned to identify non-filer cases and assist those taxpayers to file tax returns. IRS has initiated outreach programs, in conjunction with return preparers and other tax practitioners, to educate and inform taxpayers about how to get back into the tax system. Currently, IRS is assisting non-filers in preparing their tax returns and offering payment arrangements, such as installment agreements and offers-in-compromise, to taxpayers who cannot pay the full amount they owe. In many cases, IRS is waiving penalties if there is reasonable cause for the person's late filing. Examples of reasonable cause include personal events, such as illness, death of a family member, and disasters that destroy records, such as fires or natural disasters.

Taxpayers who do not voluntarily contact IRS face increased attention from IRS criminal investigators. Currently, IRS is identifying non-filers through computer matching of IRS records and other means. In a number of egregious cases, IRS has recommended that the Department of Justice bring criminal charges against non-filers. Under the new program, IRS will not prosecute taxpayers who come forward with a true, voluntary disclosure of a failure to file a return.

In announcing the hearing, Chairman Pickle stated: "On April 15, 98 percent of Americans will have filed their Federal income tax returns and paid their taxes. Honest taxpaying Americans have a right to expect that everyone required to file a tax return does so. Taxpayers also have a right to expect IRS to catch and take harsh action against those who don't file.

(MORE)

"Last year, the Oversight Subcommittee matched Form 8300 data with IRS records and identified 57 individuals who spent more than \$10,000 in cash to purchase automobiles and other consumer items and did not file Federal income tax returns. IRS has advised the Subcommittee that these cases are being vigorously pursued and that Form 8300 information is now routinely used to create non-filer cases.

"For those who ignore the law and fail to pay their taxes, IRS has issued a carrot and stick ultimatum -- voluntarily come forward, pay your back taxes, and begin to file accurate returns in the future, or run the risk of being caught in IRS's expanded crackdown on non-filers and face criminal prosecution.

"IRS has extended to people from all walks of life an opportunity to get straight with the Government without fear of prosecution. For those who wait to be caught by IRS, all bets are off.

"The Subcommittee will examine IRS's progress in identifying non-filers to date and IRS's plans for the future. In addition, the Subcommittee has requested that IRS detail how and what one must do to take advantage of IRS's new non-filer program, and how IRS is coordinating criminal prosecutions with the Department of Justice."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Persons submitting written comments for the printed record of the hearing should submit six (6) copies by the close of business, Friday, April 30, 1993, to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * NOTICE -- CHANGE IN SCHEDULE * * *

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 7, 1993

PRESS RELEASE #6-REVISED
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
1135 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN,
SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES POSTPONEMENT OF THE HEARING ON TAXPAYERS
WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

The Honorable J. J. Pickle (D. Texas), Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the hearing on taxpayers who fail to file Federal income tax returns, scheduled for Thursday, April 15, 1993, has been postponed. The hearing will be rescheduled, and a subsequent press release will be issued with the new date and time.

* * * * *

FOR IMMEDIATE RELEASE
WEDNESDAY, OCTOBER 20, 1993

PRESS RELEASE #16
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1135 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN,
SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A HEARING ON TAXPAYERS
WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing on taxpayers who fail to file Federal income tax returns, and the Internal Revenue Service's (IRS) program to identify non-filers and help get such taxpayers back into the tax system. (See Press Release #6, dated March 25, 1993.) The hearing will be held on Monday, October 25, 1993, beginning at 2:00 p.m., in the main Committee hearing room, 1100 Longworth House Office Building. The IRS Commissioner, individuals who failed to file their tax returns, and tax practitioners involved in the non-filer program will testify at the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Persons submitting written comments for the printed record of the hearing should submit six (6) copies by the close of business, Monday, November 15, 1993, to Janice Mays, Chief Counsel and Staff Director, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

* * * * *

* * * NOTICE -- CHANGE IN SCHEDULE * * *

FOR IMMEDIATE RELEASE
FRIDAY, OCTOBER 22, 1993

PRESS RELEASE #16-REVISED
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
1135 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN,
SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS,
U.S. HOUSE OF REPRESENTATIVES,
ANNOUNCES A CHANGE IN SCHEDULE FOR THE HEARING ON TAXPAYERS
WHO FAIL TO FILE FEDERAL INCOME TAX RETURNS

The Honorable J. J. Pickle (D., Texas), Chairman, Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the hearing on taxpayers who failed to file Federal income tax returns, scheduled for Monday, October 25, 1993, has been rescheduled. The hearing will be held on Tuesday, October 26, 1993, beginning at 2:00 p.m., in room B-318 Rayburn House Office Building. (See Press Release #6, dated March 25, 1993.)

* * * * *

Chairman PICKLE. We will ask the subcommittee to please come to order.

I have an opening statement and Mr. Houghton has a statement and then we will proceed with our witnesses.

What does a Wall Street lawyer earning \$500,000 have in common with a California construction worker making \$30,000? What would a judge from Louisiana have in common with a grocery store owner in Oklahoma? What experience could a day laborer from Ohio share with a certified public accountant from Georgia?

The answer is that all of these types of people have failed to file Federal income tax returns. That is a crime punishable by up to 1 year in prison and a \$25,000 fine.

Each year there are 10 million individuals and businesses that neglect to file Federal income tax returns costing the Treasury an estimated \$10 billion. Not all 10 million are purposely cheating the Government. A lot of people don't know that they should file. A lot of people have made some payments, but haven't paid enough. A great many of them, perhaps nearly half, just didn't file.

So today's hearing will explore the nonfiler problem and the impact this growing menace is having on our voluntary tax system. When tax scofflaws don't file their returns, law-abiding taxpayers are forced to pick up their tab. When businesses don't file returns or pay taxes, they illegally grab an unfair economic advantage over their competitors. When tax practitioners don't file their own tax returns, they become the worst type of a hypocrite, demonstrating a complete disregard for the system that provides their livelihoods.

In September 1992, the Internal Revenue Service started an ambitious initiative to identify these nonfilers and encourage them to voluntarily come forward and comply with the law. We will hear today how the program is operating and what successes have been achieved to date.

We will hear from individual nonfilers to learn more about why they don't file returns and how they get away with it. And also, we will learn what tax practitioner groups say about IRS's new strategy, whether it works, and what could be done to improve the program.

All too often, IRS aims its powerful enforcement weapons on the easy targets, those taxpayers attempting to comply with the tax laws instead of those thumbing their noses at it. If a faithful taxpayer makes a mistake on his or her tax return, they are certain to hear from the IRS.

For those "outside" the tax system, the story is much different. There are millions of people earning a decent living that haven't filed a tax return in years. To them, IRS stands for "income reduction service" and they don't want any part of it. And unfortunately, IRS didn't want to have much to do with them either, until now.

IRS's nonfiler program is the start of a new and promising strategy. For example, in my city of Austin, Tex., close to 1,000 people came forward on May 11, 1993, to take advantage of the program. As a result, 1,402 delinquent returns were filed with a balance due of more than \$1 million.

To get these people to come in, the local IRS office aggressively advertised IRS's nonfiler program and offered free coffee and donuts. Most importantly, IRS offered the nonfilers a helping hand

in preparing their delinquent tax returns. Other cities have had similar successes.

My initial reaction is that the nonfiler initiative is a good, responsible, and balanced approach to a very complex compliance problem. To all those nonfilers out there, I must tell you that you cannot escape the tax system forever. Your day will come and you may lose everything you have. You are eventually going to get caught, so further delay will only result in digging yourself into a deeper hole. Now is the time to take advantage of IRS's fair and reasonable terms.

To IRS Commissioner Richardson, I must tell you that you know—I think you know, or you have the means to know—who these nonfilers are. You have an obligation to try to bring these people back into the system one way or the other. Otherwise, I promise you there are many out there that may just throw up their hands and become nonfiler number ten million and one.

If now is really the time for nonfilers to come back into the system, then you must do a better job promoting this program. While I have seen more than enough State-sponsored responsible commercials soliciting the purchase of lottery tickets, I have never seen a single television advertisement for the IRS's nonfiler program. They may run TV ads, but it is more likely to be at 12 midnight.

Of course, that is when the tax scofflaw may be up. If IRS expects this program to work, then much more should be done by IRS, this committee, and the public media to prove it and to promote it.

I hope that today's hearing will help advance this program, because I think it can work to our advantage.

Mr. Houghton.

Mr. HOUGHTON. Thank you, Mr. Chairman.

Ms. Richardson, its good to have you here. You bring not only a professionalism but a humanity to the IRS and we are delighted to have you here.

The facts are that 6 to 10 million people don't pay their taxes and it is a problem. Of course, you can address that by a particular program. You have over 12,000 agents working on this to see what we can do to recoup some of the losses which this country has unfairly absorbed. We would like to hear more about this.

We will ask what you have done and what the results are. Basically, the starting point is that most people are honest, pay their taxes and their bills. It is too bad that some people don't, but ride on the backs of the honest people in this country. That is what we want to get at.

I am delighted to have you here.

Thank you, Mr. Chairman.

Chairman PICKLE. Our first witness today is Hon. Margaret Milner Richardson, Commissioner of the IRS.

We appreciate your attendance today and look forward to your testimony. You have with you Mr. Orosco, Ms. Tucker, and Mr. Voskuil.

STATEMENT OF HON. MARGARET MILNER RICHARDSON, COMMISSIONER OF INTERNAL REVENUE; ACCOMPANIED BY RICHARD VOSKUIL, REGIONAL COMMISSIONER OF THE SOUTHWEST REGION; RICHARD R. OROSCO, DISTRICT DIRECTOR, LOS ANGELES, CALIF.; AND BETH TUCKER, COMPLIANCE 2000 COORDINATOR, DALLAS DISTRICT, U.S. INTERNAL REVENUE SERVICE

Ms. RICHARDSON. Ms. Tucker and Mr. Orosco have had experience with nonfiler programs and I think you may have seen Ms. Tucker on the news clip. They would like to speak for just a moment.

Chairman PICKLE. We recognize you then.

Ms. RICHARDSON. Mr. Chairman and distinguished members of the subcommittee—

Chairman PICKLE. Will you hold up a minute?

I am told that we will have a vote.

Is this a new vote—in view of the fact that we just have a vote started, rather than interrupt your statement, if you will excuse us for 10 minutes, we will be right back.

[Recess.]

Chairman PICKLE. We will ask the subcommittee to please come to order again.

We regret the interruption. We are pleased to hear your statement.

Ms. RICHARDSON. Thank you, Mr. Chairman and other distinguished members of the subcommittee.

I appreciate the opportunity to be here today to discuss the nonfiler issue, the extent and the causes of nonfiling, and our multifaceted compliance strategy to address this problem.

Accompanying me today are Rich Voskuil, the Regional Commissioner of the Southwest Region, the executive who is responsible for initiating and coordinating the IRS nonfiler strategy, Richard Orosco, formerly the Austin District Director and now District Director in Los Angeles; and Beth Tucker, the Compliance 2000 Officer for our Dallas District.

Nonfilers pose one of the most serious problems facing tax administration today. Our estimates indicate that the Government loses billions of dollars each year because taxpayers fail to file required returns and pay the taxes due on those returns.

We identified the nonfiler issue as a serious problem several years ago and became increasingly concerned in 1991 when the delinquent return inventory, which had been growing by about 12 percent each year, suddenly increased by 30 percent. Our current estimate is that approximately 10 million individuals and businesses have not filed required returns.

More than 7.1 million of these are individual income tax nonfilers, many of whom own their own businesses or work as independent contractors. In dollars and cents, we estimate the amount of unpaid tax on individual nonfiled returns for 1992 alone is more than \$10 billion.

We have found that some taxpayers fail to file because of a personal crisis such as divorce or a death in the family, others because they could not pay the tax they owe, and still others because they

did not know they were supposed to file. Some are afraid to file now because they have not filed earlier returns.

There are also those who are just too busy or who believe the IRS will not find out. Our goal is to reach out to these people, bring them into the system, and keep them there.

We are doing everything we can to help those who are willing to come in on their own. Those who choose to remain outside the system need to know that we have intensified our efforts to identify nonfilers and will use appropriate enforcement measures to ensure that they pay their taxes as well.

To address the nonfiler problem, we developed a new, multifaceted strategy which brings all of our agency's resources to bear. Initial efforts have focused primarily on individual income tax nonfilers and fully incorporate the twofold elements of a Compliance 2000 approach: outreach and enforcement.

The first element—outreach—recognizes that most taxpayers, including many who have not filed, want to comply with the tax law. Our goal with these taxpayers is to reach out to them, to work with them to overcome whatever problem has taken them out of the system, and to help them return to compliance.

The second element of the nonfiler strategy—enforcement—recognizes that there are also those who will not respond to outreach attempts and simply refuse to comply with the law. We are devoting more of our enforcement resources to finding and bringing these nonfilers into compliance. In the most egregious cases, we are also recommending criminal sanctions.

The initial idea for the new strategy came from a project conducted in our Austin District. Austin District managers made note of the success achieved in assessing and collecting amounts due on nonfiler cases when collection and examination worked together.

The district initiated an 18-month pilot project in which groups of revenue agents worked selected return delinquency cases taken from the collection inventory. Not only did the project produce better results than collection had accomplished before on its own, but the examination employees were also able to generate more in nonfiler assessments than they had in auditing previously filed returns. In one instance alone, the transfer of a nonfiler case from a collection revenue officer to an examination revenue agent resulted in an assessment of almost \$400,000.

That Austin pilot gave us information that has been useful in developing our nationwide program and provided case information that gave us a greater understanding of the reasons why taxpayers fail to file. For those who claimed ignorance of the law or stopped filing because of a traumatic event, such as a divorce or loss of a job; filing information, encouragement, and payment assistance were the most successful remedies.

We also learned that the apparent lack of consequence for not filing caused continued nonfiling. The average taxpayer in the pilot project was delinquent for 4 years. More than half were self-employed or received income not subject to withholding. This clearly indicated a need for stepped up, timely enforcement against those taxpayers who do not file voluntarily.

Based on the success of the pilot project, Mr. Voskuil was asked to develop a strategy to bring nonfilers into the system and keep

them there. Our approach was to use Compliance 2000 methods, that is, combining education and enforcement techniques, to improve taxpayer compliance and the identification of nonfilers; eliminate the backlog of nonfiler investigations by the end of fiscal year 1994 and to work subsequent cases more promptly; and improve the way we direct our enforcement resources in working nonfiler cases to achieve the highest return on our resource investment.

Our strategy included, in addition to outreach and communications to encourage nonfilers back into compliance, refining criteria for creating productive cases; redirecting examination resources to work select nonfiler cases; redirecting our underreporter resources to prepare returns based on information from third party documents; and developing cross-functional measures to assign management responsibility for results.

The most visible aspect of the strategy thus far has been our outreach and assistance efforts. These efforts have been based on a national public information strategy that encourages every field office to exercise its ingenuity in reaching out to taxpayers and getting the message out. Here are a few of the high points of this effort to date:

In local and national efforts to publicize the initiative, we told the public how and where to get assistance in preparing late returns and the options available for resolving any amounts due.

We enhanced the service provided at our assistance sites specifically to help people who had not filed for prior years. In addition to return preparation assistance, these taxpayers are provided information about prior-year filing requirements, taxable income, deductions, allowable credits, and dependency exemptions.

Non-IRS volunteers, including tax practitioners, are providing free return preparation assistance at more than 600 Prior Year Tax Assistance (PYTA) sites, where more than 9,000 taxpayers have been assisted.

For example, in Dallas, the American Bar Association, H&R Block, the Texas Society of Enrolled Agents, and the Texas Society of CPA's have sponsored nonfiler events, during which more than 300 taxpayers have been assisted and 460 delinquent returns filed for total tax liabilities of \$1.2 million.

The business community has also been very supportive in getting the word out to their workers. Employers have posted flyers on company bulletin boards, included information on our assistance efforts in pay envelopes, and published positive articles in many journals and trade publications.

A major thrust of our communication effort is to explain the costs of not filing and to allay the fears of nonfilers who are worried about how to pay their back taxes, what penalties they may have to pay, and whether they might be prosecuted.

For those who do not think they need to file promptly, we point out that they may be losing refunds forever. Working parents with low incomes who do not file may also be losing out on the Earned Income Tax Credit, which can help make ends meet.

For taxpayers who cannot pay the entire amount they owe, we have streamlined our installment agreement and offer in compromise procedures.

For those who fear being penalized for not filing, we will determine if their failure to file was the result of reasonable cause, such as loss of records in a natural disaster or a death in the family. Taxpayers who can establish reasonable cause will not be penalized.

For those who fear criminal prosecution, our long-standing practice, and it long predates the nonfiler program, has been not to recommend criminal prosecution of individuals for failure to file tax returns if they filed or made arrangements to file voluntarily before being notified they were under criminal investigation; made an honest effort to file correct returns; derived their income exclusively from legal sources; and paid all amounts due, or made arrangements for payment.

Again, our efforts are directed at getting people back into the system, not towards prosecuting people who make a mistake. However, we are continuing to investigate flagrant cases involving criminal violations of the tax laws with every intention of recommending prosecution where appropriate.

I must emphasize one point: our nonfiler strategy is not an amnesty. Taxpayers continue to be responsible for filing all returns and paying all taxes due. Moreover, while our voluntary disclosure policy is intended to encourage taxpayers to return to the system, make no mistake that if they choose to ignore our invitation and wait for us to begin a criminal investigation, they will be vigorously prosecuted to the fullest extent the law allows.

For those choosing to ignore the message to come in voluntarily, we realized we must improve our enforcement efforts and make them more effective. To identify individual income tax nonfilers, we rely primarily on information returns filed by third parties reporting payments of wages, interest, dividends, and similar payments. For tax year 1991, we identified approximately 4.5 million potential individual nonfilers that way.

Our enforcement efforts include "substitute for return" assessments, in which we make an assessment based on third-party information; telephone contacts through our automated collection sites; or on-site contacts by collection and examination personnel. A case is referred to criminal investigation if it appears that the taxpayer's failure to file meets prosecution criteria.

At the end of August of this year, approximately 344,000 individual income tax cases were being worked under substitute for return procedures and over 887,000 individual income tax investigations were underway in examination and collection.

At the end of fiscal year 1993, our criminal investigation activity had 384 open nonfiler cases in inventory and another 327 completed cases pending legal review or awaiting prosecution.

Improving the way we select, prioritize, and work nonfiler cases permits us to focus our enforcement resources to obtain the greatest results. Nationwide in fiscal year 1993 and fiscal year 1994, we are redirecting 2,000 examination staff years each year to the highest priority nonfiler cases.

Presently, these agents and auditors are working on over 230,000 nonfiler cases. By combining the skills of our examination employees with the existing collection resources already allocated to

nonfiler work, we believe we will be able to direct prompt enforcement attention to those taxpayers who refuse to file.

Though data we are collecting on this program are now providing us with a wealth of statistical information, it is still a little too soon to judge our progress accurately. Determining a benchmark by which to measure our results has been made more difficult because the numbers of late returns filed in fiscal year 1991 and fiscal year 1992 vary significantly.

We are currently analyzing what caused the differences between those 2 years so that we can determine how most accurately to gauge our performance. However, we can say that through August of this year, the number of delinquent individual returns filed in fiscal year 1993 was approximately 2.3 million. This figure significantly exceeds that for fiscal year 1991, although it is only slightly above that for fiscal year 1992. A total of almost \$400 million was collected with these returns when they were filed.

Our outreach and assistance efforts struck a responsive chord with many nonfilers who sincerely wanted to get back in step. We are pleased that voluntary filings of returns by nonfilers have increased by almost 8 percent. Many nonfilers are coming forward voluntarily.

Specific examples include a Utah man who drove 8 hours to one of our offices to get help filing returns for 5 years. Worried that he would owe about \$600, he did not know he was due refunds for some of the years and promptly paid in cash when he got the final bill for \$8.

An oil worker in Oklahoma went to one of our assistance sites and filed seven delinquent income tax returns. After filing the returns he expressed his relief, "I couldn't do anything without a copy of a tax return * * * Couldn't buy a house, so we continued to rent, and my son couldn't apply for a scholarship."

We are also seeing results from the cases assigned to revenue agents and tax auditors. Through August, our examination employees received or prepared 243,827 returns reporting more than \$1.4 billion in tax after prepaid credits. They collected \$93.9 million of this unpaid tax with the returns. Our substitute-for-return program produced assessments totaling \$1.9 billion after prepaid credits, an increase of 24 percent compared to the same period in fiscal year 1992.

In working nonfiler cases, our exam personnel are securing returns averaging \$8,487 in tax and are producing \$1,384 in assessments per staff hour expended.

With the support of the Department of Justice, we have had continued success in prosecuting egregious offenders. Through August, 326 individuals had been sentenced compared to 310 last year. The average term of imprisonment imposed is 28.5 months, up from 13 months in 1992, and the average criminal tax deficiency in 1993 was just under \$108,000 compared to \$45,000 in 1992.

Recently approved changes to the sentencing guidelines will make it far more likely that those convicted for nonfiling will receive a term of imprisonment as part of their sentences.

A final but very important result of our nonfiler initiative is that, as part of our Compliance 2000 approach, we are learning more about nonfilers. We have identified some of the characteristics of

our high-income nonfilers, including predominant sources of income and likely areas of traceable interest payments. This information is allowing us to refine our enforcement strategies.

A project recently conducted in our Southwest region provides a good example of the benefits of learning more about nonfilers. We noted a filing/nonfiling pattern with some taxpayers who did not file when they owed a balance, but did file for years in which they were due refunds. To address this abuse, we conducted a test in which we held refunds for taxpayers who had not filed for earlier tax years and requested that late returns be filed.

During the test we held almost 1,800 refunds totaling \$2.6 million. As of mid-August 1993, taxpayers had filed 670 delinquent returns, 452 showing a balance due.

Because of the success of this test, we are expanding the program nationwide in 1994. We will hold tax year 1993 refunds over a threshold amount if there is an active delinquency investigation or nonfiler examination for any of the 6 previous years. Based on the reactions of taxpayers during the test, we do anticipate increased compliance.

We are also learning that among individual nonfilers, self-employed taxpayers stand out as the group presenting us with the greatest compliance problem. For the 1988 tax year, self-employed individuals with adjusted gross incomes of \$25,000 or more accounted for only 7 percent of all individual income tax nonfilers, but they owed 70 percent of the unpaid tax due.

I think you can see a graphic illustration of that on the charts, the nonfiler profile.

This information corresponds with earlier studies indicating significant underreporting problems among nonwage earners. An earlier study revealed independent contractors report 97 percent of the income they receive which is reported on information returns, but only 83 percent of the income which is not on information returns.

These statistics contrast sharply with the fact that wage earners report 99 percent of their wages shown on forms W-2 and subject to withholding. In 1988, we found that the percentage of taxable income reported by small, service provider corporations had fallen from 69 percent to 48 percent between 1980 and 1987. We believe that a substantial number of these service provider corporations do not file income tax returns at all.

Gaps in information reporting requirements, such as the exemption for amounts paid to corporations, and lapses in reporting of payments are providing opportunities for those who want to cheat. For example, in our Jacksonville District, an examination of local governments found millions of dollars in payments to self-employed businesses and independent contractors on which required forms 1099 were not issued. Followup examinations of the individuals receiving these payments revealed many nonfilers, some of whom have been referred for criminal investigation.

In our North Atlantic region, an examination of beer distributors disclosed that one large distributor had required its driver/salespersons to incorporate to save the distributor from having to pay employment taxes and benefits.

In subsequent examinations of the newly incorporated drivers, we found that 14 percent had failed to file their individual income

tax returns reporting \$1.4 million in income received from the distributor.

The compliance-inducing effects of information reporting were the driving force behind the administration's proposal earlier this year that would have required information reporting on service payments to corporations. We appreciated the support of this subcommittee and particularly you, Mr. Chairman, for the proposal, and we were quite disappointed when it was not included in the final version of OBRA 1993, since the administration believes this information reporting requirement would raise in excess of \$6 billion over 5 years by inducing service corporations to file and by permitting IRS to better verify the amounts they report as income.

As part of our nonfiler initiative, we are continuing to explore other possible administrative and legislative remedies to this major component of the nonfiler problem.

Much of our effort to improve our abilities to identify nonfilers focuses on self-employed and other nonfilers whose income is not subject to traditional information reporting. Without information reporting, we usually have to obtain information from external sources in order to identify these nonfilers. In many instances, we are also trying to create more powerful inducements for these individuals to file on their own rather than waiting for us to find them.

For example, nonfiling can have serious consequences for tax professionals and their firms. Many tax firms require their partners to certify that they have filed all required returns but are unable to validate these certifications.

To assist the tax professional community in policing itself, we have established procedures that allow firms to request proof of filing for their partners' returns. I might note that several of the Big 6 accounting firms have done so and two law firms have also asked that be done.

Chairman PICKLE. Is that nationally?

Ms. RICHARDSON. Right.

Several local IRS projects to identify nonfilers among the legal and tax professional communities have recently attracted national publicity. Our Chicago District found 90 potential nonfilers among the 6,600 certified public accountants within its boundaries.

In New York, our Manhattan District Criminal Investigation Division checked the filing record of 4,200 partners associated with 40 prominent New York law firms. Several hundred had either not filed or were chronic late filers. Criminal investigations were opened on 37 of the most egregious cases and the district anticipates recommending 19 for criminal prosecution.

We have found the States to be our most valuable allies in addressing the problem of self-employed nonfilers. One of the best examples of assistance we are receiving from States is in identifying self-employed nonfilers who require State licenses.

This provides an opportunity to set requirements for tax compliance as a prerequisite for obtaining or renewing a license. For example, Hawaii has a 10-year-old law requiring a tax clearance for applicants for liquor licenses.

South Carolina recently enacted a similar requirement. Our Jackson District last year entered into an agreement with the State of Mississippi to establish a requirement that all gaming licensees

in that State be in compliance with Federal and State filing requirements.

Matching State sales tax databases against IRS files to identify business nonfilers is underway in at least seven States. We have found that these programs identify not only Federal, but State income tax nonfilers as well.

Although it is too early in our program to draw conclusions from the results reported so far, they will provide us a framework for evaluating our longer term efforts. Through 1994, we will monitor the results of our efforts, evaluate the dollar impact of changes, measure the impact on voluntary compliance, and use the data to prepare and support any appropriate legislative proposals.

Over the next year, we will continue our focus on completing the goals that were laid out to address the nonfiler problem. We will continue to perfect measures for the program that will help us develop the most effective ways of directing our limited enforcement resources.

We will also apply process analysis techniques to gather information on the current system, identify the components which require repair or redesign, and develop improvements.

Finally, we will continue to look for better ways to address the problem of self-employed nonfilers and to improve our understanding of all nonfilers.

In closing, Mr. Chairman, I acknowledge that the nonfiler problem is a serious one, but I also believe that we have made progress in dealing with the problem and are working toward a long-term solution. We would appreciate any suggestions for improvement that you may wish to offer.

I do want to mention that although you suggested that the initials "IRS" refer to "income reduction service" in some quarters, I like to think they refer to "I am real serious," and we are very serious about our nonfiler efforts.

My colleagues and I would be happy to answer any questions you may have.

Ms. Tucker would like to share a little bit of her experience in the Dallas District with you, and Richard Orosco would like to tell you what is happening in Austin in their nonfiler program.

[The prepared statement and attachments follow:]

Statement of Margaret Milner Richardson
Commissioner of Internal Revenue

Before the

Subcommittee on Oversight
House Committee on Ways and Means

October 26, 1993

Mr. Chairman and Other Distinguished Members of the Subcommittee:

Nonfilers pose one of the most serious problems facing tax administration today. Our estimates indicate that the government loses billions of dollars each year because taxpayers fail to file required returns and pay the taxes due on those returns. When millions of taxpayers fail to file their returns and are able to do so with impunity year after year, it undermines our system of voluntary compliance.

I appreciate the opportunity to be here today to discuss the nonfiler issue, the extent and causes of nonfiling, and our multi-faceted compliance strategy to address this problem. Accompanying me today are Rich Voskuil, Regional Commissioner of the Southwest Region, the executive who is responsible for initiating and coordinating the IRS' Nonfiler Strategy; Richard Orosco, formerly the Austin District Director and now District Director in Los Angeles; and Beth Tucker, the Compliance 2000 Officer for our Dallas District.

I. Introduction

Several years ago, as a result of Congressional hearings that focused on high-income nonfilers and based on our own research and experience, we identified the nonfiler issue as a serious problem. We became increasingly concerned in 1991 when the delinquent return inventory, which had been growing by about 12% each year, suddenly increased by 30%. At the end of August 1993, based on information documents showing payments made by third parties, we estimate that approximately 10 million individuals and businesses have not filed required returns¹. Individual income tax nonfilers make up more than 7.1 million of this category. Many are individuals who own their own businesses or who work as independent contractors. To put the nonfiler problem in dollars and cents, we estimate that, for individual income taxes, the amount of unpaid tax on returns due but not timely filed for 1992 alone is more than \$10 billion.

We have found that some taxpayers fail to file because of a personal crisis such as divorce or a death in the family, others because they could not pay the tax they owe, and still others because they did not know they were supposed to file. Some are afraid to file now because they have not filed earlier returns. There are also those who are just "too busy" or who believe the IRS will not find out. Our goal is to reach out to these people, bring them into the system, and keep them there. We are doing everything we can to help those who are willing to come in on their own. Those who choose to remain outside the system need to know that we have intensified our efforts to identify nonfilers and will use appropriate enforcement measures to ensure that they pay their taxes as well.

¹ The 10 million nonfilers include individuals and businesses that are more than one year late in filing a required income tax return and businesses that are more than 90 days late in filing employment tax returns.

II. Description of Nonfiler Strategy

Compliance 2000 Approach

Realizing that the Service's traditional single-function approach in addressing the nonfiler problem was not enough, we developed a new, multi-faceted strategy which brings all of our agency's resources to bear. Initial efforts have focused primarily on individual income tax nonfilers and fully incorporate the two-fold elements of a Compliance 2000 approach: outreach and enforcement². The first element -- outreach -- recognizes that most taxpayers, including many who have not filed, want to comply with the tax law. Our goal with these taxpayers is to reach out to them, to work with them to overcome whatever problem has taken them out of the system, and to help them return to compliance.

The second element of the Nonfiler Strategy -- enforcement -- recognizes that there are also those who will not respond to outreach attempts and simply refuse to comply with the law. We are devoting more of our enforcement resources to finding and bringing these nonfilers into compliance. In the most egregious cases, we are also recommending criminal sanctions.

Development of the Strategy

The initial idea for the new strategy came from a project conducted in our Austin District. In the past, nonfiler cases have primarily been the province of our Collection function. With responsibility assigned to only one IRS function, resources and skills devoted to resolving nonfiler cases were sometimes limited. For example, Examination employees are authorized to initiate deficiency assessments while Collection employees cannot. Austin District managers made note of the success achieved in assessing and collecting amounts due on nonfiler cases when Collection and Examination worked together. In one instance the transfer of a nonfiler case from a Collection revenue officer to an Examination revenue agent resulted in an assessment of approximately \$400,000. While working the case, the revenue agent learned that the taxpayer was about to sell a house so he expedited assessment of the tax. He then notified the revenue officer who promptly filed a notice of tax lien which resulted in the collection of \$100,000 from the sale proceeds to apply against the tax debt. By working together the revenue agent and revenue officer were more effective than either would have been acting alone.

With these and other examples of the possible benefits of combining the varied skills of employees in different functions to tackle the problem, the Austin District initiated an 18-month pilot project in which groups of revenue agents worked selected return delinquency cases taken from the Collection inventory. Not only did the project produce better results than Collection had accomplished before on its own, but the Examination employees were also able to generate more in nonfiler assessments than they had in auditing previously filed returns. One group generated assessments of almost \$10,000 per return working nonfiler cases.

During the pilot, we also began to identify some reasons why people do not file timely returns. The pilot gave us information that has been useful in developing our nationwide program and provided case information that gave us a greater understanding of the reasons why taxpayers fail to file. This was particularly useful in

² Our Compliance 2000 philosophy recognizes that long-term voluntary compliance can only be attained if taxpayers understand what is required of them and can satisfy their obligations in a reasonably easy and direct manner. However, because we recognize that some citizens will not respond to our attempts to facilitate their compliance, the Compliance 2000 philosophy also envisions gathering more data on noncompliant taxpayers to permit a very focused use of our enforcement resources.

developing the outreach portion of the nonfiler initiative. For example, the typical reasons given for not filing included ignorance of the law or a traumatic event such as a divorce or loss of a job. Taxpayers in these circumstances needed to receive filing information and be encouraged to return to the system. We also found we had to be able to address their likely inability to pay in full.

We also learned that taxpayers, when they first failed to file, feared the enforcement powers of the IRS; however, when they discovered that there was apparently no consequence to not filing, they often continued to delay filing. The average taxpayer in the pilot project was delinquent for four years. More than half were self-employed or received income not subject to withholding. This clearly indicated a need for stepped-up, timely enforcement against those taxpayers who do not file voluntarily.

Goals of the Nonfiler Strategy

At the conclusion of the pilot project, my immediate predecessor and other senior IRS officials were briefed on the results. Mr. Voskuil was asked to head an initiative to develop a comprehensive, multi-faceted strategy for addressing the nonfiler problem on a nationwide basis with the single, overriding goal of bringing nonfilers into the system and keeping them there. He proceeded to develop a multi-functional strategy to accomplish this long-term goal. As a first step, interim goals were established to put us on the road to accomplishing our major objective. These are to:

- use Compliance 2000 methods to improve taxpayer compliance and the identification of nonfilers;
- eliminate the backlog in our inventory of nonfiler investigations by the end of Fiscal Year 1994 so that we can work individual nonfiler cases promptly as they are identified, and not let several returns go unfiled; and
- improve the way we direct our enforcement resources in working nonfiler cases so that we can employ the most effective techniques on different types of cases to achieve the highest return on our resource investment.

Five-Part Strategy

The strategy developed to accomplish the interim goals during Fiscal Years 1993 and 1994 has five major components:

- Outreach and communications to encourage and help nonfilers get back into compliance;
- Removal from inventory of cases with the lowest potential of tax-due and refinement of criteria for creating productive cases;
- Redirection of revenue agent and tax auditor resources to work select nonfiler cases;
- Redirection of service center underreporter resources to prepare returns based on information from third party documents; and
- Development of cross-functional goals and measures Servicewide in the annual business plans to institutionalize the program and assign management responsibility for results.

III. Outreach and Assistance

Publicity and Outreach Efforts

The most visible aspect of the strategy thus far has been our outreach and assistance efforts. These efforts have been based on a national public information strategy that encourages every field office to exercise its ingenuity in reaching out to taxpayers and getting the message out. In so doing, local offices work with regional and local media to provide general information; they work with tax practitioners and business associations, and they work with volunteer groups that are able to target diverse communities and to provide the needed assistance.

Here are a few of the high points of this effort to date:

- News releases and other publicity efforts were undertaken in all districts to publicize the initiative and our invitation to help nonfilers voluntarily get back into the system. We told the public how and where to get assistance in preparing late returns and the options available for resolving any amounts due. These efforts were supplemented with numerous press interviews of National and local IRS officials. We also prepared public service announcements for radio, television, and the print media. Local papers across the country carried our message and the widely read Parade magazine provided a quarter page ad in 14 eastern editions of its September 5 issue.
- We enhanced the service provided at our assistance sites specifically to help people who had not filed for prior years. In addition to return preparation assistance, these taxpayers are provided information about prior-year filing requirements, taxable income, deductions, allowable credits, and dependency exemptions. Some of our offices have been able to arrange for assistance in filing prior-year state tax returns as well. Copies of prior-year forms continue to be available from local IRS offices or by telephone. If the taxpayer needs information from lost or misplaced wage or other income statements, IRS employees can request the data from IRS files.
- For those who feel uncomfortable dealing directly with the IRS about their nonfiling, non-IRS volunteers, including tax practitioners, are providing free return preparation assistance at more than 600 Prior Year Tax Assistance (PYTA) sites.

For example, in Dallas, two events were held in which practitioners contributed their own time to help nonfilers return to the system. The American Bar Association sponsored the first event last March at the Southern Methodist University Law School. In August, H&R Block, the Texas Society of Enrolled Agents, the Dallas Chapter of the Texas Society of Certified Public Accountants and the Dallas Chapter of the American Bar Association sponsored nonfiler programs at 11 locations in the Dallas/Fort Worth area. More than 300 taxpayers were assisted at these events and 460 delinquent returns were filed for total tax liabilities of \$1,200,000. Through August of 1993, more than 9,000 taxpayers nationwide had been assisted at the PYTA sites.

Our Cheyenne District conducted well-advertised events in 10 cities in Wyoming over four months with help from IRS employees, VITA volunteers, and practitioners who provided assistance to almost 260 taxpayers. We received almost 180 returns and expect 200 more as prior-year income information is obtained.

- Local IRS offices conducted numerous events outside of normal working hours which gave taxpayers additional opportunities to file. These events have helped people who want to get back into the system.

For example, IRS employees set up a nonfiler booth at the Oshkosh, Wisconsin air show and our Philadelphia District has conducted two special events through July, with the following results:

Taxpayers Assisted:	2,291
Returns Secured:	3,020
Total Unpaid Tax Liabilities:	\$2,160,534

- The business community has also been very supportive in getting the word out to their workers. Employers have posted flyers on company bulletin boards and others have included information on our outreach and assistance efforts in pay envelopes. Some large airlines have placed articles in their in-flight magazines and one large utility company placed inserts in its billing envelopes. Positive articles have also appeared in many journals and trade publications.
- We are not forgetting our citizens living abroad. The Assistant Commissioner (International) implemented the Volunteer Embassy Consulate Tax Assistance (VECTA) Program which is modeled after the Volunteer Income Tax Assistance (VITA) Program and utilizes volunteers to assist taxpayers living overseas. Increased efforts have been made by our Revenue Service Representatives overseas to encourage filing by working with local Chambers of Commerce and professional organizations in their overseas posts. This endeavor allows for ongoing discussions on issues pertaining to both the organization's membership and IRS.

The Message: Don't Be Afraid to Come In

A major thrust of our communication effort is to explain the costs of not filing and to allay the fears of nonfilers who are worried about how to pay their back taxes, what penalties they may have to pay, and whether they might be sent to jail. Our communications campaign includes the following messages for these people:

- **The Costs of Nonfiling**

For those who do not think they need to file promptly because they are due a refund or did not earn enough to owe tax, we point out that they may be losing refunds forever. More than a third of unfiled individual income tax returns are refund returns. We cannot issue refunds on returns filed more than three years late. Working parents with low incomes who do not file may also be losing out on the Earned Income Tax Credit which can help make ends meet. In 1994 the benefits of the Earned Income Credit have been increased and, for the first time, limited benefits will be provided for individuals with no children who earn less than \$9,000. Our publicity emphasizes that taxpayers must file to get these benefits.

- **How to Pay**

For taxpayers who cannot pay the entire amount they owe, we have streamlined our installment agreement and offer in compromise procedures. We know many nonfilers stopped filing because they could not pay, and we are determined to help them get back on track.

- **Penalties**

There is also good news for those who fear being penalized for not filing when they were unable to file for good reason. We will work with taxpayers to determine if their failure to file was the result of reasonable cause, such as loss of records in a natural disaster or a death in the family. Taxpayers who can establish reasonable cause will not be penalized. If the taxpayer disagrees with the IRS employee working with the

taxpayer on the application of a penalty, the taxpayer may request a review by the employee's supervisor or our Appeals Division.

- **Criminal Liability**

Criminal prosecution is an area which has received a great deal of attention. Many Americans think that not paying their taxes means going to jail. Many think filing a late return is tantamount to "turning yourself in." In addition, the practitioner community was initially reluctant to assist in our program without some assurance that they would not be advising their clients to incriminate themselves. This is not the case. Our long-standing practice has been to not recommend criminal prosecution of individuals for failure to file tax returns provided they:

- Filed, or made arrangements to file, voluntarily before being notified they were under criminal investigation;
- Made an honest effort to file correct returns;
- Derived their income exclusively from legal sources; and
- Paid all amounts due, or made arrangements for payment.

Again, our efforts are directed at getting people back into the system, not towards prosecuting people who make a mistake. However, we are continuing to investigate flagrant cases involving criminal violations of the tax laws with every intention of recommending prosecution where appropriate.

Several samples of the publications, flyers, and other promotional materials used in our outreach campaign are provided in the Supplement.

No Amnesty

Despite our scrupulous avoidance of the word, there has been some misrepresentation of our nonfiler strategy as an amnesty. This may be because of our emphasis on our willingness to work with the taxpayer to resolve the delinquency and get the taxpayer back into compliance. Let me emphasize this point - - our nonfiler strategy is not an amnesty. Taxpayers continue to be responsible for filing all returns and paying all tax, penalties, and interest which are due. Moreover, while our voluntary disclosure policy is intended to encourage taxpayers to return to the system, make no mistake that if they choose to ignore our invitation and wait for us to begin a criminal investigation, they will be vigorously prosecuted to the fullest extent the law allows. To do otherwise would be unfair to the millions of Americans who faithfully file and pay their taxes each year. To underscore this point, we have worked with the Department of Justice to prepare a model news release for use by the U. S. Attorneys in publicizing criminal indictments of nonfilers. The release includes information on the scope of the nonfiler problem, its impact on all taxpaying Americans, and our initiative to bring nonfilers into the system.

IV. Enforcement

Nonfiler Case Creation and Processing

Outreach and assistance efforts address only a part of the nonfiler problem. For those choosing to ignore the message to come in voluntarily, we realized we must improve our enforcement efforts and make them more effective. I also want to describe how we identify nonfilers and how we pursue those who have not yet decided to come in voluntarily.

Individual income tax nonfilers make up the majority of nonfilers we identify. In doing this, we rely primarily on information returns filed by third parties reporting payments of wages, interest, dividends, sales of capital assets, payments for services, large currency transactions, etc. Our computer programs use this information to identify apparent nonfilers. For Tax Year 1991, we identified approximately 4.5 million potential individual nonfilers. After notifying these individuals by mail to file returns, we will direct our enforcement efforts to securing returns from those who are most likely required to file.

Our enforcement efforts include "substitute for return" assessments, telephone contacts, or on-site contacts. In a "substitute for return" assessment, we determine the taxpayer's liability based on available third party information and write to the taxpayer proposing assessment of this amount unless they respond by filing a correct return for a different amount. If the taxpayer fails to respond or disagrees with this calculation but does not file a return, we pursue assessment using standard deficiency procedures.

Nonfiler cases not resolved in response to our initial written notices are sent to our Automated Collection Sites for contact by telephone. Cases on high-income nonfilers receive priority processing and are referred to Examination if not resolved by the initial contact. All other cases not resolved through initial notices and telephone contacts are transferred for assignment to field offices. Previously, field cases would be worked solely by revenue officers. Under our new strategy, the more complex cases are now being assigned to revenue agents and tax auditors who are highly trained in identifying and verifying income sources and amounts. Field employees attempt personal contact with the taxpayer to secure the delinquent returns or to verify that no return is required. Employees working nonfiler cases are mindful of the potential for criminal prosecution. A case is referred to Criminal Investigation if it appears that the taxpayer's failure to file meets prosecution criteria.

The following statistics provide current information on nonfiler cases. At the end of August, we had approximately 344,000 individual income tax cases being worked under substitute for return procedures and over 887,000 individual income tax investigations underway in Examination and Collection.

At the end of FY 1993, our Criminal Investigation activity had 384 open nonfiler cases in inventory and another 327 completed cases pending legal review or awaiting prosecution.

Resource Redirection

Improving the way we select, prioritize, and work nonfiler cases permits us to focus our enforcement resources to obtain the greatest results. It is important that the resources we apply to these cases include the best mix of skills and abilities needed to bring nonfilers into compliance. We have drawn on the experience of the Austin District, where increased involvement of employees with examination skills produced significant results. Nationwide in FY 1993 and FY 1994, we are redirecting 2,000 staff years of Examination revenue agents and tax auditors to work the highest priority nonfiler cases. Presently, these agents and auditors are working on over 230,000 nonfiler cases.

By combining the skills of our Examination employees with the existing Collection resources already allocated to nonfiler work, we believe we will be able to direct prompt enforcement attention to those taxpayers who refuse to file.

V. Results to Date

Overall

As part of our nonfiler initiative, we created new reports to both monitor our progress and provide new information about the nonfiler population. Historically, our reports did not give us the information necessary to effectively manage this program. While various functions tracked information about delinquent returns, we did not have a uniform measure of the Service's efforts as a whole. Some of the figures we are now tracking on a uniform and national basis include:

- the total number of nonfiler returns filed;
- the number of returns filed by known³ and previously unknown nonfilers; and
- the amounts assessed, collected, and refunded as result of these filings.

Though these reports are now providing us with a wealth of statistical information, I think it is still a little too soon to judge our progress accurately. Determining a benchmark by which to measure our results has been made more difficult because the numbers of late returns filed in FY 1991 and FY 1992 vary significantly. We are currently analyzing what caused the differences between those two years so that we can determine how most accurately to gauge our performance. However, we can say that through August of FY 1993, the number of delinquent individual returns filed was approximately 2.3 million. This figure significantly exceeds that for FY 1991, although it is only slightly above that for FY 1992. A total of almost \$400 million was collected with these returns when they were filed.

Although we cannot yet provide a full analysis of our results, we believe our outreach and assistance efforts struck a responsive chord with many nonfilers who sincerely want to get back in step. We are pleased that voluntary filings⁴ of returns by nonfilers have increased by almost 8% through August of FY 1993 compared to the same period in FY 1992. This indicates that many nonfilers are responding to our message and coming forward before we begin taking enforcement action. Specific examples include a Utah man who drove eight hours to one of our offices to get help filing returns for five years. Worried that he would owe about \$600, he did not know he was due refunds for some of the years and promptly paid in cash when he got the final bill for \$8.00! An oilworker in Oklahoma went to one of our assistance sites and filed seven delinquent income tax returns. After filing the returns he said, "I am so glad to get this off of me. I couldn't do anything without a copy of a tax return ... couldn't buy a house, so we continued to rent, and my son couldn't apply for a scholarship." In another instance, one of our district coordinators was approached by a tax practitioner who had not filed for four years. When questioned about his reason for failing to file, the taxpayer revealed that he had suffered a heart attack the year he stopped filing. After he returned to work, the nonfiling was compounded. Penalties for the year of his illness were abated, and he made full payment of all other liabilities at the time of filing. He was very positive regarding his treatment by the IRS and was grateful that the situation had been resolved.

³ By "known" nonfiler we mean a taxpayer for whom we have information on our Master Files indicating that a tax return is due.

⁴ Voluntary filings are defined as returns from taxpayers whom we have not contacted about the delinquency. Our nonfiling initiative focuses on taxpayers who have not filed for more than one tax period (e.g., one year for income tax returns and 90 days for quarterly employment tax returns).

We are also seeing results from the cases assigned to revenue agents and tax auditors. Through August, our Examination employees received or prepared 243,827 returns reporting more than \$ 1.4 billion in tax after prepaid credits. They collected \$ 93.9 million of this unpaid tax with the returns. Our additional substitute for return program staffing is also showing results. Through August, this program produced assessments totalling \$ 1.9 billion after prepaid credits, an increase of 24% compared to the same period in FY 1992. In working nonfiler cases, our revenue agents and tax auditors are securing returns averaging \$8,487 in tax and are producing \$1,384 in assessments per staff hour expended. These results are significantly higher than those they would achieve in auditing filed returns.

Criminal Investigation Results

We are experiencing greater success in the area of criminal enforcement after contacting the Department of Justice to request assistance in promoting the nonfiler strategy. In October of last year, the Deputy Attorney General wrote to all U.S. Attorneys to enlist their support for the initiative. As a result, we have had continued success in prosecuting egregious offenders. Through the end of August of this fiscal year, 326 individuals had been sentenced due to tax convictions compared to 310 in FY 1992. The average term of imprisonment imposed in FY 1993 is 28.5 months compared to 13 months in FY 1992. This increase in average prison sentences is attributable to the fact that the average criminal tax deficiency in FY 1993 was just under \$108,000 compared to \$45,000 in FY 1992. Recently approved changes to the sentencing guidelines will make it far more likely that those convicted for nonfiling will receive a term of imprisonment as part of their sentences.

High Income Nonfilers

In your invitation letter, you asked that we provide information pertaining to high-income professionals who failed to file Federal income tax returns. As you know, we began a special emphasis program on high-income nonfilers in 1991. For this purpose, we define high-income nonfilers as those for whom information return documents indicate income payments in excess of \$100,000. All cases on individuals meeting this criterion are selected for full delinquency investigation processing and receive expedited processing and special verification after a return is secured.

Returns received from high-income nonfilers are referred to Examination for evaluation. All assertions of nonliability are verified. If no return is filed in response to notices or direct telephone contact, the investigation is referred to Examination or to Collection if a balance due account for the taxpayer is already being worked there.

For tax year 1987, we identified almost 32,000 potential high-income nonfilers. The number of potential high-income nonfilers we identified for tax years 1988 through 1990 increased by about 20% for each tax year. For tax year 1991, the number increased by 38% to just over 74,000. We have just begun working the cases for tax year 1991 and cannot yet explain the reason for this sharp increase. Obviously, we hope to see a decline in the growth in the number of high-income nonfilers as a result of our nonfiler strategy.

Through the end of July 1993, we have received returns in almost 70% of the high-income nonfiler cases identified for tax years 1987 through 1989. For these three tax years, we have collected \$550.6 million from high-income nonfilers and refunded overpayments of \$325.6 million. We have received returns so far in only 56% of the tax year 1990 cases reporting net tax of \$120.9 million and overpayments of \$118.4 million. These results will improve as we continue to work the 1990 cases. We do not have results to report yet for tax year 1991.

U. S. Citizens Living Abroad

We also believe that our outreach and enforcement efforts have improved compliance by U.S. citizens living abroad. For the period ending August 28, 1993, timely return filings by U.S. taxpayers overseas are up 2.1 percent and prior year return filings are up 4.5 percent compared to the same period in 1992.

Learning More About Nonfilers

A final but very important result of our nonfiler initiative is that as part of our Compliance 2000 approach we are learning more about nonfilers. It is important for us to know why people do not comply. Do they need more help or education, or is a stronger enforcement presence needed? For those taxpayers who do not know how to comply, we should provide the help and encouragement they need to get into compliance. Those who try to avoid filing must be shown that they will be dealt with promptly and properly. We must also learn more about the types of people who are most likely not to file so that we can tailor our outreach and enforcement efforts more effectively.

Toward this end, we are working with our state partners and matching inventories to determine which taxpayers are compliant and which are non-compliant with taxing requirements for each of us. From these matching efforts, we are analyzing what causes taxpayers to be compliant or non-compliant. This information will allow us to develop effective joint strategies to improve overall tax compliance.

As a part of our special emphasis on high-income nonfilers, we have been gathering statistics from the returns we secure from them. Our most recent analysis includes returns filed through March 1993 for Tax Years 1987 through 1990. We have found that:

- About half received self-employment or farm income. This compares to about 15 percent in the general population.
- About 40 percent had overpaid their taxes through withholding and other prepayments.
- The average total income ranged from \$174,000 in 1987 to \$196,000 in 1990. Taxpayers with higher incomes were more likely to have refunds than those with lower incomes.

In addition, we have analyzed Information Return Program data for Tax Years 1988 and 1989. Highlights of this analysis include:

- The average age of the high-income nonfilers is 49.
- Mortgage interest payments were reported for 71 percent of the nonfilers. The average interest paid exceeded \$20,000.
- Over 60% had income from wages.
- One quarter had reported brokerage transactions.

Nonfiler Refund Freezes

A project recently conducted in our Southwest Region provides a good example of the benefits of learning more about nonfilers. We noted a filing/nonfiling pattern with some taxpayers: they did not file for tax years for which they owed a balance, but they did file for years in which they were due refunds. These nonfilers appeared to be taking advantage of our processing procedures: if there was no unpaid assessment on our Master File, we would issue their refunds if their current return indicated a refund was

due. To address this abuse, two of our Service Centers conducted a six-month test earlier this year in which they held refunds for taxpayers who had not filed for earlier tax years. Letters were sent to the taxpayers telling them that we would not issue the refunds until they filed their other returns.

During the test we held 1,792 overpayments totalling \$2.6 million. The largest was over \$21,000 and the average was almost \$1,500. As of mid-August 1993, taxpayers had filed 670 delinquent returns, 452 showing a balance due. More than 200 overpayments totalling more than \$300,000 were offset to these liabilities. The remainder of the cases are not yet resolved.

Because of the success of this test, we are expanding this program nationwide in 1994. We will hold tax year 1993 refunds over a threshold amount if there is an active delinquency investigation or nonfiler examination for any of the six previous years. Based on the reactions of taxpayers during the test, we anticipate increased compliance.

Self-employed Individuals and Others Receiving Income not Subject to Information Reporting

We are also learning that one major category of nonfilers will be very difficult to address. Whenever we look at individual nonfilers, self-employed taxpayers stand out as the group presenting us with the greatest compliance problem. Our research data indicates that for the 1988 tax year, while self-employed individuals with adjusted gross incomes of \$25,000 or more accounted for only 7% of all individual income tax nonfilers, they accounted for 70% of the unpaid tax attributable to nonfiling of individual income tax returns. (See Supplement.) We are able to identify self-employed nonfilers responsible for a significant portion of the unpaid tax due from this group because they often receive business income subject to information reporting.

This information corresponds with earlier studies indicating significant underreporting problems among non-wage earners. An earlier study looking at independent contractors revealed that these individuals, many of whom provide employee-like services for a fee rather than wages, report 97% of the income they receive which is reported on information returns, but only 83% of the income which is not on information returns. These statistics contrast sharply with the fact that wage earners report 99% of their wages shown on Forms W-2 and subject to withholding. In a 1988 study we found that the percentage of taxable income reported by small, service-provider corporations⁵ had fallen from 69% to 48% between 1980 and 1987. We believe that a substantial number of these service-provider corporations do not file income tax returns at all.

The fact that it is more difficult for the IRS to detect nonfiling or underreporting of income not subject to information reporting has not been lost on those wishing to avoid paying their fair share of tax. Gaps in the information reporting requirements, such as the exemption for amounts paid to corporations, and lapses in reporting of payments subject to information reporting are providing opportunities for those who want to cheat. For example, an examination of a contractor in our Jacksonville District found a self-employed bricklayer subcontractor who incorporated just to avoid information reporting. Also in Jacksonville, an examination of local governments found millions of dollars in payments to self-employed businesses and independent contractors on which required Forms 1099 were not issued. Follow-up examinations of the individuals receiving these payments found many nonfilers, some of whom have been referred for criminal investigation. In our North Atlantic Region, an examination of beer distributors disclosed that one large distributor had required its driver/salespersons to incorporate to save the distributor from having to pay

⁵ These are corporations with assets of \$10 million or less primarily engaged in providing services such as engineering, crafts, repairs, accounting, and medical or legal assistance.

employment taxes and benefits. In subsequent examinations of the newly incorporated drivers, we found that 14% had failed to file their individual income tax returns reporting \$1.4 million in income received from the distributors.

Service Corporations

The compliance-inducing effects of information reporting were the driving force behind the Administration's proposal earlier this year that would have required information reporting on service payments⁶ to corporations. We appreciated the support of this Subcommittee and particularly you, Mr. Chairman, for the proposal, and we were quite disappointed when it was not included in the final version of OBRA 1993, since the Administration believes this information reporting requirement would raise in excess of \$6 billion over five years by inducing service corporations to file and by permitting IRS to better verify the amounts they report as income. As part of our nonfiler initiative, we are continuing to explore other possible administrative and legislative remedies to this major component of the nonfiler problem.

Projects Targeting Nonfilers with Income not Subject to Information Reporting

Much of our effort to improve our abilities to identify nonfilers focuses on self-employed and other nonfilers whose income is not subject to traditional information reporting. Without information reporting, we usually have to obtain information from external sources in order to identify these nonfilers. To ensure the most productive use of our resources in gathering external information, we focus on those occupations/professions which produce high incomes, such as doctors, lawyers, and accountants. In many instances, we are also trying to create more powerful inducements for these individuals to file on their own rather than waiting for us to find them. For example, nonfiling can have serious consequences for tax professionals and their firms. These individuals are subject to standards set out in Treasury Department Circular 230 which defines willful nonfiling as disreputable conduct which may result in reprimand, suspension, or disbarment from practice before the IRS. Many tax firms require their partners to certify that they have filed all required returns but are unable to validate these certifications. To assist the tax professional community in policing itself, we have established procedures that allow firms to request proof of filing for their partners' returns.

Several local IRS projects to identify nonfilers among the legal and tax professional communities have recently attracted national publicity. Our Chicago District found 90 potential nonfilers among the 6,600 certified public accountants within its boundaries. That district is also working through a list of over 41,000 attorneys. Our Pittsburgh District is also looking at the tax compliance of CPAs and attorneys. In New York, our Manhattan District Criminal Investigation Division checked the filing record of 4,200 partners associated with 40 prominent New York law firms. Several hundred had either not filed or were chronic late filers. Criminal investigations were opened on 37 of the most egregious cases and the district anticipates recommending 19 for criminal prosecution.

In our North Atlantic Region, nonfilers are being identified during the course of audits of large corporations by checking the names of highly paid employees and service-providers. In addition, the Augusta District has checked used car dealers, identifying 32 nonfilers from a list of 680 dealers, and insurance agents, finding 435 nonfilers from a list of 9,000 agents. The Augusta District is also identifying large employers that have employees who are nonfilers. Lists of all employees of these companies are then checked to find other nonfilers. So far almost 50 more nonfilers have been identified using this approach.

⁶ Service payments, as described in IRC section 6041, include commissions, fees, and other forms of compensation for services.

We have found the states to be our most valuable allies in addressing the problem of self-employed nonfilers. Many of our districts are working jointly with the state revenue departments to bring nonfilers into compliance. These joint efforts include all aspects of our nonfiler strategy, from joint media outreach efforts to matching inventories and joint enforcement efforts.

One of the best examples of assistance we are receiving from states is in the area of identifying self-employed nonfilers who are professionals. Many professions or business enterprises require state licenses. This provides a useful means of identifying self-employed persons and, better still, an opportunity to set requirements for tax compliance as a prerequisite for obtaining or renewing a license. For example, Hawaii has a ten-year old law requiring a tax clearance for applicants for liquor licenses. South Carolina recently enacted a similar requirement. Our Honolulu District is working with the Hawaiian Department of Commerce and Consumer Affairs to extend this requirement to other types of state-issued business licenses. Our Jackson District last year entered into an agreement with the State of Mississippi to establish a requirement that all gaming licensees in that state be in compliance with Federal and state filing requirements. Similar arrangements are being sought with other states and the District of Columbia. The Anchorage District obtained a list of fishing vessels through the Alaska State Licensing Board and is using this list to identify nonfilers in the commercial fishing industry. Our Boston District is working with city and town halls in Massachusetts to obtain building permit information to identify nonfilers in the construction industry. In Louisiana, all applicants for video poker licenses are required to sign a disclosure authorization permitting IRS to verify whether they have filed and paid all Federal taxes. As a result of this requirement, our New Orleans District received 413 delinquent returns with payments of almost \$1.4 million in tax through December of 1992.

Our Fresno Service Center conducted a joint project with the California Franchise Tax Board to identify return preparers who were nonfilers. A joint letter was sent to 1,100 preparers who had not filed with either tax agency. We are now developing joint strategies to bring these individuals into compliance.

Matching state sales tax databases against IRS files to identify business nonfilers is underway in at least seven states. We have found that these programs identify not only Federal, but state income tax nonfilers as well.

Our Detroit District and the Michigan Department of Revenue are developing a model Fed-State cooperative agreement that will include a nonfiler strategy. Once completed, this model will be available for use nationwide.

We also have undertaken several initiatives in the international area. In Puerto Rico, a special project has been underway for over a year which involves the use of data provided by La Hacienda (Puerto Rico's Tax Department) listing individuals who filed income tax returns with Puerto Rico indicating they are self-employed. This list is matched against the filing of Form 1040PR on which they are to report and pay the self-employment tax to the IRS. This effort has resulted in securing 7,534 returns with a total tax in excess of \$21 million.

In another international initiative, we conducted a pilot project to identify individuals living abroad who filed for an extension and subsequently did not file. By contacting the return preparer who completed the extension request, we were able to obtain the taxpayer's current overseas address and oftentimes the place of employment. This pilot compliance effort allowed the Service to identify and contact 300 individuals overseas who had not filed 700 returns. Preliminary results indicate we are receiving 60% of the delinquent returns with only one contact. Final results of this project will be available in the spring of 1994.

A final innovation by our International area has been to monitor daily Middle Eastern financial and business journals to identify contracts awarded to U.S. firms which require hiring or transferring U.S. employees overseas. Through this effort we have been able to educate employers and employees about the tax requirements and benefits shortly after they relocate overseas. Through this activity we also identified a need for a volunteer assistance program and proper publicity in Kuwait to assist American workers. This program provided tax return preparation assistance to 25 percent of the Americans in Kuwait who were required to file for the 1993 filing period.

VI. Evaluation of the Strategy

Although it is too early in our program to draw conclusions from the results reported so far, they will provide us a framework for evaluating our longer-term efforts. Through FY 1994, we will monitor the results of our efforts, evaluate the dollar impact of changes, measure the impact on voluntary compliance, and use the data to prepare and support any appropriate legislative proposals. Although we are interested in the immediate results of our efforts, we also need to know the broader impact on tax administration, in order to help us in maintaining an effective program in the future. During this time, we will be performing interim analyses of our results and continuing to gather data on nonfilers so that we can make improvements to this initiative.

Performance Goals and Measures

Having gotten our nonfiler strategy off the ground, it is important that we stay on track. To ensure that our organizational commitment to the success of the nonfiler strategy remains high, the first item in our 1994 Annual Servicewide Operating Plan deals with nonfilers. All functions have objectives that contribute to the overall goal of bringing nonfilers into the system and keeping them there.

VII. Future Plans

Over the next year, we will continue our focus on completing the three interim goals that were laid out for FY 1993 and 1994 to address the nonfiler problem. We will continue to perfect measures for the program that will help us develop the most effective ways of directing our limited enforcement resources. We will also apply process analysis techniques to gather information on the current system, identify the components which require repair or redesign, and develop improvements. As mentioned earlier, we will also be expanding our refund freeze program nationwide.

Finally, we will also continue to look for better ways to address the problem of self-employed nonfilers and to improve our understanding of all nonfilers. Our research staff will be reviewing the delinquent returns received this year and combining this information with other data to develop more detailed profiles of individual and business nonfilers. We will also attempt to determine which of our various methods are the most effective in encouraging nonfilers to file. We will use the lessons learned to further improve our nonfiler identification and investigation processes.

VIII. Conclusion

In closing, Mr. Chairman, I can say that we have identified a serious nonfiler problem, but we also believe that we have made progress in dealing with the problem and are working toward a solution. We would appreciate any suggestions for improvement that you or your colleagues may wish to offer. I would also once more remind those who have not yet filed a return for 1992 or earlier, it is not too late to file.

Mr. Chairman, this concludes my prepared remarks. My colleagues and I would be happy to answer any questions you or other Subcommittee members may have. Mr. Voskuil, Mr. Orosco, and Ms. Tucker would be particularly pleased to discuss how we have implemented the new strategy in our Southwest Region.

Supplement to IRS Nonfiler Testimony



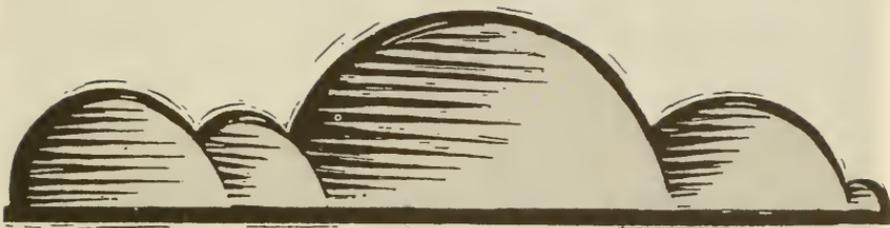
Department of the Treasury
Internal Revenue Service



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AMERICA'S
TEAM

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WITH FREE HELP
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Don't let a cloud follow you around.



If you missed filing your taxes for a year or so and should have filed, the people at the IRS want to help. Whatever your reason, they'll listen, help you file your return, and explain your payment options. You might even be due a refund. So call the people at the IRS any time of year.

1-800-829-1040

Then go out and enjoy the sunshine.



Now's the Time!

To get help
with your
back
taxes.



Department of the Treasury - Internal Revenue Service
**Individual Income
Return**

1988

Every Thursday at **IRS**

Internal Revenue Service
70

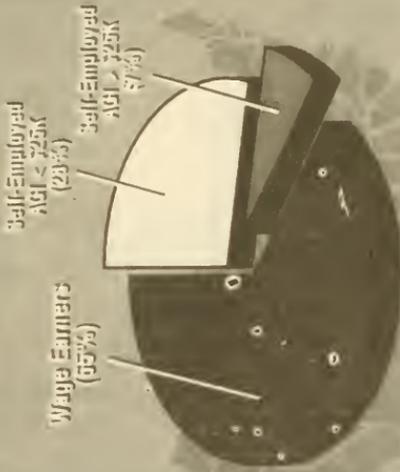
1988

Call 800-829-1040 for details
and the location of your nearest
IRS office.

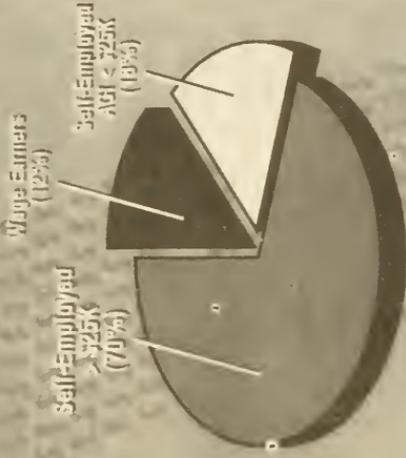
Dallas District IRS

Nonfiler Profile

Individual Nonfilers



Net Tax Due



* Source: IRS 1988 Individual Nonfiler TCMP, projected to 1992

Profile of a Problem Nonfiler

- self-employed individuals
- an AGI greater than \$25,000.00
- responsible for more than 70 percent of all taxes due from individual nonfilers
- have not filed for more than 2 years
- are more likely to live in a community of 50,000 or less
- fail to file because of procrastination or a claimed inability to pay
- are licensed professionals

* Source: IRS 1988 Individual Nonfiler TCMF, projected to 1992

What information do I need?

You should bring any information relating to your income and deductions for the years you need to file. Some of the documents to bring include:

- Forms W-2. These are the forms you receive each year from your employers showing your wages.
- Forms 1099. These are the forms you receive from banks, and other financial institutions showing your interest and dividends.
- Information on expenses you want to claim on your return, such as itemized deductions, child care expenses or business expenses.
- Social security numbers for your children, spouse or other and any other person whom you claim as a dependent.
- A copy of the last 13+ return you filed if you do not have any or all of this information, come in anyway. IRS employees can help you reconstruct old records, such as income statements, that you need to prepare your old returns.

Staying in the System

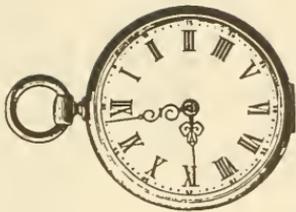
Many people don't file tax returns because they don't have enough money to pay the tax they owe. They find out on tax day that their withholding or estimated payments do not equal their tax bill.

We can help you avoid this situation by telling you how to ask your employer to withhold enough tax from your pay. If you have income that is not subject to withholding, we can give you the information you need to make quarterly

payments to cover the amount you will owe. Changes in your financial circumstances may have an impact on your taxes. For example, if your income goes up, you get divorced or you sell an asset, you may need to adjust your withholding or estimated payments.

If you take these steps, you will be better able to meet your tax obligations and avoid tax day surprises.

It's Never Too Late!



If you haven't filed a Federal tax return for a couple of years, you probably think the IRS is the last place you want to go, right?



Department of the Treasury
Internal Revenue Service
Publication 1715 (Rev. 7/93)
Catalog Number 15278E



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Internal Revenue Service

What if I don't file voluntarily?

We are taking enforcement steps for those who choose repeatedly not to comply with the law. Nationwide, 2,000 IRS agents are contacting people who our records show have not been filing returns.

Agents will prepare returns when taxpayers still do not file. We will send bills to those taxpayers for the tax due, plus interest and penalties. People who repeatedly don't comply with the law are subject to additional enforcement measures.

Wrong!

As many as ten million people who should have filed tax returns in recent years failed to do so. If you are one of these people, the Internal Revenue Service wants to help you make a fresh start.

We are making a special effort, including assistance and education programs, to help you get right with the government.

Why should I do it now?

There are three major reasons to come in and file as soon as possible.

- Although there is no time limit on this initiative, not filing a return is costing more than you think. If you owe tax, interest and penalties are adding up more quickly than you may realize.
- Generally, if you are due a refund for withholding or estimated taxes paid, you must claim it within 3 years or you lose your right to it. The same rule applies to your right to claim a tax credit, such as the Earned Income Credit.
- Also, if you are self-employed and do not file a return, you may lose credits toward Social Security retirement or disability benefits. If you do not file, we cannot report your self-employment income to the Social Security Administration.

Will I pay interest and penalties?

Interest and penalties do not apply to years in which you are entitled to a refund. About a third of those who file returns for past years discover they have a refund coming.

Interest and penalties do not apply to years in which you owe money. The interest charged on late payments changes quarterly. During the last several years the interest rate has ranged from a high of 12 percent to a low of 7 percent.

What if I owe more than I can pay?

Even if you don't have enough money to pay, you should file your return to avoid further penalties for failure to file. The IRS will work with you to find a solution to your problem.

The IRS has streamlined its policies for various collection procedures. Two of these procedures offer alternatives to resolve your account, if you cannot pay in full with your return.

→ The IRS will work with you to set up an installment payment agreement when the situation warrants.

Will I go to jail?

Our long-standing practice has been not to recommend criminal prosecution of individuals for failure to file tax returns—provided they voluntarily file, or make arrangements to file, before being notified they are under criminal investigation.

We want to get people back into the system, not prosecute ordinary people who made a mistake. However, we will continue to investigate flagrant cases involving criminal violations of tax laws.

Can I get free help filing late returns?

We have arranged special assistance and education programs to help you get back into the system. We will provide prior year tax forms and information concerning income you received. We also will help you complete the tax return if you need assistance. In addition, we will work with you in setting up payment arrangements if you are unable to pay in full at the time you file your return.

Will I go to jail?

There are free assistance sites in many communities to help people get right with the government. Volunteers at these sites include tax return preparers and other tax practitioners. They will help complete your returns and request for installment agreements, if needed.

To find out where help is available near you, call our tax information line at **1-800-829-1040**.

¿Qué Información Me Hace Falta?

Usted debe traer cualquier documento relacionado con sus ingresos y deducciones de los años en los que tiene que presentar una declaración. Los documentos que debe traer incluyen:

- **Formas W-2.** Estas son las formas que usted recibe cada año de sus empleador(es) o patrono(s), indicando su sueldo.
- **Formas 1099.** Estas son las formas que usted recibe de los bancos y otras instituciones financieras indicando los intereses y dividendos pagados.
- **Información sobre los gastos que usted quiere reclamar en su declaración,** como:

deducciones de salud, gastos por cuidado de menores o gastos del negocio.

- **Números de seguro social para sus hijos de un año o mayores y para cualquier otra persona que usted reclame como dependiente.**
- **Una copia de la última declaración que usted presentó.**

Si le hace falta algún documento o no tiene la información necesaria venga de todas maneras. Los empleados del IRS le pueden ayudar a reconstituir sus registros, tales como comprobantes de ingresos, que le harán falta para preparar sus declaraciones anteriores.

¿Qué Puede Pasar Si No Presento Mi Declaración Voluntariamente?

Nosotros iniciamos acción ejecutiva de cumplimiento hacia aquellas personas que deciden repetidamente no cumplir con la ley. A través de la nación 2,000 inspectores y agentes del IRS están comunicándose con personas las cuales de acuerdo con nuestros registros, no han presentado sus declaraciones de impuestos.

Aquellas personas que repetidamente no cumplen con la ley están sujetas a medidas de cumplimiento obligatorio adicionales.

Permanezca Dentro Del Sistema

Muchas personas no presentan declaraciones de impuestos porque no tienen suficiente dinero para pagar los impuestos que deben. Si las personas se dan cuenta a último momento de que los impuestos retenidos y pagos estimados no son suficientes para cubrir los impuestos que deben.

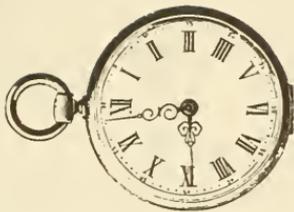
Nosotros podemos ayudarle a evitar esta situación comunicándole a usted como le puede pedir a su empleador o patrono que le entregue suficientes impuestos de su sueldo. Si usted recibe ingresos que no están sujetos a retención, le facilitaremos la información necesaria para

que usted haga pagos anticipados que cubran la cantidad de impuestos que va a deber.

Si su condición financiera cambia eso quizás afectará a sus impuestos. Por ejemplo, si sus ingresos aumentan, si se divorcia o si vende alguna propiedad que da lugar que ajustar sus impuestos retenidos o sus pagos estimados de impuestos.

Si usted toma estas precauciones podrá cumplir con sus obligaciones tributarias y prevenir sorpresas al preparar su declaración de impuestos.

¡Nunca Es Tarde!



Si usted no ha presentado su declaración federal de impuestos por unos años, probablemente creará que el IRS es el último lugar adonde quiere ir, ¿no es cierto?



Department of the Treasury
Publication 1715 (SP) (7-93)
Catalog Number 158555



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Internal Revenue Service

¿Es Posible Que Vaya A La Carcel?

Nuestra práctica por mucho tiempo ha sido la de no recomendar un procesamiento criminal contra aquellas personas que no han presentado sus declaraciones de impuestos, siempre y cuando presenten sus reincorporaciones voluntariamente, o exista un arropio para presentar la declaración antes de que sean notificados que están bajo investigación criminal.

El contribuyente debe hacer un estudio sincero para presentar una declaración correcta y que contenga ingresos de fuentes legales. Una carta recibida del IRS Centro de Servicios del IRS acerca de sus obligaciones

tributarias, no es una indicación de que usted está bajo investigación criminal.

Este estudio para que los contribuyentes regresen al sistema es parte de un plan a largo plazo para aumentar el cumplimiento con las leyes tributarias. Nosotros queremos que las personas procesar criminalmente a personas que solamente han cometido una falta. Sin embargo, si continuáremos las investigaciones de casos relacionados con infracciones criminales de nuestras leyes de impuestos

¿Puedo Obtener Ayuda Gratis Para Presentar Declaraciones Atrasadas?

Nosotros tenemos veros programas de asistencia gratuita en muchas comunidades a fin de ayudar a los contribuyentes a sellar sus cuentas con el gobierno. Los grupos de voluntarios en estos sitios se componen de preparadores profesionales de declaraciones de impuestos y de otras clases de gente profesional. Si es necesario, ellos los ayudarán a preparar sus declaraciones y solicitudes de pagos a plazos. Para más detalles sobre cómo y dónde obtener ayuda, llame a nuestro teléfono de información tributaria al

1-800-828-1040.

¿Tendré Que Pagar Intereses Y Multas?

(tarda) generalmente no excederá del 25 por ciento de la cantidad adeudada. La multa por presentar una declaración tardada es la mitad del 1 por ciento por mes, hasta un 25 por ciento de la deuda.

Nosotros recomendamos que incluya personas que incluyan, fuera del sistema por causas personales incluyendo enfermedades graves, una muerte en la familia, o circunstancias que ocurrieron por donde no podíamos ayudarlos. Explíquenos la razón por la cual usted no ha presentado su declaración. Según las circunstancias quizás podamos condonar algunas de las multas.

¿Qué Pasa Si Debo Más De Lo Que Puedo Pagar?

usted para implantar un plan de pagos a plazos, cuando es justificado. Los pagos a plazos le permitirán pagar su deuda durante un período de tiempo.

Otra forma en la cual los asistimos, es tomando en consideración una oferta de transacción con esta oferta usted se propone liquidar su deuda por menos de la cantidad que debe. Una oferta de transacción es apropiada en aquellas situaciones en las cuales la deuda es mucho mayor que los activos que usted posee.

¡No Es Cierto!

Este programa está diseñado para ayudar a personas que debían haber presentado declaraciones de impuestos en años recientes no lo han hecho. Si usted es una de estas personas, el Servicio de Impuestos Internos (IRS) quiere ayudarle a lograr un nuevo comienzo. La multa por haber no presentado su declaración a través de preguntas educacionales y de asistencia con los impuestos para ayudarle a presentar al día con el gobierno.

¿Por qué Debo Presentar Mi Declaración Ahora?

Hay tres razones principales por las cuales debe venir y presentar su declaración lo más rápido posible:

- Aunque esta iniciativa no tiene límite, no presentar su declaración le está costando más de lo que usted piensa. Si debe algún impuesto, las multas y los intereses se acumulan más rápido de lo que usted quizás puede imaginar.
- Generalmente, si usted espera recibir una devolución de impuestos retenidos o de pagos estimados, usted debe reclamarlos dentro de tres años o perder el derecho de recibir la

Los intereses y las multas no aplican a los años en que le corresponden recibir un reembolso de impuestos. Aproximadamente una tercera parte de los contribuyentes que presentan declaraciones descalifican que tienen un reembolso.

Los intereses y las multas se aplican a los años en que debió impuestos. El interés que se carga sobre los pagos atrasados va aumentando. En los últimos años este interés ha variado desde un máximo del 12 a un mínimo del 7 por ciento.

La multa por presentar una declaración fuera de plazo

Aunque usted no tenga suficiente dinero para pagar, usted debe presentar su declaración para que le cargen más multas por no presentar su declaración. El IRS trabajará con usted para encontrar una solución a su problema.

El IRS ha reestructurado varios procedimientos relacionados con el proceso de cobro. Dos de estos procedimientos ofrecen alternativas para resolver su deuda si usted no puede pagarla en su totalidad con la declaración.

→ El IRS trabajará con

Chairman PICKLE. Let me see, my outline here—that would be fine.

First, we will hear from Ms. Tucker.

Ms. TUCKER. Thank you, Mr. Chairman.

Basically, I guess what I wanted to share with you is the success that we have had in the Dallas District in the Southwest region in reaching out to nonfilers. We do have an aggressive enforcement program there but have also implemented aggressive outreach education and publicity programs. One of the main components of our program in the Dallas District has been to contact employers, both large and small, basically asking them to assist us with providing nonfiler information to their employees, to customers and to subcontractors.

The request by the Service in the Dallas District of these employers has been met positively and we have not had one declination at this time. Some of the examples of things major employers have done in the Dallas District—the nonfiler poster displayed here—we have distributed those to major employers, one retailer in the Dallas District distributed 5,000 of those posters for placement in retail outlets across the country.

A local power company has posted those. We have also provided well over 300,000 nonfiler flyers for inclusion in employee pay stub envelopes. An interesting side note, some of the employers have asked that we print them for them in pink so that when that was included in an employee's pay envelope, they will be sure and look at it.

Another positive thing, a major oil company has included 200,000 nonfiler flyers in their credit card statements that are distributed to card holders. We have had an individual come in with that flyer and file returns for 10 years after receiving that in their credit card statement.

We also received positive publicity when we contacted the two major airlines based in the Dallas area and they included articles on the nonfiler program in their in-flight magazines.

Another area that we have aggressively pursued, as the Commissioner mentioned, was nonfiler assistance events. We have sponsored 14 sites across the Dallas District from west to east Texas. We have assisted approximately 1,800 nonfilers at those events, filing approximately 3,000 returns for a tax due of approximately \$3 million.

We also have worked very closely with the practitioner community with excellent results. We have worked with the American Bar Association, Texas Society of Enrolled Agents, CPA's and H&R Block. The practitioners have provided us with call-in show invitations to address nonfiler questions. They have also assisted us by providing articles in local newsletters distributed to their membership in the Dallas area.

Another facet of our outreach program in Dallas has been to distribute these posters that you see here through all of our employees. Employees in every operation in the Dallas District have been asked to place those posters; we have them in banks, grocery stores, bowling alleys, and even congressional offices throughout the Dallas District where your constituents might see them when they come in on another issue.

We had one taxpayer come in from east Texas and file 3 years of delinquent returns and pay \$23,000 in tax and penalties after seeing that poster each time he went to the grocery store with his wife. That was another positive feedback.

We have been advertising the nonfiler program on our local transit system in Dallas, the bus system. They have been running nonfiler messages on the electronic bulletin board system in front of the buses. We have posters on the back of the buses. Those messages are reaching thousands of riders a day.

We had an individual come in in early April and file and pay \$73,000 in tax penalties and interest. His reason for coming in was because he was a commuter from far north Dallas and saw those messages over and over again and said he couldn't ignore us any longer.

Another area has been utilization of coupon booklets on a space-available, where we have contacted—I think everyone is familiar with the coupon booklet you may receive in the mail. You might go through and look for drycleaning or pizza coupons, and we have had individuals bring the coupons in saying: I am here for free tax assistance.

We have had a number of individuals coming in without the coupon saying: Are you still going to help me? And we are glad to do that also.

We are working with city and county governments to see if they will post the posters in walk-in areas, as well as to include nonfiler information in city newsletters. That has also been met with positive results.

We are working with a county in west Texas to include nonfiler information in the property tax mailings.

These are examples of outreach activities that we have pursued, and I think with very positive results in the Dallas District as elsewhere across the country.

Thank you, Mr. Chairman.

Chairman PICKLE. We will now hear from Mr. OroSCO.

Mr. OROSCO. Thank you, Mr. Chairman.

Chairman PICKLE. You have been the Director for a long time, and why he would want to leave Austin and go to the west coast is beyond me. I understand he was directed to go there by you. Mr. OroSCO is an old friend from the Texas area.

Mr. OROSCO. I want to provide some background on the enforcement side. Beth covered basically what the Dallas District has been doing but that kind of activity has been throughout the Nation. All of our districts have been having those kind of outreach programs.

On the enforcement side, when a taxpayer doesn't file a tax return, we send him a notice. Eventually, he gets to the district.

I want to share the district experience going back to 1990. When one of our revenue officers receives a case file, there is certain information on the case file, some is the fact that the taxpayer hasn't filed for 1 or more years.

There are other kinds of information that the officer has. They contact the taxpayer and ask them for a tax return. At the end of the process hopefully the taxpayer gives them a tax return and that tax return is processed.

This officer does not have the ability to audit the tax return. They process it and say he has now filed a tax return. In 1990, some of my employees noticed that our inventory of people not filing tax returns had grown from years before. They started asking other employees from the examination function, the function with the ability to audit.

Together they studied the problem and in 1990 came up with a new approach in Austin. That was where we would have revenue agents, people who have the ability to audit the returns would look at the nonfiler returns along with the revenue officer and they would compile a case file which would include 1099 information that we have in our system, W-2 information on that taxpayer.

We would know how much mortgage interest they were paying after a certain amount. There was also information on precredits, in other words, they had paid money in estimated tax payments, if there were any large cash transactions, we had that information in the case file.

We also look at their address, whether they live in an affluent area or not, because these indicators give us an idea of the income level of the taxpayer, and possibly his or her occupation. So what our revenue agents and officers did in Austin is they compared the information, contacted the taxpayer, and asked the taxpayer to file a tax return.

After a certain amount of time, the taxpayer submits a tax return. At that time, the agent now has the ability to audit the return and they would check all the information we had to what the taxpayer handed them. If it didn't match, they would ask the taxpayer to take a look at your records again and the taxpayer would look at their records and for the most part, it would match because the taxpayer knows we have information not previously reported to us.

Our agents have the ability to audit the tax return when it is filed. We have had very good results, it has been very productive for the IRS and this program, Mr. Voskuil will tell you later, it has been spread throughout the Nation. It has been a positive factor to the morale of our people because they see this as a great step in getting nonfilers to file.

Chairman PICKLE. Mr. Voskuil.

Mr. VOSKUIL. I have no statement to make, Mr. Chairman.

I could take questions.

Chairman PICKLE. I will say at the outset that I am impressed with the in-depth investigation and processing of these nonfiler returns. You have given me examples primarily which happened in the Austin and Dallas Districts. Mr. Orosco said this is taking place in all districts. Is this a nationwide program?

Ms. RICHARDSON. Yes, a year ago in October we began our nationwide effort. Everything in the Southwest is always ahead of everybody else. Because the Austin District—

Chairman PICKLE. Including the L.A. District?

Ms. RICHARDSON. I think that is right. Because that was where we began our pilot project, I think it is fair to say that the southwest region was a little bit ahead of the rest of the country and has had always more aggressive programs. Rich Voskuil is our national coordinator because of his experience.

Mr. VOSKUIL. What Richard was talking about in utilizing revenue agents to work nonfiler cases—when we saw what Austin's experience was using revenue agents on nonfiler work—our payback was about 3½ times what it is from auditing the lower income taxpayers. We said let's redirect some of these resources from examining or auditing lower income taxpayers, to working the more egregious taxpayer who has not filed tax returns.

We looked at the nationwide work and trained 70 or 80 managers along with revenue agents nationwide, and that is why we are redirecting those resources over 2 years. It is a good business reason because the payback is 3.5 to 1 for that revenue agent investment. We are dealing with a more problematic taxpayer, the one not filing at all.

Chairman PICKLE. I am glad the program is underway on a national basis and I assume the format is being used throughout the Nation so we have an active, aggressive campaign in every district.

Mr. VOSKUIL. That is correct.

Chairman PICKLE. We will want to see 2 years from now how the other sections of the Nation have responded. In spite of the work we are doing, we have seen that the number of nonfilers in the last 4 years has gone up 150 percent or more. I assume that for the past year or more in the Austin and Dallas area that has gone down considerably.

We don't know how much, although you gave me an estimated figure. Across the Nation, we have to see how this works now, so we will have to watch the results. I think it is an excellent program. I have some misgivings in a sense about why is it we have so many nonfilers.

You have indicated that some individuals don't file because of natural or personal disasters, some are confused, and some paid part of the time and didn't make all their payments, and yet the percentage of nonfilers is growing. You have about 10 million of those.

How do you identify those people? How do you know you have 7.5 million individuals and 2.5 million businesses? Do you know who they are, where they are?

Ms. RICHARDSON. Mr. Chairman, we have the so-called known nonfilers, if you will, are typically people that we can track through other kinds of third party information, information reporting, typically 1099's that have been filed on them. So we have a record of them.

They may have filed in prior years and not filed in, say, 1991 or 1992, so they are on our master file. So we have a record of their existence.

What has happened over the last several years is that enforcement resources became somewhat tighter. People focused their attention on different kinds of things and perhaps weren't paying quite as much attention to how many people were leaving the system who were already in there.

When they began in Austin to realize what the magnitude of the problem was, it sounded a wake-up call to the rest of us.

Chairman PICKLE. It is a wake-up call. I think a lot of people have an idea "I am not going to get away with this, they are going to catch me sooner or later." They know they can't beat the system

in the long run. If you can identify them then you ought to aggressively go after those people.

Ms. RICHARDSON. That is correct.

Chairman PICKLE. With all the systems and programs you have established, how can a prominent attorney in New York get by not paying income tax on funds he has received? Do you know who they are? You are telling me you are going to check their W-2's—are you closing in on that kind of a gap?

Ms. RICHARDSON. Yes. In the case of the attorneys who are partners in law firms, we have K-1 information, the partnership files a return and we are closing in on them and in some cases we are actually referring them for criminal prosecution.

Chairman PICKLE. It bothers me that attorneys who should know better than any group would actually use their firm as a means of not filing a W-2 or trying to beat the rap. If this is going on, I have to assume this is a national phenomena, not just in New York.

Ms. RICHARDSON. I don't think we have enough data to extrapolate throughout the country, but I think it is probably fair to assume that it is not just confined to one city in the country.

Another area of special concern falls into what we call the unknown nonfilers. These are people who may deal only in cash. We don't have information reporting on them. We are not necessarily in a position to catch up with them as quickly as we would like to.

Chairman PICKLE. I want to get into that aspect later because that is the most heinous group in the society. If we catch them, I hope you throw the book at them. I hope we can set traps to do that and we are trying to work on that now.

It bothers me that an accountant practicing before IRS doesn't file their own. Can you disbar them, can their CPA firm disbar them?

Ms. RICHARDSON. The CPA firm certainly could, I suppose, drum them out of the partnership. But you have a witness coming behind us who should be in a better position to answer these questions about the rules specifically. For people who are enrolled to practice before the Service, we do plan to take action and can.

Chairman PICKLE. We ought to because they ought to have a higher sense of integrity than of all groups.

Ms. RICHARDSON. I agree.

Chairman PICKLE. I yield to Mr. Houghton.

Mr. HOUGHTON. Thank you.

If you spread this out nationwide, you have 2,000 people; is that right?

Ms. RICHARDSON. Two thousand two hundred over last year.

Mr. HOUGHTON. You have seven districts; is that right?

Ms. RICHARDSON. Seven regions.

Mr. HOUGHTON. You would have, roughly, 14,000 people doing this?

Ms. RICHARDSON. I am sorry, it is 2,000 nationwide. We wish it were 14,000.

Mr. HOUGHTON. There are some things that you have learned, for example, helping firms being able to validate the tax certification and working very closely with the States. Are those the types of things that really are going to reap big rewards for you?

Ms. RICHARDSON. I certainly believe that they can. I am particularly excited about working with the States in the licensing area because people have to have licenses to go into business, lawyers, accountants, beauticians, plumbers. When you think of everyone who is licensed by a local State jurisdiction to get into business, you think about the possibilities of tying that into an income system not just at the State but at the Federal level. I see it as a very promising thing. Where we have had it in operation, it has worked very successfully.

Mr. HOUGHTON. I asked you this before—are certain countries that do this better than others? I don't know how we stack up against them, Scotland or India or wherever. Are there any very significant things we can learn from the people that do it the best, that we could apply to our system, that you have been testing out here?

Ms. RICHARDSON. We are definitely in contact with most of our trading partners both in Europe and in the Pacific area. The real difference I think is that we have a much larger base, if you will, a customer base, than most countries, and we also have a much more complicated system. Just the law itself is much more complicated. We have spent time with New Zealand in looking at improvements that they have made in their system. We talk regularly with the Canadians, with all of the people in the OECD, and we are trying to use those as benchmarks for how we can improve our system.

In many ways, they look to us for ways that they can improve their systems.

Mr. HOUGHTON. They look to us if they have the same taxing concept. If you have things like a value-added tax that takes a lot of the maneuverability out.

Ms. RICHARDSON. They look to us for administrative systems, the technology and what we are doing and how we are doing it. We found that a country like New Zealand looked at our concept for tax system modernization, thought it was a great idea, and they have already implemented it and we are still going through the procurement process.

Chairman PICKLE. Mr. Brewster.

Mr. BREWSTER. Do I understand that you only have 2,000 existing staff now that are going to be there to observe the high-profile nonfilers?

Ms. RICHARDSON. That is correct. That doesn't mean that we only have 2,000 examining agents but they are specifically focused on nonfiler efforts.

Mr. BREWSTER. There are probably quite a lot more than that involved?

Ms. RICHARDSON. I am sorry. The 2,000 figure is additional examination staff years nationwide. Through August, we have devoted a total of 5,994 staff years nationwide to nonfiler enforcement.

Mr. BREWSTER. Working on the problem. How reliable is our 10 million figure or 7,500,000? Chairman Pickle started to get into that a while ago—how reliable do you think that figure is of the number of nonfilers?

Mr. VOSKUIL. That information, 7.1 million individual income tax nonfilers with the remainder of the 10 million being businesses comes from our master file information where we have documents that tell us these people should be filing and are not, Social Security information which indicates wages have been received. That information comes right out of our files indicating that those 10 million people need to be filing tax returns. It doesn't say they all owe taxes. But it is 10 million people who need to be filing, we call them known nonfilers.

Ms. RICHARDSON. We feel pretty confident about that number, the so-called known nonfilers. It is the unknowns, if you will, the ones that we don't have on our master file that we would have no reporting on that we feel less sanguine about.

Mr. BREWSTER. There are 384 cases in inventory currently of nonfilers?

Mr. VOSKUIL. I think that was criminal prosecution cases. In terms of total cases, cases being worked, many of these 10 million are in various stages of being worked. Notices and letters have been sent. Some are out for revenue agents to work, some are for revenue officers, some phone calls are being made on them.

Mr. BREWSTER. There were 327 completed cases?

Ms. RICHARDSON. That is also criminal.

Mr. BREWSTER. I always assumed it was a crime not to file what you owed in income taxes. If we have 10 million of them out there, we have 384 in inventory we are working and 327 completed, that is 701 cases total out of 10 million that we know about?

Mr. VOSKUIL. That is correct. We have 701 criminal cases for nonfiling under investigation or pending prosecution by the Department of Justice at this time. In addition, the Department of Justice successfully prosecuted 311 nonfilers during fiscal year 1993.

Mr. BREWSTER. I also always assumed that if you ever filed income tax that you were in some giant computer and any year that you did not file, you would have an IRS agent at your door. If I have to pay my taxes, I darn sure want everybody else to.

Mr. VOSKUIL. I agree. We do not have someone at the door if you don't file. Normally what happens is we go through a process of sending notices, letters, making phone calls. What we have found over the last few years with the increase in the matching of information documents, it has built up a bigger inventory. But in addition, we are finding when we knock on people's doors, all have had notices previous to that. A lot more people seem to wait for us to come knock on the door.

This is why we are doing a systems analysis of the whole process. And next year we will be looking at what brings us success in getting people back in the system because sending letters and notices doesn't seem to work as well as it has in the past.

Mr. BREWSTER. If we only have 700 cases completed or being worked on the criminal side and there are 10 million nonfilers, odds are pretty good for a nonfiler.

Ms. RICHARDSON. The crime is a misdemeanor for willful failure to file a return. It is hard to make a criminal case based on not filing. Fully a third of the people, as we mentioned, actually are due refunds and those are not typically the kind of cases that are appealing to a prosecutor. The cases that we are pursuing are the

egregious ones, where they have the highest income or have been repeat offenders. Those are the kinds of cases that we are able to refer for prosecution and get action through the Department of Justice.

Mr. BREWSTER. Do you feel that the \$10 billion figure of taxes owed is probably accurate?

Ms. RICHARDSON. Pretty close to accurate, based on our tax gap estimates for 1992.

Mr. BREWSTER. After subtracting the refunds of the third that you mentioned?

Mr. VOSKUIL. For individual income tax nonfilers, \$10 billion, and that is a net tax figure.

Mr. BREWSTER. Is the problem of nonfilers a relatively new phenomenon or are we just getting equipment where we can identify an ongoing problem?

Mr. VOSKUIL. The problem has been with us for years and years since we have had our income tax system. We do see growth in the last 4 or 5 years. Our estimates, research figures from 5 years ago indicated we had somewhere around 5 million income tax nonfilers and now we have 7.1 million. So it is a growing phenomenon.

I think part is the fact that we have additional information that we are matching so we can identify more, but I think with a growing phenomenon, word gets around that if you get something, you may not have a prompt followup by the IRS. That is why we need to look at our systems and how we have been dealing with these. We need to get to these taxpayers much earlier than we have in the past.

Ms. RICHARDSON. I think we are also experiencing an important change in the nature of our economy. For many years, people were wage earners who worked for large corporations, had withholding, interest, and dividend income, all of which was reported. We matched and could follow up.

We have seen a tremendous growth in the number of smaller businesses, people who have sometimes rightly and sometimes wrongly chosen to treat themselves as independent contractors. They are not subject to withholding and they get out of the information reporting stream. I think that is where we are finding the largest part of our compliance problem, as more and more people are no longer working for larger companies and the nature of the economy has changed and it has moved more into a service economy, we are noticing a tremendous difference in compliance.

Chairman PICKLE. Would the gentleman yield?

Two of the biggest offenders seem to be the independent contractors. I know that in certain professions, businessmen insist that they be independent contractors. This is a very political problem for the Congress and for business, too. They don't want to pay the taxes, they say they are an independent contractor.

This is the biggest single group that are probably nonfilers now, either they don't pay enough or at all. Do you know who the people are that are declared independent contractors, do you have a list, how do you trace somebody who says I am an independent contractor and, therefore, I don't withhold and I don't have to submit records? How do you know that?

Ms. RICHARDSON. If and when they file, we know it.

Chairman PICKLE. Here is a real estate company, they have 50 agents out there who are independent contractors. You don't know—they don't give W-2's, so we have no real records. How do you trace them? Can the law be changed where there is a list of independent contractors, you know that and you can go back and check them?

Ms. RICHARDSON. Where independent contractors are not incorporated, information reporting 1099's are required to be filed on any payments that are made. So, in your example, if you have a real estate company and the people working for them are independent contractors, 1099's need to be filed so we might know that.

Chairman PICKLE. Yet, in spite of the fact they file 1099's, that number is growing.

Ms. RICHARDSON. Where it is growing is in the sector where you have independent contractors that are corporations. They contract with, say, your real estate company. We do not have information reporting.

Chairman PICKLE. I want to ask you, what can the Congress do now to close in on this group who classify themselves as independent contractors and we don't know who they are, how do we go get them?

Ms. RICHARDSON. I guess in terms of our concern about reporting of income, we don't really care whether you are an independent contractor or an employee. What we want is the proper amount of tax that you owe on what you have received.

We spend, as you know, a lot of our time arguing about classification issues and I am beginning to think that we might be better off spending our time trying to work out some other system.

Chairman PICKLE. If you have any suggestions for us, what can we do to direct attention to those groups that classify themselves independent contractors, how do we get them to make that report, because you want our funds—if it is the biggest group that is violating the system, we ought to find some way to stop that.

Ms. RICHARDSON. We propose to work with you and we are doing a lot of creative thinking about what we could do and what would make the most sense, because it is clear that the way things are working today is not acceptable.

Chairman PICKLE. Thank you.

Mr. BREWSTER. Along with that same line of thought, as the recession has occurred the last few years, probably a lot of independent contractors did not set aside the money on a monthly basis to pay their taxes, maybe came to the end of the year and weren't financially able to make the payment. I think if a guy misses 1 year, they are probably going to be fearful of going in the following year.

Ms. RICHARDSON. That is correct.

Mr. BREWSTER. We did a tax amnesty in Oklahoma, we had a lot of people come forward. I know this is not an amnesty but it is in some part in that you are not prosecuting those who come forward. I would like to see you put a date certain on it, get aggressive in advertising it, get signs, do a TV ad running a public service, showing an agent sitting down with a cup of coffee and a donut, visiting with someone, and show the consequences if they don't do it, with a clanging bell if they don't do it.

Ms. RICHARDSON. You are right. Our research and experience has shown that people frequently don't file 1 year for a reason that probably does constitute reasonable cause, an illness, a divorce, a death in the family—once you don't file then it is easy to let it worry you but not do it again the next year.

Mr. BREWSTER. All the TV stations are required to do so much service, radio, too. Let's see if we can't utilize that, get a professionally done ad out and see if we can't be aggressive in getting people back into the system.

Ms. RICHARDSON. We have had particularly good responses to radio ads. We had a report in the southeast region in Mississippi where one of the districts had a truck driver come in and he said I have been listening to the radio from New Mexico to Texas to Louisiana, he said, and every single State I have been in, I keep hearing this ad about nonfilers and coming in. He said I think it was a message, so here I am.

Mr. BREWSTER. I agree with the chairman, whatever we can do to help in this process, we certainly want to be involved.

Ms. RICHARDSON. We very much appreciate your support.

Chairman PICKLE. Mr. Brewster, we took a picture with Ms. Richardson in front of one of the placards there earlier that we might be able to use. We want to get one with you, too, Mr. Houghton, since this is a bipartisan issue.

We ought to be more aggressive in appealing to people and the media, whether it is the newspapers, or television or radio, ought to give more cooperation to it.

This business of public service is—strikes them as the right thing to do along about 2 o'clock in the morning. But altogether, the media ought to cooperate more and we ought to be more aggressive in giving them information to help on that.

We also have to be tougher. If you don't file, you are going to get caught. And it gets worse and worse and worse. Used to be you could say you didn't file and nobody would ever know. I had a dear friend in Texas, a lawyer and a good man, and he went 4 to 6 years and didn't pay income tax because he said they will never know. They caught him and his practice was gone then.

I can't understand why people do it. But if they are in those situations, they ought to know it, and they ought to say if you will help me, I will try to catch up and get back in the system properly.

Mr. Herger.

Mr. HERGER. Thank you, Mr. Chairman.

Ms. Richardson, we have been talking about the number that is out there. I believe we have used the number, 10 million estimated nonfilers, which is somewhat of a round number. I noticed in testimony a little more than 1 year ago, in June 1992 before this committee, the testimony was as many as of 6 million individuals and businesses failed to file returns, so for that year, it seems like about a 60-percent increase.

I am curious as to how much of that do we really know. Is it 150 million, is it 15, is it 6? Do we have much of an idea? And if we do, I am curious about how we arrived at it.

Mr. VOSKUIL. I believe the 6 million was indicated as an estimate 1 year ago. We have actually extracted information off our computer master files which tells us we have 7.1 million individual in-

come tax nonfilers and 2.8 million business nonfilers. The 10 million is right off of our master file information.

Mr. HERGER. So those are the ones we know about?

Ms. RICHARDSON. I think it is a more precise number. I don't think we have seen an increase of 4 million over the last year.

Mr. HERGER. So we know about 10 million, that is not to say there aren't x number out there, 20 million, who knows what it might be.

Ms. RICHARDSON. That is correct.

Mr. HERGER. Your program began in September 1992, can you tell me how many nonfilers have voluntarily come forward in the past year to file returns?

Mr. VOSKUIL. Yes. Voluntary—

Ms. RICHARDSON. We have had 900,000 so far that have come forward since the program began. Actual nonfilers.

Mr. HERGER. So almost a million of those 10 million that we believe are out there have come forward?

Ms. RICHARDSON. Right.

Mr. HERGER. Approximately how much in revenue has that amounted to?

Ms. RICHARDSON. We have not kept statistics on collections from voluntary filers. We have had total delinquent returns filed of about 3.6 million, and the dollars we assessed were—the gross dollars were around \$20 billion, the net dollars were around \$10. The dollars we have actually collected when these returns were filed totaled \$792 million. We have actually collected—

Mr. HERGER. Seven hundred and ninety-two million dollars being collected?

Mr. VOSKUIL. Yes.

Mr. HERGER. Looking at the number, the amount that we have invested in it was about \$20.3 million, and 358 additional employees working, dedicated to that area. Can we say this \$20 million has all been going into this program?

Do you feel that is enough, do you need more, can we be more productive if we had more? It sounds like a pretty good return, \$20 million and we have brought in almost \$800 million.

Mr. VOSKUIL. I think you are asking would more resources be helpful to import into this program at this point in time or during the next year? Where I would come down is I wouldn't want to say we are ready to ask for more resources at this point. We would like to continue the strategies, continue to redeploy the additional resources from examination; do more analysis on why people come back, why they subsequently drop out; put in place some research to find out what can we do to keep them in the system when they come back in; and also saying that we might be coming up within the next few years on our modernization program to reinvest that in our compliance work.

It is too early to say that we would be ready to ask for additional resources to try and address the problem until we do more in-house analysis and research.

Mr. HERGER. You are utilizing those 358 employees?

Mr. VOSKUIL. Yes. The revenue agents that we have redirected to the program, we have over 200,000 cases in their hands being worked. So they are fully occupied on this program.

Ms. RICHARDSON. I think maybe your number reference to our fiscal year 1994 budget initiative—as you know, the Senate has not yet passed our appropriation, but we anticipate that it will so we have not actually added those staff years to the program. But we have redeployed over the last year, about 2,000, actually it works out to almost 2,200, I think, revenue agent and tax auditor staff years in this program.

We do think it has been productive. I think the final analysis is yet to be done because we don't have enough experience but we will certainly be analyzing what we have discovered over the last year and our results. We think it is a good value for the dollar, it at least appears on the surface to be.

Mr. Voskuil touched on something that we feel is quite important, and that is that as we move into areas where we are able to work more productively because of our tax system modernization effort, no question but that we need that effort in order to keep up with people—it is clear when you can get to somebody right away, that you are more apt to have them comply in the future.

We feel that we need to redirect our productivity savings into compliance efforts so that we can bring in the nonfilers, get our inventories current, and then keep people in the system.

Mr. HERGER. Thank you.

Chairman PICKLE. I want to go to this next panel, but before we do, I think Mr. Houghton has a question.

Let me come back to Mr. Houghton. About 2 years ago, we conducted a sting operation with a lot of the business interests who were selling luxury items in excess of \$10,000 cash and not reporting it. It was a shameful sort of an admission we had to convey to the public, that out of 79 people who tried to sell goods, we found 78 of them were willing to accept the money and not report it to IRS.

In one area, particularly the Southwest, we found out there were 57 individuals who had bought items in excess of \$10,000 cash and didn't file income tax returns in the last 4 years. What is the status of those cases?

We sent them back to you and you were going to give me a report. How many are currently under examination now?

Ms. RICHARDSON. Right now, we have 26 cases that are currently under examination.

Chairman PICKLE. In other words, you had 57, you have 26 still?

Ms. RICHARDSON. We closed 31. We had previously closed nine of them.

Chairman PICKLE. Of the 31, what have you collected?

Ms. RICHARDSON. We have about \$5,369 collected on 3 returns; 26 of the cases are currently in process. And at this time, only one of those cases has been referred for criminal prosecution.

Chairman PICKLE. How many cases are awaiting action now?

Ms. RICHARDSON. We have 26 that are currently open. We will be reporting back to you on those.

Chairman PICKLE. Only one referred for criminal investigation?

Ms. RICHARDSON. So far, yes.

Chairman PICKLE. On the surface, you read your list of 150, we brought it down to 57, they actually came in, paid the \$40,000,

didn't report it and now you come back and say only one has been prosecuted.

Ms. RICHARDSON. Thus far.

Chairman PICKLE. So far, only one. And every one of them were violating the law. But you have only prosecuted one; why only one?

Ms. RICHARDSON. As I said, 26 are still open, so it is conceivable that some of those will end up being prosecuted as well.

Chairman PICKLE. Why does it take 2 years to determine, when you know somebody paid cash and didn't report it—why do you take over 2 years—

Ms. RICHARDSON. In order to get a case that we can successfully prosecute, and I underscore "successfully" because when we prosecute somebody, we want to be successful—it takes time to actually put together all the evidence.

Chairman PICKLE. I don't want to be an impetuous prosecutor, but here is an individual who paid a high sum of money in cash and you know it was hot money, laundered money, and he hadn't filed an income tax return in 4 years, and yet in 2 years time, you have only one case prosecuted criminally. It seems to me like you are hesitant to go after the crooks.

Mr. BREWSTER. If the Chairman would yield?

Those other 30 cases that are closed, were they plea bargained—

Mr. VOSKUIL. No, I don't believe those were criminal cases.

Chairman PICKLE. They were just closed out?

Did we write them a letter and tell them they shouldn't do that again?

Ms. RICHARDSON. In some cases, they paid in cash and spent more than \$10,000 in cash but there was no criminal activity that we could find. They may have been someone who sold a house, sold something.

Mr. BREWSTER. Had not filed a return in more than 4 years?

Ms. RICHARDSON. There are cases where you have an inheritance where you might not otherwise have income that would require you to file a return.

Mr. BREWSTER. Wouldn't you earn interest on that inheritance?

Ms. RICHARDSON. You may be below a level where you need to file.

Chairman PICKLE. My sense of fairness is shocked when I realize that here you have a person you know has been violating the law and hasn't filed a return in more than 4 years, and half of them are off the hook.

Ms. RICHARDSON. There are cases where people are not required to file returns because of their income levels.

Chairman PICKLE. In these 57 cases, these are clear-cut cases of people who want to deal in cash, off the record. If that is allowed to go on, more and more people will say I want to pay with cash. They will live higher than a king but pay the Government nothing.

I want a further report on the 26 to know who or what type of violators they are, and what might happen to those 26. We get them, you have somebody who is violating the system and nothing is being done about it. That can't be tolerated.

Ms. RICHARDSON. I can assure you that we are doing something about it. We will give you a report—

Chairman PICKLE. Do so with deliberate speed.

Mr. Houghton.

Mr. HOUGHTON. One very quick question.

This doesn't take away from anything you are doing because I think what you are doing is absolutely great. However, when do you consider what you are doing a success?

It seems to me in looking at the numbers that your rate of efficiency has grown about 12 percent a year. All of a sudden, it bumped up in 1992 to 30 percent. So you are still losing ground. What determines success from your standpoint?

Ms. RICHARDSON. Certainly, from my standpoint, success will be determined when we are not losing ground, we are getting ahead of the curve, we are getting our inventories down and getting current. There was a bump between 1991 and 1992, and I think it was a direct correlation to our redirecting resources in other areas where apparently people at the time thought we could have more of an impact. What happened was people went out the door in record numbers. I would measure success by not——

Mr. HOUGHTON. Return that curve.

Ms. RICHARDSON. In absolute numbers getting——

Mr. HOUGHTON. The program you have now, when do you think that will be?

Mr. VOSKUIL. We believe that by the end of next fiscal year we will show progress in reducing our field inventories, the more serious nonfiler cases. We will have that reduced to about 1.5 million by the end of fiscal year 1994. I think it is going to take a much longer period of time for us to really make significant reductions in the 10 million figure for us to say we have now solved the problem. This may take 3, 4, 5 years in order to make serious, significant reductions in that large figure.

But I think in these first 2 years, we are going to make significant reductions in reducing our field inventory which is the more serious high-income nonfilers.

Mr. HOUGHTON. That is the only other question I have. It would be interesting to know what you tell your bosses you are going to do, because somebody is saying this is getting out of control. You are doing a great job, yet we are still losing ground here, but this is what I hope to do by a certain time.

Ms. RICHARDSON. One of the things that we are in the process of doing now is getting ourselves into a position where we could answer that question for you as to what we would consider a measure of success and ultimately getting the inventory down and getting the number of nonfilers reduced is the measure of success. We are in the process now of assessing exactly what makes sense and what would be a proper measure.

Chairman PICKLE. We thank you and the others for coming forward. We think the program is serving a very useful purpose and I think you have set the standard for further pursuit on it and we are encouraged. We think you ought to speed it up and get tougher out there.

Personally, I don't think people ought to know that any year they want to they cannot file and file next year.

How long will the IRS operate this program?

Ms. RICHARDSON. Well, the program is scheduled to run through the end of this fiscal year which will give it basically a 2-year time period for an experiment. It is really open-ended.

We don't have any plans for beyond this fiscal year—

Chairman PICKLE. Do you have a deadline of any kind—just through the rest of this year?

Ms. RICHARDSON. That is how long the—the original initiative was set up to look at a 2-year period.

Chairman PICKLE. I will raise the question with myself. If you say you need another 3 or 4 years before you can really ask for more help, more manpower—

Ms. RICHARDSON. I am not sure I am as patient as Mr. Voskuil.

Chairman PICKLE. You don't need extra assistance until you study it more and yet you are going to finish next month?

Ms. RICHARDSON. I did not set the 2-year period. I wasn't saying we are ready to abandon it at the end of the year.

Chairman PICKLE. We may want to continue for another year but I don't want to leave it out there that every year you can do it, that is an appeal to everybody you don't have to file this year, you can do it next year. They still owe the debt and can be subject to penalty, but we will take into consideration several factors that will help them come back into the system.

Where we have cases where somebody has violated as a group and we know it, or when we catch them and don't do anything about it, it seems to me like we hurt our system. Somewhere we have to get a decision on these things.

Thank you.

I personally want to thank Mr. Voskuil, Mr. Orosco and Ms. Tucker for coming back to us again.

Ms. RICHARDSON. Thank you, Mr. Chairman. We look forward to working with you on the problem and would be delighted to answer some of your questions. I hope if we are here next year about this time, we have some tremendous success to report.

Chairman PICKLE. Thank you.

Now, two members of the next panel—we have two gentlemen who will be appearing on the next panel who have agreed to testify before this subcommittee about their experiences as nonfilers, providing that their faces are not photographed or names revealed. I have agreed to that request.

I now ask that anybody in this room who has a camera to turn it off or not to use it and wait until these two gentlemen come forward to the witness table. Also, at no time during their presence in the hearing room should any attempt be made to photograph these men.

I want to thank those affected by this request for their indulgence.

They have agreed that we could use their names as Chuck and Richard. If they will come forward to the witness table.

Chairman PICKLE. I think we will proceed in the order as listed for you to make your statement. The first individual nonfiler is classified as Mr. A, or as Chuck. So Chuck, if you will make your statement, we will be pleased to hear from you.

STATEMENT OF INDIVIDUAL NONFILER "A"

Mr. CHUCK. My name is Chuck, and I was a nonfiler there probably at least 4 or 5 years, but, in the meantime, I did send estimates in and I just got behind 1 year and then another year and it was easier, and I said I hate to go through all that bookkeeping; why go all through this bookkeeping and have to keep paying all these taxes? I felt I had paid enough in.

So, then, it would be 3 years, 4 years, and it is a lot of book-keeping for the Government. In the meantime, I was not trying to get out—I really honestly believed I had paid enough money into the system and—oh, in the meantime, we are talking about why these nonfilers don't file, and I think there is a message here we are not listening to or not hearing. I am not saying breaking the law is right to do, but there is so much Government waste and I think they are trying to tell us a message here and I think we are not listening.

That is not why I didn't do it, but it used to aggravate me and anger me, the waste you would hear year after year after year, and you would say why give this money to the Government, they are just going to throw it overseas or give it to this person or for this waste or that waste. There is nobody accountable for it any more. It is such a huge, vast waste and I think people are fed up with it. They are sick of it. They are tired of it.

I am not saying that it makes it right, but there is a message that is missing. I think a lot of these nonfilers are going broke. You know, we fought Communists. Ever since we were in school, this is an awful banner, whatever you want to call it, it has been corrupting the world, and it probably is, and yet we are probably more Communist than Russia is right now.

You know, the system—we are not listening. We are still wasting that money. I have heard cases where we are paying 50 to 60 percent back to Uncle Sam. Why?

You know, I do want to get with the system. I have been with the system. I am current in the last couple of years. I am not trying to defraud anybody, but it is good. I have learned a lot of things by this happening. It seems to be an honor to be up here today, and yet I hate to have the chains thrown at me when I walk out of here today. I don't know.

But I think we are missing the boat. There is a book I picked up. I think anybody that runs for office should have to read this—should have to take a test if they are in the power to sign bills and to spend taxpayers' money.

I am a real estate salesman. Seems like you were picking on them today, but they do file my 1099's, and that is how they catch up with you, too. That is one way of doing it. It is not that I was avoiding it, but, again, I did go through a period of separation there and psychologically it was kind of devastating there for a couple of years.

But that is over with now. Maybe that is not a good enough excuse, but as Mr. Brewster mentioned earlier, and I am all for it, for 2 or 3 years I used to call every Congressman I could think of. I used to call the Presidents, Bush and Carter. I said, you guys want to raise cash? Have a tax amnesty. You will raise so much money you will not know what to do with it at first—and it is true.

Virginia did it and raised \$5 million overnight but nobody wants to hear that.

Now, I hate to say this—

Chairman PICKLE. Let me back you up. What did you call and tell them? What was your—

Mr. CHUCK. I asked them—I probably called your office. I probably called anybody that had anything to do with taxes. I asked if you guys want to raise revenue—if you want to raise revenue—by God, then, have a tax amnesty. People will come forward.

I mean, I was getting cornered by IRS. They wanted a couple of years. I could go through a year maybe making \$10,000; next year it might be \$150,000. It all depends. Right now I don't have health insurance, but—maybe I am jumping around here too much but—oh, I called them and asked if they would have a tax amnesty. Because I know it worked. I know it worked for other States.

I would call the Commissioner of Revenue and talk to somebody in their office, and I would call the Ways and Means Committee and said that was always talk but we never got around to it. But it does work.

And I think if you did—I probably owe maybe about 3 years right now. It may be \$15,000; it may be \$45,000, but then when you hit the penalties and interest, it doubles it. It may even more than double it. I didn't have the cash at that time, but I was fortunate enough to have an old piece of property I had for years and sold it, and I have some cash now and would like to come forward and pay it.

I don't know how to come. I don't know if I should approach the IRS. Should I approach ex-IRS agents who write books and tell you what the system is like and why people don't pay? I mean, you have heard this but it seems like it is not going anywhere. If you pay these people to come in to represent you, do they say the right things?

I mean, here is something. I mean, after hearing the good Commissioner talking, I don't think they are anything like that, but the IRS has a negative, nasty, ugly name. They are ruthless, they are bandits, they are bullies. This is what we have been brainwashed because you see these tabloids or Jack Anderson or something like that. People are ripped out of their car, they break in their houses, they take personal items down to toothbrushes. They do this.

Thank God there is a committee like this. I don't know if you do anything with them when people come to report this, or their property is taken. But you can only make so much and go so far and pay bills, but Uncle Sam keeps on coming in and taking more money out of your pocket. It can only go so far, so people go bankrupt because they can't pay their bills.

I personally think that maybe the Government is running scared. Maybe they have gone too far in spending. This is the first year I have ever heard that the IRS extended extensions without penalties as long as you filed. This is the first year in history I have heard of this. There are only two reasons for it: One is because the administration said don't hold so much taxes back, spend your money so we can rejuvenate the economy. But it didn't work. It backfired.

But people took their money and they spent it, and April 15 somebody maybe had the wisdom and the foresight to say, hey, we are going to have a lot less nonfilers if we demand these taxes, because people don't have any money. Maybe you can tell by savings accounts; I don't know, so they extended it, which was a nice thing. Or maybe because they are running low on cash and something has got to give here.

But the Internal Revenue, they do have this—the public out there, they feel like—here is something I will quote. A few years ago the Wall Street Journal quoted a lawyer saying they have the most high-handed, obnoxious bastards he has ever dealt with. They are almost brutal in their approach. They seem to be relishing their power. In general, they bully the general citizenry. I don't like and I don't know anybody in the legal practice who does.

What do they feel about this? Maybe they clean up the system. I don't know. After listening to the good Commissioner, I can't give any of these adjectives to her. So what is wrong here?

That is all I have to say at the moment.

Chairman PICKLE. Well, I thank you for your statement. I think we will ask for Richard to make a statement and then we may have questions after that for both of you.

Mr. SALTZMAN. Mr. Chairman, members of the committee, my name is Michael Saltzman. I am a practicing attorney in New York and I have with me today a client of mine. For the purposes of this hearing, we have agreed to call him Richard.

My client has gone through the criminal process for failure to file a tax return. He appears before you today faced with very substantial civil tax liability and, for that reason alone, never let it be said that the punishment for failing to file a tax return is inexcusably light.

I want to say also that my client deserves credit, and it is a sign of his rehabilitation that he appears before you today voluntarily to describe his experiences and why the failure to file occurred in his particular case.

Chairman PICKLE. Well, we do appreciate the appearance of both you gentlemen. We are trying to understand why there would be a nonfiler and particularly now what they are doing about it to get back in the system and be treated like anybody else. It takes a good bit of courage to come forward in a public hearing and make those statements, so I appreciate that. We may not agree with all your conclusions that you had made earlier, but it helps for this committee because we are trying to understand.

So, Richard, we would like for you to go ahead and make your statement.

STATEMENT OF INDIVIDUAL NONFILER "B"

Mr. RICHARD. Mr. Chairman, members of the committee, my situation started in 1982. I sort of, if you want to use the word, fell out of the groove. I missed that particular year of filing taxes, and the reason for that particular situation was just very easily I didn't have the funds to pay the tax at that given time.

And what happens is you get caught up into the situation where the next year comes, and you really are gripped with fear. You owe x amount of dollars from the year before. You have another year

coming. It adds up and you are really short of the funds. You don't have the funds.

Chairman PICKLE. Richard, let me interrupt you. Were you a businessman?

Mr. RICHARD. Strictly a businessman. And what happened was the employer decided to end the W-2 form, which I really think is a mistake, and he put us on a 1099 situation. I am an independent rep. I represent several different lines and I am paid commission that way.

What happens, I think the two key words to this whole situation is responsibility and discipline. I mean, I think every one of you on that particular panel in this particular room, you get your paycheck, you have your deductions all taken out of it. Fine. Those two words, discipline and responsibility, come a lot harder on a person that is paid under a 1099.

Discipline in the sense that you have to structure yourself where it comes your quarterly tax time you can afford to pay those taxes. And it is the responsibility of that individual to do that. However, all of a sudden, when you see this large sum of money coming in, you start saying, oh, there is no problem, everything is wine and roses, it will go better. It does not happen and you miss 1 year, you miss the second year, and you miss the third year.

In my case it went on for approximately 8 years until I finally was inquired about by the IRS. And it was pretty brutal, no doubt about it. It was approximately a 2½ to 3-year procedure. It is over with. I pleaded guilty. I was sentenced, I am on probation, I did 6 months house arrest. I am making restitution.

That is the story, but it is very difficult to amass what can go through your mind. During these years, I had a lot more alcoholism problems. I started drinking a lot more. You go to bed at night with three letters, I-R-S; you wake up, I-R-S; and it is magnified because of the amounts of dollars. The interest and penalties were astronomical.

These are situations I think maybe I am talking logically what really happens to a lot of people. New Jersey I think 3 years ago had a great commercial on TV. But that instilled fear. They had a picture of—at that time the Governor was Brendan Byrne. He had a picture of him standing in front of a jail cell and this is what happens if you don't pay your taxes and they slammed the jail doors.

That is going to instill fear and it will work that particular way. I think what has to happen is if we can get something to the effect of where most employers file and give their employees W-2 forms, that can save a lot of money or a lot of money going back to the Government.

Mr. Chairman, that is about it in a nutshell.

Chairman PICKLE. Let me pursue some additional questions. Now, Chuck, you described the IRS as brutal and ugly and barbaric or some soft words like that. I want to ask you, were you audited? Did they break down your door, as you said? Did they take things out of your house? Did they include your toothbrush? Did they do those things to you?

Mr. CHUCK. No, they did not do those things to me, no.

Chairman PICKLE. You said IRS are terrible and they are barbaric. That is just your opinion? It does not relate in your own case, but just what you think or feel?

Mr. CHUCK. I am telling you how the public—I feel that is how the public feels about the IRS.

Chairman PICKLE. They may, and I am trying to understand. Nobody likes the tax collector, we have known that from the good book but still we have them, and I am trying to find out specifically in either your cases. Richard, in your case, did the IRS investigate you?

Mr. RICHARD. Totally, yes.

Chairman PICKLE. You came in and you turned yourself in, so to speak.

Mr. RICHARD. They started the proceedings. They came to offices and subpoenaed records, bank records, came to the home.

Chairman PICKLE. At that point you decided you better be honest about it and step up?

Mr. RICHARD. Correct.

Chairman PICKLE. At the point you came into their office, did they prove themselves, the agents, overbearing or strong willed or ugly or barbaric or whatever?

Mr. RICHARD. They are doing their job. You know, I would not say they were barbaric. In a way, I think I can spot them a mile away. You have this kind of instinct that they are coming through your front door. They have a certain look about them. But I don't think, I don't find them barbaric. I think they might be a little—what can I use?

What word can I use? It depends upon the income level that you are making compared to maybe their income level sometimes where they will start really pounding you. Like why didn't you pay tax and I have to pay tax? That sort of thing. I did feel that way many times.

Chairman PICKLE. Well, in Chuck's case, you got behind and you did not have the cash, and then you reasoned yourself that the Government is wasting a lot of money, a bunch of crooks out there and why should I give my money because they are misusing their offices and that type of reasoning.

But you were making a decision in your own mind and some of these things are taking place that you described, but we have a broad-based system that everybody is supposed to pay their portion and everybody in public office ought to be carrying out the public business in the public's interest. If we let you be the judge, we would be letting 200 some odd million people be making the judgment and then you have no control over your budget.

Now, I think it is significant, though, if you are reasoning that the Government is going to waste its money, then millions of others may be reasoning the same way. But I don't think that is the answer because everybody ought to be held accountable. But if you are doing that, people are thinking about that very case, are you saying, Richard, that in your particular case we should go back to the use of W-2's so that as you make your money you make a report on it and that the 1099's are not being effective?

Mr. RICHARD. Wholeheartedly agree.

Chairman PICKLE. You would do away with the 1099's.

Mr. RICHARD. Well, I think, and I was hearing in the background before, we are in a situation in the last 4 or 5 years, we are in a pretty serious recession. We are starting to come out. Well, lifestyles somehow, it is very hard to change your lifestyle and you don't want to give back anymore, you want more. And the problem is, when business gets a little tough out there, it is hard to change your lifestyle.

And I think the way of looking at it, to make it a lot easier for the Government, would be to reinstate, in a lot of cases with corporations, or make it mandatory, the W-2 form, because you are getting a proportion of your tax money.

Chairman PICKLE. Well, this is a very contentious issue with business and I don't know what the answer is, but I can see your viewpoint.

Do either one of you, did you feel that eventually you would get caught? Did you think at some point—

Mr. RICHARD. I knew from day one it was going to happen sooner or later. But what happens is, you get caught up into that fold where you are going to go. How am I ever going to come out of this again? How am I going to ever get above water? And what used to happen with me, came April 15, when you have your news on, whether it is CNN, C-SPAN or what, all you hear is you have to get your tax in by 12:01 a.m. I would shut the radio off because the fear was so overwhelming because you are talking immense amounts of money.

Chairman PICKLE. Well, I thank you both for your statements. It gives us a little different insight into this problem and I am glad to hear your testimony.

The Chair will recognize Mr. Houghton now for any questions. Mr. Houghton.

Mr. HOUGHTON. Yes, thank you very much, Mr. Chairman. I have a couple of questions.

First of all, I appreciate very much your being here. It is really fascinating, because all of us can see ourselves in different lives being in a situation of how do we extricate ourselves. So this really helps in terms of understanding the conditions why this thing arose.

But, really, the question is how do you correct it? How do you correct it in terms of bringing other people back the way you have come back? How do you correct it so that other people out there do not fall into the same type of trap? What do you do?

For example, are there corrections to the tax system which could discourage this type of thing? Does the threat of penalties scare people into compliance or does it just drive them underground?

We are interested not only in you as individuals but the motivations which will correct the system rather than the specific numbers. So what are those things that should be done to bring other people back into the fold and also prevent others from falling over the cliff?

Mr. RICHARD. When I was sitting in the background, I think more awareness to the public. I think you were conducting situations or these big advertising campaigns, so to speak, in the Dallas or Houston or Austin area. I think that is one way of looking at it, to really pound in and drive the nail home, so to speak.

The other thing is, I think—I personally feel that it is, in my opinion, that the W-2 should be an automatic situation for everybody. Another thing is, yes, you have fear. You get a thousand letters in the mail from the IRS. You look at the penalty and the fines on these things, they are astronomical, and it is just going to drive—I know you are trying to drive the point, but you drive the point so far that that person is going to run away.

So more advertising, more TV awareness, but not hitting—certain things will always stick in your mind, but not to put so much fear into the taxpayer. You have to play a little hard ball, but not to the degree that some of it is done.

Mr. HOUGHTON. Maybe Chuck, you can make a comment.

Mr. CHUCK. I personally—I mean, I personally feel—

Mr. HOUGHTON. What is the book, by the way, you have there?

Mr. CHUCK. It is by Morton Gross, and he is apparently an ex—he has written for some large newspapers out in the country.

You made me feel like I am the bad guy and I go around making up all these stories, but 10 million people out there, 14, there is something wrong with the system. Again, they are trying to tell us something. I think we are missing the boat.

And I agree breaking the law, two wrongs do not make a right, but I was taught you don't give money to an alcoholic. You give them food or you help them. But you give him more money and he goes out and drinks it. And that is the waste. I mean, I could not believe at the end of the Government's fiscal year people will run around and spend money and buy items. Maybe I am mixing apples with oranges here, but people out there, they hear this, and they know it. People fly around the country just to use that money. And you don't spend your money for that. People resent that.

I ran into a little Korean lady yesterday. She said she makes \$6 and something an hour. She says, I work all day and all these foreigners are coming in here and they get all these benefits immediately.

Where is this money coming from? It is coming from us.

I talked to another guy, a lawyer, who used to work on the Hill. He said everybody on that Hill, they all have a horror story telling about the waste of the taxpayers' money. There is a message but we don't want to listen to it.

I mean, here is a man that said people are suspicious that something is fraudulent and wrong in Washington, and they are right. Hundreds and billions of dollars are taken from them each year under false pretenses. In fact, waste in enormous proportion.

Mr. HOUGHTON. Can I just interrupt a minute? You know, that was the old dodge when I was in the service. You know, the captains and the majors and the generals. They didn't know what they were doing; my God, they were feeding us right into the battle. But that did not make any difference. We were under their command.

We have a system here where other people are carrying people like yourselves and we want to correct it.

Mr. CHUCK. Okay.

Mr. HOUGHTON. We want to do the best we can to correct it, whether it is in a W-2 form, or whether it is other motivations to help people like yourself and others from falling in.

Mr. CHUCK. I honestly, personally, sincerely believe you would clear up a lot of those people in that computer, whatever you use to track them, I think if you had an amnesty period for a certain period of time, people would come forward and say, hey, I goofed, I made a mistake. And I mean in my case, I underestimated my payments and it came back and hit me and I didn't have the cash and what do you do? That is my answer.

I mean this may be a little farfetched, but, you know, we are working as a country. I mean somebody's private corporation can run millions of people through these credit cards; and, for example, one of the wastes in this kaleidoscope that we already spent billions of dollars on, we were going to spend more on that, but the unportion of that kaleidoscope that we didn't spend, why can't you credit that back to all the taxpayers and get them in the system? Hey, we are part of it. They changed their mind.

Maybe we will get \$5; maybe we will get \$100. But they could say, hey, you are trying. I mean, that might be a little farfetched but it was just a thought that kind of flashed through my mind.

But I think getting back to whatever State you are from, Mr. Brewster, and Virginia, I think they are examples. They came forward and they paid, and they made \$5 million. I understand that is a lot of money for the Commonwealth of Virginia.

That is my honest opinion. That is why I was told they invited me here, and I am trying to get that message across.

And as Commissioner Richardson said, there are excuses, but you have to almost be dying of cancer; you almost have to have had an accident or lost a leg or something before they will forgive you the penalty.

I think if they can reduce that and say, hey—I mean I have loaned money to friends or people. If they came back and just paid me the principal, I would be so happy with it. I mean, I would not say where is my interest. Let's clean the system up and go forward, because it is costing the taxpayers a lot more money to chase the ones that have not paid. That is all.

Chairman PICKLE. Well, I thank you. Now, Mr. Brewster.

Mr. BREWSTER. Thank you, Mr. Chairman. Just a few fairly specific questions, Chuck.

Was there a specific event in your life that caused you to not file a Federal income tax return or was it just coming up short of cash or just the feeling that the Federal Government was wasting your money or was it a combination of all those?

Mr. CHUCK. No, I think to start with it was just carelessness, laziness. I didn't want to get my papers together. One year went by and then another year went by, and that is how it happened.

Mr. BREWSTER. And once you got behind, as we talked about a moment ago, a year or two, it became very difficult, then, to face the predicament?

Mr. CHUCK. Yeah, I dreaded the thought of going through the paperwork. And I said it is either that, or when they do catch up to me they are going to do my own taxes and they will not give me the benefit of my deductions and that would really wipe me out, so I said, well, I better get a few.

Mr. BREWSTER. The tax amnesty as you are talking about, you would forego the penalties and interest?

Mr. CHUCK. Have the Federal Government forego it.

Mr. BREWSTER. That would be the tax amnesty you would be talking about?

Mr. CHUCK. Yes.

Mr. BREWSTER. So there would be no percentage, then, really in filing if I am going to pay the same amount 3 years down the road?

Mr. CHUCK. Well, no, it is a temporary system. I mean we have never had it; never tried it, and I think if there is a short period of time, I mean I think you would raise more money than you ever believe you could raise.

Personally, here is an opportunity to come clean, wipe a debt off, and to save money. It is not maybe fair to the people who have paid penalties. I don't have an answer for that. But at least it will help clean up the system, I think. I really do.

Mr. BREWSTER. A program like that did work in my State, and my State is Oklahoma, by the way, but I don't know that it is possible to do something like that on the Federal level.

How has being a nonfiler affected you personally, financially? I take it you had to pay sizable penalties and interest, having gone several years without filing anything.

Mr. CHUCK. Well, there was a few years they wanted there and they filed the forms, and I guess I owed them—I don't remember the numbers offhand. It might be \$3,000 to \$5,000, \$6,000, and then the penalties came back at least equal to that or close to it. And I wrote to them and asked them if they would waive them and they came back and said no.

So then they started getting—well, I don't know if you would call it ugly, but they started attaching a little savings account and started collecting \$1.75 a month; and \$2 out of this account, or \$3. It would cost them more money in the stamp to send it, but maybe that is the way to catch up with people like myself.

Mr. BREWSTER. At what point did you start fearing that the IRS would start catching you; was it immediately after not filing that first time; or were you thinking, well, I am going to file, I just have not gotten around to it?

Mr. CHUCK. That was always what my thinking was, yes.

Mr. BREWSTER. So at what point did you fear you were in trouble with the IRS?

Mr. CHUCK. They called me for a specific year and I filed that, and they gave me a certain amount of time. I asked for a few extensions, and they gave them to me, and then I asked for another one and they got nasty and said, no way, we are not going to do it. You may not look at it being nasty, but that—so I did that and filed that, and then they realized I didn't file the previous year so they wanted that one. So that is how they got me on those couple ones. Not that I was trying to get away with anything, but I just didn't get around to it, that is all.

Mr. BREWSTER. Did your family or coworkers know of your predicaments, by chance?

Mr. CHUCK. My wife knew I didn't, but—

Mr. BREWSTER. I assume it had troubled her also.

Mr. CHUCK. Oh, yeah, she was on my back to get them in there. If it was up to her, she would have done it a long time ago, but I sort of take care of all the bookkeeping.

Mr. BREWSTER. Keep in mind all the stuff you read about Government waste may or may not be correct also. Waste is in the eye of the beholder.

Mr. CHUCK. Pardon me?

Mr. BREWSTER. Waste is in the eye of the beholder.

Mr. CHUCK. Oh.

Mr. BREWSTER. For those members from Texas, they thought the super collider was certainly not waste; those in the physics community thought it was not waste. For others, they thought it was.

Chairman PICKLE. You are meddling now.

Mr. BREWSTER. I understand, Mr. Chairman, you are from Texas. But, at any rate, all of us read some pretty inflammatory stuff sometimes. Some of it is factual, some of it is not. I don't think any of us feel like we get our dollars value for dollars spent. I would be the first to say that. But to take the attitude that we only pay what we want to pay, then our form of Government cannot exist. So I just wanted to throw that out.

I certainly sympathize with the problems and I understand. I have been in business myself since I got out of college, and I understand how it would be possible to get behind. I understand, too, it would be very, very difficult, once a person ever got a year or so behind, to get back even.

And I understand—I think you have a very good point of going back to W-2's on everything, every dollar out there. Probably business interests would not like that because of the paperwork involved. But as far as the private contractors, such as yourself, it would be, in my mind, a much better way to go.

Thanks for your testimony.

Chairman PICKLE. Did either of you gentlemen, originally were you classified as an employee and W-2's were being filed on you? You at first were?

Mr. RICHARD. Yes.

Chairman PICKLE. And through you or your employer you became an independent contractor?

Mr. RICHARD. They decided to eliminate it from the W-2 to a 1099.

Chairman PICKLE. Your employer?

Mr. RICHARD. Yes.

Chairman PICKLE. Was that true in your case?

Mr. CHUCK. I have always worked on a 1099.

Chairman PICKLE. Did either of you have any difficulty in filing your State income tax? Did you have an income tax in your State? Was that a problem for you? Did you file that?

Mr. RICHARD. I finally filed it now, but I didn't file it at the same time—

Chairman PICKLE. When you were not filing with the IRS, you were not filing with the State?

Mr. RICHARD. Correct.

Chairman PICKLE. Is that true with you, too?

Mr. CHUCK. I sent estimates into the State, and then on those couple of years I brought my taxes current with the Federal Government, they notified the State then.

Chairman PICKLE. Neither one of you had any kind of arrangement with your employer originally that they would classify you, but you were always in the 1099 program and you were a W-2 originally?

Mr. RICHARD. Yes.

Mr. CHUCK. Yes.

Chairman PICKLE. Did either one of you realize that by not filing you were hurting your retirement or your chances for disability? Had that entered your mind?

Mr. RICHARD. Oh, for sure. When you take a look at only what the base taxes were, and then you compound it with all the interest and fines and penalties, it was astronomical.

The way I am set up now, and it has all worked out, it is done through an agent and I get an allowance every month. But if you could stay even every year you would be perfectly fine, and it is a good feeling to be back in the groove again. You can sleep nights now.

Chairman PICKLE. Well, did either of you have any specific suggestions to the Internal Revenue Service or to us as public servants representing the people of our districts of any way to go about the program?

You, Chuck, say that you ought to have an amnesty program and that would settle it all. I personally have a problem with that, because I have tens and tens of millions of people paying their taxes, and have been year after year after year. And if we come along and say we will give those others complete amnesty, I fear it might hurt the overall program. It might help the people who are out there. The next step we are taking, or preliminary at least, to try to say if you are a nonfiler we are going to get you back into the system and help you with installments or rearrange the payments. I don't know about an amnesty.

But do you have any particular recommendation for this committee or for Congress?

Mr. RICHARD. The main one I would still say is the W-2.

Chairman PICKLE. All right. I will ask Mr. Saltzman, you are the attorney for Richard, to make any comments you might make, or if you have any kind of statement, we would be pleased to receive it at this point.

STATEMENT OF MICHAEL I. SALTZMAN, ESQUIRE, NEW YORK, N.Y.

Mr. SALTZMAN. Thank you, Mr. Chairman.

I am appearing here today as an attorney who has been actively involved in the administration of the tax laws for approximately 30 years, first as a prosecutor from the Justice Department's tax division and then as an assistant U.S. attorney in charge of tax cases in the southern district of New York, now as a defense counsel, an author, and a teacher.

I can understand that there is a temptation to increase the penalties for failure to file, since both a failure to file and tax evasion may involve nonpayment of taxes. But I urge the subcommittee not

to increase the criminal penalty for failure to file a tax return but to retain the present criminal penalty, which I believe is serious enough to punish those convicted of the crime. This is especially the case, by the way, under the sentencing guidelines which treat failure to file and tax evasion the same with the exception that there is a one level reduction for a failure to file. So under the sentencing guidelines, there is a very serious effect to a failure to file.

My reasons for making this recommendation are derived from my experience with this crime both as a former prosecutor and as a defense counsel. There is a difference between a failure to file and tax evasion as a matter of law. The tax evader engages in affirmative conduct to conceal from the IRS. The nonfiler does not engage in affirmative conduct but omits or fails to file the return.

In fact, we have heard today about the reality that forms 1099 are filed and so there really is no secret from the IRS about people who fail to file and who are in positions where 1099 information is filed for them.

There is also a difference in the personal characteristics of tax evaders and nonfilers. The tax evader is driven by greed; the nonfiler, and this is a general statement, not true in each instance, but a general statement, by ignorance of the law, by a lack of financial discipline, we will call it, or by emotional problems.

In my experience, and I am referring to page 3 of my remarks, in my experience the typical individual who fails to file does not intend to evade tax. I will give you some of the reasons why taxpayers fail to file tax returns.

First, taxpayers fail to file returns because they lack the funds to pay the tax due and they do not know that they can file tax returns without payment. In the usual case, on the due date of the return, the taxpayer, for one reason or another, has insufficient funds to pay the tax believed to be owed for the year. So instead of filing the return without payment, the taxpayer does not file the return at all. When the next year's tax return is due, the taxpayer again does not have the funds or insufficient funds to pay the tax for both years. The failure to file continues and the situation becomes impossible for the taxpayer to reverse.

Now, the Service's programs for detecting nonfilers have markedly improved. When a taxpayer fails to file after a period of filing, notices are sent, returns are solicited, and of course this nonfiler program is an excellent one.

Many failures to file occur when taxpayers change their status; in other words, when there is that moment when they shift from a W-2 status to a 1099 status. And they are unprepared for that change, because it is a completely different way of handling one's tax affairs.

Taxpayers whose income tax is withheld do not have to think about their tax payments, but the taxpayers who are making estimated tax payments must have the discipline to put aside money to pay the quarterly payments. If the taxpayer does not have this discipline, the tax, the full year's tax, must be paid at one time.

Alcohol or other substance abuse is another reason why taxpayers fail to file tax returns. Mr. Chairman, you were talking about lawyers who fail to file tax returns. As a young lawyer in the Department of Justice reviewing criminal cases, criminal tax cases,

I was astonished at the number of lawyers who were being referred for prosecution for failure to file tax returns. But—and this is an important thing, many of those lawyers had alcohol problems. They were alcoholics; they were seriously troubled people who had failed to file tax returns.

So I know we can be tough on lawyers and nobody will say anything about it because it is a common thing to do, but understand that that kind of emotional problem frequently is at the root of the nonfiling.

[The prepared statement follows:]

STATEMENT OF MICHAEL I. SALTZMAN

Mr. Chairman and Members of the Committee:

INTRODUCTION

I am Michael I. Saltzman, an attorney from New York, New York. I am appearing here today as an attorney who has been actively involved in the administration of the tax laws for nearly 30 years as a former prosecutor, defense counsel, author and teacher. I was formerly a trial attorney with the Justice Department's Tax Division, including its Criminal Tax Section, and as an assistant U.S. Attorney in charge of tax cases, I prosecuted criminal tax cases. During my approximately 20 years of private practice I have represented many individuals in failure to file investigations and prosecutions. I have also written about and taught the criminal tax laws and procedures as the author of a treatise on IRS practice and procedure and an adjunct professor at N.Y.U.'s Graduate Law School's Tax Program.

I urge the Subcommittee not to increase the criminal penalty for failure to file a tax return, but to retain the present criminal penalty which I believe is serious enough to punish those convicted of the crime. My reasons for making this recommendation are derived from my experience with this crime both as a former prosecutor and as a defense counsel. There is a difference as a matter of law between tax evasion and a failure to file. The tax evader engages in affirmative conduct to conceal from the IRS. The nonfiler does not engage in affirmative conduct, but omits or fails to file the return. There is also a difference in the personal characteristics of tax evaders and nonfilers. The tax evader is driven by greed, the nonfiler by ignorance of the law, a lack of discipline or emotional problems.

A taxpayer who willfully fails to file a tax return may appear to have committed another tax crime -- the felony of tax evasion since nonpayment of tax may occur in both evasions and failures to file. It thus appears anomalous for a failure to file to be classified as a misdemeanor, while evasion is the most serious tax felony. But 50 years ago the Supreme Court distinguished between felony tax evasion and the misdemeanor failure to file. Tax evasion requires a willful attempt to evade -- that is, any affirmative conduct, the likely effect of which would be to mislead or conceal from the IRS.¹ A failure to file is an omission to act -- that is, the omitted act of filing the required return. If a taxpayer fails to file a tax return, the taxpayer may commit tax evasion, but only if, in addition to failing to file, the taxpayer has engaged in some affirmative misleading or concealing conduct constituting a willful attempt to evade. For example, in several cases in recent years, taxpayers who failed to file returns were convicted of evasion because they filed false W-4 forms with employers.²

REASONS FOR NONFILING

In my experience, the typical individual who fails to file does not intend to evade tax. I will give you some of the

¹ Spies v. United States, 317 U.S. 492, 498-499 (1943).

² United States v. Copeland, 786 F.2d 768 (7th Cir. 1986); United States v. Williams, 928 F.2d 145 (5th Cir. 1991); United States v. DiPietro, 936 F.2d 96 (2d Cir. 1991).

reasons taxpayers fail to file:

1. Taxpayers fail to file tax returns because they lack the funds to pay the tax due, and they do not know they can file returns without payment. In the usual case, on the due date of the return, the taxpayer has for one reason or another insufficient funds to pay the tax believed to be owed for the year. Instead of filing the return without payment, the taxpayer does not file the return. When the next year's return is due, the taxpayer again does not have funds, or insufficient funds to pay the tax for both years, and is gripped by the fear that if a return is filed, the IRS will impose punishment and seize the taxpayer's property. The failures to file continue and the situation becomes impossible for the taxpayer to reverse.

The IRS's procedures have markedly improved in detecting nonfilers. When a taxpayer fails to file after a period of filing, notices are sent to the taxpayer soliciting a return. Nevertheless, before this procedure was put into operation, a significant number of nonfilers were financially strapped taxpayers who became nonfilers for fear of detection and punishment.

2. Many failures to file occur when the taxpayer changes his or her filing status from a W-2 employee to a Form 1099/Schedule C, independent contractor. Taxpayers whose income tax is withheld do not have to think about their tax payments. But the taxpayer making estimated tax payments must have the discipline to put aside money to pay the quarterly payments. If the taxpayer does not have this discipline, the full year's tax must be paid at one time. Some taxpayers do not have this discipline. When these taxpayers are required to shoulder their new responsibility, some fail.

3. Alcohol or other substance abuse is another reason taxpayers fail to file returns. A taxpayer may be able to function in an occupation, but still be unable to carry out the responsibility of filing a tax return because of the effect of alcoholism or other substance abuse. In my experience, a significant portion of the failure to file cases involve lawyers and many of these lawyers had problems with alcohol abuse.

4. Emotional problems are a characteristic of taxpayers who fail to file returns. These emotional problems are not so severe as to constitute insanity in a legal sense. But they preoccupy and distract the taxpayer from the responsibility of paying tax and filing returns.

Based on my experience, therefore, I recommend no change in the failure to file criminal penalty. Rather, the Internal Revenue Code should be changed to make absolutely clear that a taxpayer must file a return even if payment cannot be made, and that in the event the taxpayer cannot pay tax, the taxpayer must seek an installment payment agreement with the IRS, which the IRS must reasonably consider and enter into.

Chairman PICKLE. Well, Mr. Saltzman, we will seek the reaction from the Internal Revenue Service on your recommendations of not increasing the criminal penalties but keep them much as they are now, and I don't know what they are interested in, but we will seek a response.

I also recognize there is a difference between a nonfiler and a tax evader, and in many respects the tax evader is the one we are really after, and what we want most at this point, rather than giving amnesty, is to go after the nonfiler.

Now, do you recommend that we take, readopt the W-2 form instead of the 1099 independent contractor? Do we go back to that form?

Mr. SALTZMAN. That is something to be explored, but there is also something else that the committee can do and that is this: I think the Internal Revenue Code should be changed to make absolutely clear a taxpayer must file a tax return even if payment cannot be made.

In other words, the Tax Code is unclear on this point. It says you must file a tax return, but it should be, as a matter of law, that a tax return must be filed even if payment cannot be made.

We have a provision that was added through the taxpayer bill of rights recognizing an installment payment agreement but there is no cross-reference between the obligation to file the return and the installment payment agreement.

Chairman PICKLE. Good point and I will pass that on, too.

Now, Chuck, let me ask you, in your own case, do you have any returns, in your own case, that you have not filed yet?

Mr. CHUCK. Yes.

Chairman PICKLE. You do have?

Mr. CHUCK. Yes.

Chairman PICKLE. Can you comment on that? I am not asking you to, but you do have some that you have not filed yet?

Mr. CHUCK. That is correct. I had a CPA prepare them. They are all finished. It is just a matter of coming in and coming forward and turning them over, but I fear the penalty.

Chairman PICKLE. I don't want to press you on that because that is in the process, you are saying.

Do you plan to take advantage of the nonfiler program that the Internal Revenue Service is advancing that was described here today?

Mr. CHUCK. At this time, yes.

Chairman PICKLE. Well, let me say, we have another vote here at this point, do we not. I have another panel, so I think we will probably recess the committee for about 10 or 15 minutes before I go to the next panel.

Do any of you have any additional statements? Mr. Saltzman, your entire statement will be made a part of the record. Do you have a written statement?

Mr. SALTZMAN. Yes, I do.

Chairman PICKLE. If you will submit that, we will include it in the record. Do either of you, Richard or Chuck, have anything you wanted to add to this hearing record, other than what has been said here today?

Well, I can't say that I as an individual agree with every statement you have made, but I understand better how you arrived and got in this situation, and I don't know how we overcome this except we have to study these things and see how we can make it a little more reasonable.

You may have a good point, Mr. Saltzman. We may have to require filing an income tax return even if payment is not made. That way nobody can think they can get away with it. But these are good suggestions.

Well, I thank you very much for your testimony. Now, you two gentlemen can fade off or out or you can leave, and nobody—I don't think anybody will get a picture. You can go out this way, if you wish. It is no great big secret, but we are not trying to make your problems any more difficult either. So we will excuse you.

Thank you very much for your testimony.

Now, I will ask the next panel to go ahead and take their place here at the table. Jane Bergner from Washington, D.C.; then we have Claudia Hill, representing the National Association of Enrolled Agents; and we have the American Institute of Certified Public Accountants, represented by Deborah Walker. I think if you all would come forward and take your places.

I don't think I have enough time to get the testimony. If you all have written statements, they will all be made a part of the record, but I think the best thing to do at this time is just to call a recess. We are going to the floor, and according to the signal, we will have a vote on an amendment and then another one following that, so it may be 10 or 15 minutes before we come back, but we will come back as soon as we can. If you all can wait, we will return.

[Brief recess.]

Chairman PICKLE. At long last we will resume. We apologize again for the interruption to vote but it had to be.

Now, this panel consists of Jane Bergner, Esq., Washington, D.C. Jane Bergner in the center. Then the National Association of Enrolled Agents, Claudia Hill, to my left; and then American Institute of Certified Public Accountants, Deborah Walker.

Now, I said earlier that your entire statements would be made a part of the record. So, if each of you would like to kind of summarize your statement—I realize it is late, but we do want to get your testimony in the record.

So, Ms. Bergner, we recognize you.

STATEMENT OF JANE C. BERGNER, ESQUIRE, WASHINGTON, D.C.

Ms. BERGNER. Thank you, Mr. Chairman, and I thank the other members of the committee who will read the written statement.

My name is Jane C. Bergner, and I am an attorney who concentrates her practice in Federal taxation in Washington, D.C. I was formerly chair of the taxation section of the District of Columbia Bar for 5 years; and following that, until this past June, I chaired our taxation section's Tax Audit and Litigation Committee. The taxation section of the District of Columbia Bar has been largely responsible for implementing the nonfiler initiative in the Washington, D.C. metropolitan area.

I am also a member of the American Bar Association's section of taxation task force on the implementation of the nonfiler initiative, and as chair of the ABA taxation section's Regional Liaison Meetings Committee, I have been very active in monitoring the nonfiler initiative on a national basis as it has been implemented by the private bar.

Chairman PICKLE. Is the program you are conducting here in the District of Columbia much similar to the program they conducted in Texas and in other places?

Ms. BERGNER. I am not sure it is altogether that similar. That was an IRS program, and I think that is what is really very distinctive about our program, because it was not an IRS program. That had some deficits and some benefits to it.

We did counsel nonfilers confidentially and free of charge on the implications of the nonfiler initiative on criminal prosecution, what constitutes reasonable cause for relief from civil penalties, how to document their income and deductions, file their returns, obtain missing information, et cetera, and we established and supervised a series of 3 days on which we had six tax sites throughout the District of Columbia. That was our first facet of our program.

Subsequently, this summer, we assisted the Internal Revenue Service, in the Baltimore District, on its nonfiler days, which were held at IRS sites. Our nonfiler days were not held at IRS sites. They were not really supervised by IRS personnel. That was different. But we did work extensively with the IRS representatives, although the people who manned our sites were members of our taxation section. We assembled instructional materials, et cetera, and all of that is in our written statement which the committee has.

I personally, because I supervised—as I visited each of the four sites that we established on April 3, and I also supervised the April 10 site—I have received oral and written reports with respect to our April 17 site as well as the days that we assisted the IRS in July and August, so I have a pretty good background on what has happened in this area.

I conservatively estimate that I have spent over 300 hours on this. We have had an enormous number of hours from our volunteer attorneys. It really has been a tremendous effort on our part. I want to summarize my recommendations quickly because I think they fit in very much with the testimony that has preceded me this afternoon.

First of all, we feel that more extensive publicity as well as increased cooperation from the press is necessary to publicize these pro bono assistance programs. Our tax section's experience demonstrates that the tax story is not an April 15 story. It exists before April 15, it exists after April 15, and, in this regard, the Service's national office—Internal Revenue Service's national office—is uniquely qualified to assist its local district offices in providing more effective publicity, particularly publicity with respect to the relief from civil penalties.

Now, this is one thing I know about because of my ABA activities as well. I have had reports from attorneys throughout the country, and if there is any difficulty with the volunteer bar holding nonfiler days, publicity is the difficulty. Try as hard as we may, we are not

public relations professionals and we do not have abundant time to write copy and make sure it is read by the press.

We had enormous publicity for our nonfiler days. We sent out many press releases to over 50 different press agencies. I remain convinced that had the publicity been even greater, had we had more professional assistance from service people, there would have been more nonfilers participating in the program.

And one example is that of a network television reporter who contacted me immediately before April 15. He wanted me to produce a taxpayer for an April 15 nonfiling day, April 15 deadline story. I said, "It is too bad you were not at our April 10 nonfiler day because we had nonfilers there and maybe you could have interviewed them." He said, "I didn't know anything about that." But I said, "I sent you two press releases on this." And he said, "Oh, I didn't read them. I just looked at the envelopes and they didn't look interesting to me so I threw them out."

We have to encourage the press to really participate in giving us greater publicity on these events.

Also, in order to encourage greater taxpayer compliance, I believe the Internal Revenue Service should provide more publicity in its written announcements and press releases about the availability of relief from civil penalties for those taxpayers who present persuasive reasonable cause justification for their failure to timely file returns. Many taxpayers are not sophisticated and some of them do not speak English as their native language, and given those limitations, the publicity really should include illustrative and readily understood examples of what reasonable cause is.

My written statement contains a number of examples that our taxation section publicized, our releases and flyers, as well as a copy of our standard engagement letter, and in all that publicity we stated our understanding that the service would accept a reasonable cause explanation for failing to file returns in the context of considering civil tax penalties.

On the other hand, I personally attended the press conferences by the district directors of the IRS' Baltimore and Richmond Districts when they publicized the nonfiler days this summer that the service had, and I have read their press releases. In contrast to our publicity, nowhere in the service's publicity was the possibility of relief from civil penalties mentioned.

Now, I know that the nonfiler program is not an amnesty. It is very clear and, indeed, our engagement letters advise our nonfiling clients to that effect; but, on the other hand, it would be an important incentive for taxpayers' return to the system—we have heard about this here earlier—if they knew that if there was a reason they might have relief from civil penalties.

Indeed, when I worked on the ABA task force on this nonfiler initiative, I know that we conceived of a program where nonfilers would first consult with the volunteer lawyers, who would then advise them about whether they could make a reasonable cause argument for relief from civil penalties. And it was only after they obtained legal advice that they were then referred to tax return preparers.

Additionally, revenue officers, we really believe, should be provided more frequently by the service to local community sites, on

weekends, or perhaps even in the evenings as a resource for taxpayers who seek assistance to resolve their collection problems. I think this would promote greater respect for the tax system and, really, it would prevent the withdrawal of taxpayers from that system, as we have heard about earlier today.

I was fortunate last week to attend an invitational conference of professionalism in tax practice at which Commissioner Richardson spoke. She stated that the service wants to develop before-the-fact ways to promote tax compliance and to put more of its employees on the front lines. The proposal to bring revenue officers into local communities would really put these employees on the front lines, and my written statement has a number of examples of how the revenue officers working with us at our tax day sites was a vital facet of our program. It really assisted taxpayers.

There were taxpayers who were really not nonfilers but who had collection problems and came in simply to resolve those with the revenue officers in a nonthreatening environment. This is a valuable way to deploy resources if the service can afford to do so.

Nonfilers often fall out of the system, as we have heard, because of tax law changes or an inability to pay, and if there is some way they can receive counseling before the fact, before all those years go by, as we heard Chuck and Richard talk about, we think there would be a better opportunity.

There was also some discussion about better ways to address compliance problems for 1099 nonfilers. We know that greater tax compliance education is necessary. We know this from the people whom we counseled in these tax days, particularly with regard to reporting by certain industries in our country. Day labor employment—a number of employers do not know how to report wages or they mistakenly characterize people as independent contractors, and there ought to be a lot more education out there on this.

Also of vital importance is that when we work with the local Internal Revenue Service district offices that sponsor their own nonfiler days, the Service should take steps to ensure the anonymity of those taxpayers who wish to consult confidentially with volunteer lawyers at IRS-sponsored sites. This is really very important when the sites are located on IRS premises, which are inherently threatening to some taxpayers.

We encountered a problem with the application of section 7214(a)(8) of the Internal Revenue Code, which may, in a technical interpretation, require IRS employees to report the names of those nonfilers who may not have filed. We sought clarification from the Service as to whether it would apply in the nonfiler initiative, and we were told that the Service's policy now is not to turn in nonfilers who identify themselves as part of the program, unless they exhibit an intention not to file.

But as attorneys we can only counsel taxpayers confidentially. If they leave and do not file their returns for some reason, we cannot force them to file. At one of the sites several nonfilers were sophisticated enough not to give their names. These were sites where the IRS required the nonfilers to come in and register by name and they saw IRS people before they saw the attorneys. This is a very difficult situation when attorneys are working with taxpayers at this level.

Also, I want to stress here locally, in the District of Columbia, the governmental officials should be encouraged to cooperate in the implementation of pro bono tax problems. Now, we heard earlier from Commissioner Richardson that the IRS found the States to be most valuable allies in identifying nonfilers. We made several efforts to bring the District of Columbia into our tax nonfiling days and we were notably unsuccessful. That was in the beginning of the year up until April. Then in the summer, when the IRS had its nonfiler days, we found the IRS was also unsuccessful here in the Baltimore District in encouraging the District of Columbia to help participate.

This does not promote tax compliance, because we have to tell taxpayers that even if they file their Federal returns under the nonfiler initiative, there is absolutely no assurance that the District of Columbia will administer its tax laws in the same way, and they may walk. They may just leave because, you know, some of them, not the 10 million the Service knows about, but the ones they do not know about, will feel there is no vested interest in filing their returns.

I briefly want to summarize one of the incidents we had with one of our nonfilers, because I think it brings together a number of the points that have already been discussed today. I was at the site when this occurred.

A young Hispanic couple with a toddler came into our site. The wife had W-2 income and was up-to-date in her filings, but she had been filing as married filing separately. Her husband had not filed his returns for several years, the years that he was in this country. We first considered the couple's 1992 return. If the couple were to file jointly, they would have been entitled to a refund because amounts had been withheld for the wife. But we advised the couple also that if they were to file jointly, the Service would most likely apply the overpayment to the husband's liability for past years, and also the couple appeared to have marital difficulties. They determined to file separately for 1992.

Well, it was very easy to prepare the wife's return. She was a salaried employee with withholding. But we did advise the wife, who had hired a child care provider for her toddler, that she was liable to pay withholding taxes and file a W-2 for her child care worker, which she had not done because the child care worker's income was off-the-books. This gives you an idea of the extent of these problems. And the worker herself, the child care worker, was most likely an undocumented worker. I don't know whether this advice was ever followed.

Now, the husband presented far more difficult problems. He had worked as a general contractor for 1992 and had employed other individuals to work for him. He had no record of how much he had paid these workers and had not withheld taxes or filed W-2's. Not only were we unable to offset the unknown expenses of the husband's employees against his gross receipts for schedule C income—and he was able to estimate his gross receipts in good faith—but we had to inform him he was responsible for withholding of W-2's for these employees. He had no idea. He was not from this country.

To document the expenses of his schedule C business, all he had was cash register receipts for supplies that he had purchased. Well, we added the cash register receipts up, and they were the sole expenses that he was able to claim against his gross receipts on his schedule C, which was unfortunate, but that was all that was documented.

And, incidentally, we had a volunteer tax return preparer, a TCE preparer, through the AARP. These people do not normally prepare complex returns, which they consider to be returns that include schedule Cs, and we were fortunate that this preparer could do it.

In any event, we finished that one return for 1992 and it was okay, but he did not get all the deductions that he would have been entitled to, and we knew he had not reported income paid to employees. We then turned to preparing his returns for the past years, and that was where the problem was even greater.

During those years he had not been a general contractor, but he had obtained work as a day laborer by standing on a street corner in front of a nonprofit organization that assisted day laborers in obtaining employment. Every day, contractors in the construction industry would come by to pick up a crew and he was one of those people. We do not know whether he worked repeatedly for the same employer or not.

He had been in and out of the United States during these years and he was unable to estimate how many weeks he had been in the United States. Furthermore, even though we informed him that he need only calculate his income to the best of his ability, say a weekly amount, and then multiply it by the number of weeks, he had never been advised to maintain records, even by the nonprofit organization that had assisted him.

So he had no way of estimating his income, and despite our encouragement he could not do anything to estimate his income for those weeks. He could not tell us how many weeks he had been here, and because he could not do these things, we could not prepare his returns. We could not instruct the tax return preparer. As attorneys, we did not prepare returns, but we could not even instruct the volunteer tax return preparer how to prepare the returns.

And we spent over 2 hours with this couple. They left having filed their 1992 returns, and they were very grateful to be back in the system, but we also were unable to do anything for them for the prior years and we had to inform them—they were District of Columbia residents—that District of Columbia did not administer their program the same way.

Now, I think this is illustrative of a number of the recommendations that have come about here. If there had been Service personnel available earlier, in a nonthreatening environment in the earlier years, maybe the husband would have sought assistance at that time, and he would have been better able to reconstruct his income at an earlier point in time. Undoubtedly, if there had been more tax-compliance education, he would have known to keep weekly or daily records of his receipts, and that would have been of assistance. And perhaps he was really an employee and not an independent contractor in those years, and if W-2's had been filed, he might have been a more compliant taxpayer at an earlier stage.

Now, there were no Internal Revenue Service personnel at our site that day, and I don't know how they would have reacted when the taxpayer left without having filed the past due returns because they were impossible to file.

This is just one example of the taxpayers whom we have assisted, and you can see how labor intensive this kind of work was for people who really, while we are skilled in tax law, this is not the kind of work most of our people do and we spent an enormous amount of time on it.

Thank you for permitting me to testify.

Chairman PICKLE. Thank you for that very full report.

[The prepared statement and attachments follow:]

TAXATION SECTION



The District of Columbia Bar
**WRITTEN STATEMENT OF JANE C. BERGNER
 OF THE TAXATION SECTION,
 DISTRICT OF COLUMBIA BAR¹
 ON THE IMPLEMENTATION OF THE
 INTERNAL REVENUE SERVICE'S
 NONFILER INITIATIVE**
**BEFORE THE SUBCOMMITTEE ON OVERSIGHT
 COMMITTEE ON WAYS AND MEANS
 HOUSE OF REPRESENTATIVES
 OCTOBER 25, 1993**

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I. Introduction.

I appreciate the Subcommittee's invitation to comment on the experience of the Taxation Section of the District of Columbia Bar with the Internal Revenue Service's Nonfiler Initiative. The Nonfiler Initiative is a nationwide program to encourage a return to the Federal tax system of the 10 million taxpayers who the Service estimates are now failing to file annual income tax returns. The Service has found that many taxpayers withdraw from voluntary tax compliance as a result of a traumatic event, such as the death of a loved one, divorce, repeated collection problems, etc. They fear returning to the system because of the threat of criminal prosecution.

Assuming that income is from legal sources, the Service has stated that if nonfilers return to the system voluntarily and file their missing returns for recent years (generally the past six years), it will not impose criminal penalties. Moreover, the Service has indicated to members of professional groups assisting it in the implementation of the Nonfiler Initiative that it may accept a reasonable-cause explanation by a taxpayer for not filing as a basis for waiving civil penalties. If a taxpayer cannot pay the amount due, the Service will work with him/her to arrive at an installment-payment arrangement or compromise agreement.

The Service's effort to return nonfilers to our voluntary tax system is a laudatory project, both for its potential revenue benefit and for the relief granted to those of our citizens who want to become compliant taxpayers but currently fear reprisal.

For some time, the Taxation Section sought an important public-service project that would utilize the tax expertise of its members and enable the Section to provide assistance to the residents of the Washington, D.C. metropolitan area. We became aware of the ABA Section of Taxation's National Task Force on the Nonfiler Program, implementing the Nonfiler Initiative sponsored by the Internal Revenue Service, and we asked if the D.C. Bar Taxation Section could participate in that Program. The ABA Section of Taxation included our Taxation Section in its Program, and our Section became largely responsible for implementing the Program in the Washington, D.C. metropolitan area. We were fortunate to work with John S. Nolan, Lipman Redman and Scott P. Crampton, of the ABA Section of Taxation's National Task Force, in putting our local program into effect, and we appreciate the assistance of Richard C. Voskuil, Regional Commissioner, Southwest Region, Internal Revenue Service, who has had the responsibility for coordinating the Service's efforts with those of professional groups throughout the country.

¹ These comments have been approved by both the Steering Committee and the Tax Policy Task Force of the Taxation Section of the District of Columbia Bar, which Section has approximately 1,500 members. The views expressed herein represent only those of the Taxation Section of the District of Columbia Bar and not those of the District of Columbia Bar or its Board of Governors. Neither Glenn R. Carrington nor Stephen J. Csontos took part in the review of these comments.

The Chair of the Taxation Section of the District of Columbia Bar is Patricia G. Lewis, and the Vice-Chair is F. David Lake, Jr. The Section's Tax Policy Task Force is chaired by Roderick A. De Arment and William J. Wilkins. From 1986-1990, I chaired the Taxation Section of the District of Columbia Bar. Following that and until June 30, 1993, I was Chair of the Taxation Section's Tax Audits and Litigation Committee, in which capacity I undertook supervision of the Taxation Section's implementation of the Nonfiler Initiative.

Thus far, our Section's program has included two major efforts: A series of three (3) TAX DAYS conducted in April, 1993 on which DAYS our Section operated a total of six sites in a volunteer capacity, free of charge, with the assistance of volunteer income tax preparers, at locations throughout the District of Columbia; and assistance by our members, also in a volunteer capacity, at three nonfiler days conducted on July 24 and 31 and August 7, 1993 by the Baltimore District of the Internal Revenue Service at the Service's offices in downtown Washington, D.C. and Wheaton, Maryland.

At its annual meeting in June, the District of Columbia Bar presented the Taxation Section with the Bar's award for the Best Section Community Outreach Project, as a result of the Section's April, 1993 Tax Days Project.

My testimony is in several sections: (1) A summary of the Taxation Section's experience and its recommendations; (2) a narrative description of our experience with the new Nonfiler Initiative; (3) representative anecdotal case examples involving nonfilers who came forward under the D.C. Bar Taxation Section's Nonfiler Initiative project; (4) an analysis of the benefits which were provided during the course of the operation of our program; and (5) a discussion of problems which arose in the course of the operation of our program.

II. Summary of Our Experience with IRS Nonfiler Initiative and Recommendations.

A. Summary of the Local Washington, D.C. Program.

The District of Columbia Bar Taxation Section (1) established, supervised and staffed a series of three successive TAX DAYS throughout the city on April 3, 10 and 17, 1993 on which we operated a total of six sites and (2) provided volunteer legal assistance to taxpayers at nonfiler days conducted by the Baltimore District, Internal Revenue Service, on July 24 and 31 and August 7, 1993. In preparation for these efforts, I worked extensively with IRS representatives; solicited volunteer attorneys from the Taxation Section; assembled and prepared instructional materials and forms for the use of our volunteers; established site locations and coordinated staffing by volunteer attorneys, IRS Revenue Officers and trained non-legal volunteer income-tax preparers recommended by the IRS; gathered the necessary tax forms for past years and for submitting deferred or reduced payment proposals to the IRS; and arranged extensive local publicity. I also supervised one of our TAX DAY sites.

The D.C. Bar Taxation Section counseled nonfilers confidentially and free of charge on the implications of the Initiative on criminal prosecution; what constitutes reasonable cause for relief from civil tax penalties; how to document income and deductions; how to obtain misplaced income information from the IRS; how to file estimated returns; and how to enter into installment or reduced payment agreements with the IRS.

We estimate that our program has served at least one hundred (100) taxpayers and that we made a significant contribution both to the tax health of our community and to national tax compliance. The Taxation Section is considering the continuation of our local program while the Service's Nonfiler Initiative continues.

B. Recommendations of the D.C. Bar Taxation Section.

- Revenue Officers should be provided more frequently by the Internal Revenue Service to local community sites on weekends as a resource to taxpayers who seek to resolve their collection problems in a non-threatening atmosphere. This would promote greater respect for and prevent withdrawal from the tax system.

- In order to encourage greater taxpayer compliance, the Internal Revenue Service should provide more publicity in both its written announcements and press releases and press conferences about the availability of relief from civil tax penalties for those taxpayers who present persuasive reasonable-cause justification for their failure to timely file tax returns. Because of both the lack of sophistication and the English-language limitations of many taxpayers, such publicity should include illustrative and readily understood examples of what constitutes reasonable cause.

- More extensive publicity, as well as increased cooperation from the press, is necessary to publicize the existence of *pro-bono* tax assistance programs which benefit our citizenry. As our Section's experience demonstrates, the tax story is not just an April-15 story; the real story exists long before and well after that date.

- Greater tax-compliance education and enforcement initiatives are necessary with respect to informational reporting by certain industries in our country, particularly as they relate to day-labor employment.

- The Service's National Office should take further steps to assist its local District offices in providing more-effective publicity and implementation of the Nonfiler Initiative.
- Local Internal Revenue Service District offices that sponsor nonfiler days should take steps to ensure the anonymity of those taxpayers who wish to consult confidentially with volunteer attorneys at IRS-sponsored nonfiler sites. This is all the more important when such sites are located on IRS premises -- locations which many taxpayers regard as inherently threatening.
- Local District of Columbia officials should be encouraged to cooperate in the implementation of *pro-bono* programs which benefit both the District's residents and the District's ability to collect its own taxes. Such programs include the program sponsored by the D.C. Bar Taxation Section and the Baltimore District of the Internal Revenue Service, as described herein.
- The Internal Revenue Service is to be commended for its Nonfiler Initiative which reaches out to our citizenry and, at the same time, enhances revenue collection.

III. Implementation of the IRS Program.

A. Organization and Sites of the D.C. Bar Taxation Section Program.

I attended the initial meeting with representatives from the Internal Revenue Service's Baltimore and Richmond Districts which was held at the end of January, 1993. As a result of my subsequent February 11, 1993 meeting with the then District Director of the Baltimore District and his staff, it was determined that our Taxation Section would sponsor a TAX DAY on Saturday, April 3, at multiple sites in Washington, D.C. where we would counsel taxpayers. We planned to have on hand at those sites VITA and TCE tax-return preparers,² because most of our tax attorneys do not regularly prepare tax returns, even though they have specialized legal knowledge to counsel taxpayers.

Our Section initially proposed to sponsor TAX DAY sites on four successive Saturdays preceding the April-15 filing deadline, but the Baltimore District leadership expressed its view that, by establishing too many sites, we might confuse the IRS's message that taxpayers should be filing currently and, as a result, might encourage taxpayers not to file their 1992 returns on a current basis.³ Based upon the Baltimore District's response, we agreed to sponsor two TAX DAYS, one on April 3 at multiple sites and another on April 17 at the Martin Luther King Library. Ultimately, our Section also sponsored an additional TAX DAY on April 10, with the assistance of a TCE volunteer, at the request of the IRS's National Office.

In early February, 1993, a letter was sent, in the form annexed to this testimony, to all members of our Taxation Section, explaining our TAX DAY program and asking for volunteers to participate. We received approximately thirty responses.

The April 3, 1993 TAX DAY sites were located as follows throughout Washington, D.C.:

- | | |
|-----------------------------------------------------------------|-------------------------------------------------------------------------------|
| ● Chevy Chase Community Center
5601 Connecticut Avenue, N.W. | ● Francis A. Gregory Regional Library
Alabama Avenue and 37th Street, N.E/ |
| ● Lamond Riggs Library
S. Dakota Ave. & Kennedy St., N.E. | ● Woodridge Library
Rhode Island Ave. and 18th St., N.E. |

The fifth TAX DAY site on April 10, 1993 was held at the Cleveland Park Library, Connecticut Avenue and Macomb Street, N.W. An additional TAX DAY site was held on April 17 at the following location: Martin Luther King Library, Downtown Northwest D.C.

Five volunteer attorneys were assigned to each site, including a supervising attorney who was responsible for confirming the attendance of the volunteer attorneys at the site, guiding the attorneys, obtaining the tax-return forms for prior years which had been provided to our Section by the Internal Revenue Service and providing me with statistics about the operations at each site. In addition, each site was staffed by two volunteer tax-return preparers through the TCE program.

² "VITA" means Volunteer Income Tax Assistance. These are volunteers who are trained by the IRS and who volunteer to prepare returns for low-income taxpayers. "TCE" means Taxpayer Counseling for the Elderly. These volunteers perform the same services as VITA volunteers, under the auspices of the AARP. The Service provided the names of VITA and TCE coordinators who arranged to have volunteers present at our sites.

³ This view was not necessarily shared by other Districts of the Internal Revenue Service, located in other areas of the country.

Because of the need to offer "full service" to nonfilers who might want to propose an installment-payment arrangement or Offer in Compromise, we urged the Internal Revenue Service to provide an Internal Revenue Officer, skilled in collection issues, for each site on April 3, and the Service did. The four Revenue Officers who serviced our April-3 sites were not introduced to the taxpayers and did not record any names. They were available only in cases where their assistance was requested by the nonfilers.

We provided an orientation packet for each volunteer attorney which contained the following data about the Nonfiler Initiative:

- (1) My March 24, 1993 informational letter in the form annexed to this testimony;
- (2) IRS News Releases 92-94 and 92-114, describing the program;
- (3) Former Commissioner Shirley Peterson's letter describing the program, accompanied by a number of specific questions and answers about the program;
- (4) December 4, 1992 letter from the then Acting Assistant Attorney General;
- (5) Reasonable-cause guidelines for not filing as grounds for relief from civil penalties, excerpted from the Internal Revenue Manual;
- (6) A description of the nonfiler program as it relates to tax practitioners who themselves may have failed to file returns for prior years;
- (7) A number of copies of an engagement letter drafted for this project, in the form annexed to this testimony;
- (8) A form letter drafted for this project, to be used by nonfilers to inform the Service that they were participating in the Nonfiler Initiative and to obtain missing W-2's and 1099's for prior years from the Internal Revenue Service, in the form annexed to this testimony;
- (9) A form letter drafted for this project, to accompany each return and, thereby, notify the Service that the returns were being filed under the Service's Nonfiler Initiative, so that no criminal-enforcement actions would be taken, in the form annexed to this testimony; and
- (10) A number of pre-addressed envelopes in which the letter identified as Exhibit 9 was to be mailed to the Internal Revenue Service Center, thereby promoting "follow-through" action by the nonfilers.

The Internal Revenue Service provided our Section with approximately 30 cartons of multiple copies of returns for prior years beginning in 1985, as well as forms requesting Installment Agreements and Offers in Compromise.

B. Publicity for our Program.

Brightly colored flyers were prepared, reproduced and distributed in advance at the site libraries, as well as at other libraries in the D.C. system. A news release, in the form annexed to this testimony, was mailed at least two times to at least fifty publications, news services or networks. We also prepared announcements for radio and television. They were translated into Spanish and distributed to the Hispanic press by the Internal Revenue Service. With the assistance of both the IRS National Office and Dominic LaPonzina, the Baltimore District Public Affairs Officer, our April-10 and 17 TAX DAYS were publicized in Spanish in a 3-minute slot on the Hispanic television station's 6:00 P.M. news program on Tuesday, April 6 and repeatedly on the Hispanic radio station. The Spanish radio spot continued to run up to the April-17 TAX DAY. On April 10, a large sign was placed at the sidewalk in front of the Cleveland Park Library announcing our program inside the library.

We know from talking with those nonfilers who used our services that they learned about our program through television and radio advertisements, as well as *via* our flyers (some of which were carried into the sites by the nonfilers). In particular, advertisements and public service announcements on WHUR, WRC-TV and the Hispanic radio and television stations appeared to have been the most successful. The Uptown Citizen ran a story on April 3, 1993. I never saw any publicity about our program in either the Washington Post or the Northwest Current, although the Washington Post did publicize the later program by the Baltimore District at which our Section volunteers assisted. I do not know whether other radio stations ever ran a public service announcement or advertisement.

C. Need for Cooperation by the District of Columbia Department of Finance and Revenue.

The success of the Nonfiler Initiative is necessarily dependent upon the cooperation of state taxing authorities, because nonfilers do not want to be in the position of filing past-due Federal returns and, at the same time, subjecting themselves to harsher treatment by their states of residence. For example, even though a nonfiler may be more than six years in arrears with his/her returns, the Service requires only six years of past-due returns in order to comply with its program. Moreover, the Service has indicated to tax practitioners that, although it will not waive interest, it may accept a persuasive reasonable-cause statement as ground for waiving civil penalties.

It was most important for us to be able to assure our nonfiling "Clients" that they would obtain treatment from the District of Columbia that was the same as that provided by the Federal government. Indeed, both of the neighboring states, Maryland and Virginia, are administering their nonfiler programs in the same manner as the Federal program. We wanted to be able to prepare D.C., as well as U.S. past-due income tax returns, as we believed that this would enhance compliance.

Despite numerous attempts to contact officials at the D.C. Department of Finance and Revenue, including follow-up correspondence, we have received no response. Consequently, we have been unable to assure our Clients of consistent Federal and District of Columbia treatment. I was present at the July, 1993 press conference at which the IRS's Baltimore and Richmond Districts announced their nonfiler days, and Service representatives stated that the Service had not heard from District of Columbia officials in response to its efforts to acquire the cooperation of the District government in the administration of the Nonfiler Initiative in this area.

D. Legal Time and Expenditures Associated with the Section's Program.

I conservatively estimate that I have personally devoted over 300 professional legal hours to the Taxation Section's implementation of its TAX DAY program. In addition, approximately thirty members of our Taxation Section spent at least six hours each at both the TAX DAYS sponsored by the Section and the nonfiler days sponsored by the IRS Baltimore District, or a total of 180 professional legal hours. At least fifteen volunteer VITA and TCE tax-return preparers devoted four hours each to the program, or a total of 60 hours.

The Internal Revenue Service paid four Revenue Officers for four hours each in servicing our April-3 TAX DAY sites. Other paid Service personnel, including Baltimore District employees and employees in the Service's Hispanic office within its National Office, have devoted their time to the implementation of the program in the District of Columbia, both under our Section's program and in conducting the Service's own nonfiler days.

I know that the Service spent at least \$300 to ship the many copies of the past-due returns for distribution at our TAX DAY sites. Our D.C. Bar Taxation Section has spent over \$500 on the administrative costs associated with the implementation of the program.

E. Nonfilers Participating in our Program.

I personally visited all four sites on April 3, and I supervised the site on April 10. In addition, I have spoken with and have received written reports from our volunteer attorneys at both our April-17 site and the Service's July and August locations. I can say without reservation that we performed significant labor-intensive services for those taxpayers whom we assisted. It often took over two hours to serve just one taxpayer. Interestingly, our most-successful TAX DAY was on April 17, after the 1992-return filing deadline. At least 55 nonfilers appeared for assistance, fifty percent of whom had failed to file both 1992 and pre-1992 returns. A small number of these wanted only forms. Approximately forty of the nonfilers at the April-17 were counselled by our attorneys, and our attorneys extended the termination time from 1:00 P.M. to 5:30 P.M. to accommodate the crowd. There was a long wait for return preparation.

The volume of nonfilers at the pre-April-15 sites was somewhat less than that at the April-17 site. While the lower turnout at the other sites was disappointing, this may have been attributable to the "newness" of the program which did not yet have wide recognition within this area. We would estimate an even larger response as the program continues, and this appears to have been borne out by the volume of taxpayers who attended the Service's July and August nonfiler days.

F. Assistance Provided by the Taxation Section at the IRS Baltimore District's Nonfiler Days.

1. Description of Our Participation in the Baltimore District's Program.

On July 16, 1993, our Section received a written request from the then Baltimore District Director to participate in the District's three nonfiler days, to be held on July 24 and 31 and August 7 at the Internal Revenue Service offices located at North Capitol Street in the District of Columbia and Wheaton Plaza Shopping Center. Notwithstanding a lead time of only 8 days, we were able to secure nine members of our Section to volunteer at the six sites.

On the first of the three nonfiler days, at the Service's North Capitol Street office, our volunteer attorneys were located behind a partition in a different area of the facility and, thereby, both separated from the IRS employees who were assisting nonfilers and not readily apparent to nonfilers who visited the site. From their vantage-point, our attorneys estimated that 6-10 taxpayers visited the site in a 4-hour period. Our attorneys reported that taxpayers were required to sign-in by name for assistance, thereby destroying any opportunity for anonymity prior to the time that they consulted with a volunteer attorney, if, indeed, they were to request legal assistance. Internal Revenue Service employees staffing the site told our attorneys that the taxpayers were informed that if they wanted to consult with an attorney, there was an attorney present. Notwithstanding such communication by Service personnel, it is questionable whether, in such a situation, most taxpayers would have the judgment to determine whether they needed an attorney.

Because our attorneys at the July-24 site did not participate in the initial contact with the taxpayers and were segregated from the IRS staff, we do not know whether and how taxpayers were advised by the Service of the opportunity to present a reasonable-cause explanation in support of relief from civil penalties. Thus, we have no way of knowing whether advice was offered in the same manner as our attorneys would have used to elicit any facts underlying a reasonable-cause justification.

Our attorneys at the July-24 IRS North Capitol Street location counseled only two taxpayers who asked to see a lawyer, but these individuals were not nonfilers as we know them. One taxpayer wanted advice about both the inclusion of employer reimbursements in income and about the possible use of an S corporation. The second taxpayer had questions about deductions with respect to property that was used partly as a residence and partly as rental property.

At the July-24 Wheaton Plaza site also located at the IRS offices, approximately 25 taxpayers appeared during the 4-hour period. Once again, taxpayers were required to register by name and then asked whether they wished to consult with attorneys. Only three taxpayers asked to speak with attorneys, and they refused to give their names before such consultation. Under the circumstances, it was wise of these taxpayers to comprehend that by providing their names in advance, they would destroy the confidentiality of an attorney-client communication. The first taxpayer was not a nonfiler but sought advice about an offer in compromise. The second taxpayer was a nonfiler for only one taxable year, but it was questionable whether he had any tax liability, on account of allowable deductions, and he presented facts which most likely would have supported a persuasive reasonable-cause argument for relief from civil penalties. The third taxpayer did not qualify for the nonfiler program on account of income from admittedly criminal activities. He left after being advised by our attorneys of his inability to qualify under the Initiative.

At the July-31 North Capitol Street site, our attorney was not placed behind a partition. Although numerous people came into the site and worked with IRS personnel on their tax returns, no questions were asked of our volunteer attorney. Our volunteer attorneys at the July-31 Wheaton Plaza site and both of the August-7 sites had similar experiences.

2. Comments on the Baltimore District's Program.

Even though the program was largely successful, we think that it is vitally important that, when operating nonfiler days, Internal Revenue Service personnel take steps to preserve the anonymity of those nonfilers who appear on site but who may wish to consult with volunteer attorneys in a confidential manner before proffering returns or other information to the Service. For this reason, we have already suggested to the Service that, in such situations where the nonfiler sites are staffed by IRS personnel, taxpayers should not be required to register by name. Alternatively, taxpayers could be identified by number. There are two reasons for this precaution. First, a taxpayer who consults with legal counsel may determine that s/he does not want to file past-due returns. For example, this may be on account of the lack of assurance that state taxing authorities will similarly administer their local laws, or a taxpayer may have illegal-source income, in which case s/he will not qualify for the Nonfiler Initiative. In such cases, if the Service has first

obtained a taxpayer's name, this act alone will undermine the confidential relationship which members of the Bar are ethically required to provide to their clients. Not only will a taxpayer be placed at risk of criminal prosecution for failure to file, merely because s/he was required to register by name, but such a procedure also impairs our attorneys' ability to participate in the program without violating their ethical responsibilities.

Moreover, as is discussed subsequently in this testimony, section 7214(a)(8) of the Internal Revenue Code, as interpreted by the Service, may require Service personnel, in certain circumstances, to report known nonfilers who do not manifest an intent to participate in the Nonfiler Initiative. If taxpayers are required to register by name at sites staffed by IRS personnel and if such taxpayers subsequently determine not to file their returns, then the Service staff may have to report such taxpayers. It ill serves a program whose purpose is to encourage voluntary reentry into the tax system for the Service to establish a procedure under which taxpayers who seek assistance have reason to fear that, by the very act of seeking advice, they may trigger the enforcement activity they are trying to avoid. We understand that our experience is not representative of a national Internal Revenue Service policy, and having already raised our concerns with the Service, we are pleased to report that the Service is taking steps to ensure that actions which may undermine both the Service's program and the Bar's participation in that program will not occur.

IV. Case Examples.

These examples are significant because they illustrate how important our services were to the nonfilers whom we reached.

A. In Chevy Chase, D.C., a client appeared shortly after the April-3 site opened. She had learned of our program from a flyer posted on the bulletin board of a local public library. The Client, in her late-40's or early 50's, was divorced from her husband in 1984 and did not file for 1984 or thereafter. She was afraid of the consequences of filing for 1985 and later years without filing for prior years as well and paying her accumulated liabilities, which she was unable to do. She was a contract employee of a subsidiary of an international bank from 1984 through 1991. The bank reported her compensation on a Form W-2 but did not withhold income or employment taxes. She earned approximately \$18,000 a year for this period, which she applied to living expenses. As a result, she was unable to save sufficient funds to pay her accumulated liability. She changed jobs in 1992, and her new employer withheld and paid employment taxes. Thus, the Service discovered that she had not filed for 1984-1987 and assessed over \$44,000 for those years. She moved several times after her 1984 divorce and did not receive any correspondence that may have been mailed to her by the Service for the years after 1983. The Service garnished the Client's wages commencing in May, 1992, with the effect that she had \$200 net per two-week period on which to live. Between May, 1992 and March, 1993, the Client had borrowed as much as she could from her mother, friends and the person with whom she lives, and this had an adverse impact upon her relationships with these people.

The Client appeared desperate when she appeared at TAX DAY. Our volunteer attorney advised the Client that he was in private practice and that the information that she provided to him would be protected from disclosure by the attorney-client privilege. She remained apprehensive. The attorney reviewed the nonfiler program with the client, advised her that she should qualify for the waiver of criminal penalties and indicated that he believed that she would meet the reasonable-cause test for relief from civil penalties. Upon a review of the Client's financial records, the attorney estimated that the IRS assessments were close to correct and that her additional liability for 1987-1991 was approximately \$25,000. After deducting the \$10,000 garnished in 1992 and 1993, the Client was left with a liability of over \$60,000 which she was unable to pay.

With the assistance of the Revenue Officer, the volunteer attorney reviewed the Offer in Compromise Program and analyzed the Client's living expenses. Together with the Client, he pared her living expenses down to the absolute minimum and determined that, after deducting withholding and living expenses, the Client could contribute \$350 per month to her accumulated tax liabilities. The Client then completed the Offer in Compromise form, in which she offered \$21,000 payable at \$350 per month for five years. The attorney and Client also outlined an explanatory "reasonable-cause" letter, reviewed her personal financial disclosure statement and acted out a meeting in which the attorney played the part of a stern IRS collection officer to whom the client presented her case. Finally, the volunteer tax-return preparers prepared the Client's returns for 1986-1991 based on the Forms W-2 that the Client had brought with her. The Client had already completed and was prepared to file her 1992 return. This meeting took 2-1/2 hours. The Client was visibly relieved and expressed her gratitude for our assistance.

B. A U.S.-resident Chinese student had not filed returns but differed with the Service's position as to whether he was required to pay U.S. taxes under international agreements, *etc.* After he was served by our volunteer attorneys and his tax returns were prepared, he left and returned with orange juice, cookies and cake for our volunteer staff!

C. A Client appeared with a past-due return that he had prepared for filing. He was divorced and had claimed a dependency exemption on the return. He was unable to pay immediately the tax that he had calculated he owed. The Revenue Officer reviewed the return with him and noted that he had improperly claimed the dependency exemption to which only his former wife was entitled. Our volunteer attorneys counseled him, and the volunteer tax-return preparers prepared a new and correct return. The Client then met again with the Revenue Officer who worked with him to arrive at an installment-agreement proposal which was included with the tax return.

D. A married Hispanic couple who had heard our advertisement on the Spanish radio station appeared with their 18-month-old daughter. While one of our volunteer attorneys watched the child, another of our volunteer attorneys who spoke Spanish met with the couple. They were both resident aliens. The Wife, who was employed and had withholding, had filed all past-due returns as married filing separately. The Husband had not filed returns for 1990 and 1991, and the couple had not prepared their 1992 return(s). For 1992, the Wife had a Form W-2, and the Husband, who worked in construction, had Forms 1099. No tax had been withheld for the Husband. In addition, as an independent contractor during 1992, the Husband had not paid either estimated income tax or self-employment tax and had hired subservient employees to work for him for whom he had failed to pay tax or report income. Furthermore, he had incurred expenses for building supplies. The Husband presented receipts for the supplies, but he had paid the other workers in cash and had no records.

The volunteer attorney concluded that the Husband would not be able to deduct his expenses for individuals who worked for him because he had no documentation, and that he would also be subject to a liability for the failure to withhold. The attorney totalled the Husband's expenses for supplies. The attorney asked the volunteer preparer to compute the couple's liability both jointly and as separate filers. As a joint filer, the couple would be entitled to a larger refund than if the Wife were to file separately. If they were to file separately, the Husband would owe tax which he would be unable to pay. Because the couple had marital problems and because the attorney informed them that the Service might apply the joint refund to the Husband's past-due taxes for prior years, the couple determined to file separately. 1992 returns were prepared for both the Husband and Wife. The Wife was entitled to a \$900 refund, while the Husband owed additional taxes which he was unable to pay. We provided the Husband with a Form 9465 to place on the front of his return with an installment-payment offer.

The Wife had incurred babysitting costs for her child, but she had employed a babysitter who did not provide a social security number and was most likely a illegal alien. The attorney explained to the Wife that she would not be entitled to the child-care credit and also suggested that the Wife had a tax liability with respect to her employee.

With respect to his income for 1990 and 1991, the Husband explained that he had been paid entirely in cash as a construction worker and that his employers had not withheld taxes or social security or provided forms to him reporting their payments. He had worked for a number of employers by virtue of a nonprofit agency in suburban Maryland that provides "brokering" services for construction workers. These workers appear at the agency daily and are picked up by random employers who pay them in cash by the day. The attorney asked the Husband if the Husband could estimate how much he was paid weekly so that his compensation could be projected on an annual basis. The Husband was unable to do so, and as a consequence the preparer was unable to prepare the Husband's past-due returns. The Husband asked if there was an IRS representative to whom he could speak, and the attorney provided the Husband with the name of the Revenue Agent that had been provided at my request by the IRS for situations such as this. The attorney volunteered to call the Revenue Agent and speak with her before the Husband called her. He also told the Husband that he would subsequently assist the Husband in filing a reasonable cause statement. Both the Husband and Wife were very grateful. Approximately 2-1/2 hours were spent with this client.

V. Benefits of the Program.

A. General Benefits.

As is obvious, we provided a vital service for D.C.- and Maryland-resident taxpayers who could not otherwise have obtained tax help. These individuals came into our sites as frightened nonfilers and left as reassured and compliant U.S. taxpayers. Even if the taxpayers whom we assisted had been able to obtain paid tax-return preparation, a paid preparer may not have been able to devote -- as we had -- the time required to analyze their tax problems. The program also assisted Federal and local tax authorities in the collection of revenue.

B. Assistance of Revenue Officers.

A critically important facet of our program was the presence of the Revenue Officers. They were kind and dedicated employees who treated the taxpayers with dignity and enabled us to provide "one-stop" full service. Not only were taxpayers able to complete their returns, but they were also able to submit facially acceptable installment agreement proposals and Offers in Compromise because of advance review by the Revenue Officers.

Moreover, our experience illustrates that some taxpayers commence their nonfiling behavior because they have collection problems. If these taxpayers can be kindly helped with their collection problems at a friendly neighborhood location on a Saturday -- and not during the work week -- they may never embark upon a nonfiling posture. At one site, a couple (not nonfilers) who had seen our flyer came in for the sole purpose of securing legal assistance about an ongoing collection problem. We were fortunate in being able to offer them the assistance of a Revenue Officer on-site.

Accordingly, we propose that the Internal Revenue Service give serious consideration to a pilot project in which it would provide Revenue Officers on Saturdays, perhaps on a monthly basis, at various sites throughout metropolitan locations beginning in January of each year and running until the end of the filing season. As our experience bears out, taxpayers often commence non-filing after having had collection problems. Being able to discuss their problems in a neighborhood "non-official" environment -- and not during the work week -- should enhance compliance.

C. Continuation of the Program.

The Taxation Section of the District of Columbia Bar is considering continuing the program as long as the Nonfiler Initiative is continued by the Service. Even after the 1992 filing season ended, the volume of nonfilers using our program increased. Because most of our attorneys do not regularly prepare returns, it will be necessary to secure the continuing assistance of VITA or TCE volunteers. In this regard, we will need cooperation from the Service, because VITA and TCE volunteers generally terminate their volunteer activities on April 15 when the current filing season ends. If the Service's Initiative remains in effect next year, given the track record that we now have, we should commence our pre-filing-deadline program throughout the city on a more frequent basis beginning in February.

VI. Problems Encountered in the Implementation of the IRS Nonfiler Initiative.

A. Limited Recognition of Our Section's New Program.

One of the problems associated with the Initiative is the compliance attitude of the nonfilers themselves. These individuals are not accustomed to an institutional framework which requires them to plan ahead, make appointments and comply with deadlines. Moreover, being outside of the system, they may not be aware of programs such as this. Our Taxation Section's program was a new one, and, notwithstanding its success this year, it should be more successful next year, assuming both a broad-scale publicity "blitz" much farther in advance and the start of the program itself several months before the termination of "tax season." Nonfilers will see it as a ready resource. There remains, of course, the ever-present problem that some nonfilers do not want to reenter the tax system.

We understand that there is an inherent conflict between this type of program and enforcement efforts to keep taxpayers in the system. The Service should evaluate its Initiative on a national basis in terms of cost-effectiveness, *i.e.*, how many taxpayers reentered the system, what was the total revenue gain, what was the cost of the Initiative, *etc.* If the weighing of interests suggests continued utilization of this type of approach, such "institutionalization" might help further efforts.

B. The Need for the Internal Revenue Service to Provide Additional Tax-Compliance Education and Information about Relief from Civil Penalties.

1. Tax-Compliance Education.

Steps must be taken to better educate the community about the taxpaying and reporting responsibilities of employers and what is required by independent contractors to document income and expenses. Consideration should be given to enhancing the information-reporting program so that businesses will be required to report fully all payments to service providers. Not only will this ensure better compliance by employers and payors, but it will also enhance voluntary compliance by the service providers themselves.

For example, one of our clients secured day-labor job through a non-profit tax-exempt organization located in Maryland which acts as a broker for United States residents who seek day work as construction laborers. These individuals congregate daily at the organization's office, and they are picked up on trucks by "employers" who pay them in cash without documentation. The non-profit organization does not provide them with any instructions as to how to account for their income. Assuming that they are employees, rather than independent contractors, not only do they lose the recognized benefits extended to employees by employers, but their failure to maintain consistent documentation of their gross income may well prevent them from taking advantage of the earned income tax credit and, as a result, may actually increase their tax liability.

The Service should educate such nonprofit organizations and should also take steps to enforce compliance by the construction industry and other industries which adopt similar practices with respect to day laborers. Even if taxpayers themselves do not earn enough from a single employer to require the employer to report the income, the assisting non-profit organizations should be able to provide a chart to the taxpayers with instructions as to how to record their cash income on a daily basis, so that these taxpayers are able to enter the taxpaying system and document their entitlement to the earned income tax credit, if applicable.

2. Information from the IRS about Relief from Civil Penalties.

At the July, 1993 press conference conducted by the Baltimore and Richmond District Directors to publicize the Service's nonfiler days in those Districts and in those Districts' press releases, no mention was made of the possibility that taxpayers who came in during the nonfiler days and who presented reasonable cause for their failure to file could obtain relief from civil penalties. Instead, the nonfiler sessions were promoted by the respective District Directors as an opportunity to get right with government and avoid criminal prosecution. Given the relatively low criminal-tax prosecution rate, it should be considered whether relief from criminal prosecution alone may be a significant "selling point" for most nonfilers.

In our view, taxpayers would be further encouraged to get right with their government if they had reason to believe that they might qualify for relief from civil penalties for failure to file and pay. Although we understand that the Service has not obligated itself to waive civil penalties and that the facts in each case will dictate whether a waiver is possible, we also know that the Service is not required to assert such penalties in compelling cases. In our view, the possibility of relief from civil penalties should be explained by Service personnel when the Nonfiler Initiative is publicized. Taxpayers would be more encouraged to re-enter the tax system if they were aware of the fact that they might qualify for civil-penalty relief. Because nonfilers are unsophisticated in the interpretation of tax law and many taxpayers are not native English speakers, we recommend that, in making such pronouncements about civil-penalty relief, Service personnel provide express examples of those facts that may be considered reasonable cause in appropriate circumstances.

C. Publicity for the Nonfiler Initiative.

Groups such as our Taxation Section need assistance persuading the news media to "run our story." Local Service staff have expressed a legitimate concern that the Service's publicity for local Bar programs implementing the Nonfiler Initiative may undercut the Bar's representation that the names of noncompliant taxpayers will not be reported to the Service. Nonetheless, the Service has professionals who can be particularly helpful in writing copy and launching a "media blitz," and we would hope that they could provide further assistance in publicizing local Bar programs.

The limited publicity by the local press was most disappointing in our case. By way of anecdotal example, I was called on April 12 by a television correspondent who wanted me to provide a satisfied nonfiler who had reentered the system so that he could interview the taxpayer as part of an annual April-15 tax story. I responded that I could not locate such a taxpayer at the time but that, had he been present at our April-10 TAX DAY, perhaps a taxpayer would have consented to have been interviewed at that time. He replied that he did not know about the TAX DAY, and I responded that I had sent to him, by name, at least two press releases. He stated that he receives so much correspondence that he often must determine merely by looking at the envelope whether to open it and read the release. Obviously, he determined not to open the two envelopes in which our Section's press releases were enclosed. In this case, the "news" was not the production of a nonfiler for an annual April-15 story but, rather, that prior to April 15 there was an ongoing program in place to service taxpayers and enhance tax compliance. We know that when the program was publicized to certain segments of our community -- such as on WRC-TV and WHUR of Howard University -- they heard and responded to it.

D. Confusion about the Implications of Section 7214(a)(8) on the Participation by Government Employees in the Nonfiler Initiative and the Service's Efforts to Clarify this Issue.

In putting our program in place, we discovered a problem with application of section 7214(a)(8) insofar as permitting Internal Revenue Service employees to participate in the implementation of the Nonfiler Initiative.

Section 7214(a)(8) provides, in relevant part, as follows:

"(a) UNLAWFUL ACTS OF REVENUE OFFICERS OR AGENTS. -- Any officer or employee of the United States acting in connection with any revenue law of the United States --

. . .

"(8) who, having knowledge or information of the violation of any revenue law by any person . . . fails to report, in writing, such knowledge or information to the Secretary;

. . .

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years or both. . . ."

Internal Revenue Service employees who volunteer (i) as VITA tax-return preparers and who prepare past-due returns in that capacity, (ii) as Revenue Officers such as those whom the Service deployed at our Section's April-3 TAX DAY sites or (iii) who seek to counsel taxpayers might all be required under an overly strict and hypertechnical interpretation of the above-quoted Code section to take names and report to the Service all nonfilers who come to them for assistance with respect to past-due returns. We viewed such an interpretation as inconsistent with the legislative purpose of the statute and the spirit of the Nonfiler Initiative, and we brought this problem to the Service's attention. We are pleased to report that the Service has taken steps to inform its employees that disclosures made by nonfilers who participate in the Nonfiler Initiative will be viewed as voluntary disclosures and that, accordingly, unless Service personnel witness behavior by nonfilers who have made voluntary disclosures which would lead them to believe that such nonfilers do not intend to file their returns, Service employees who implement the program need not report the names of the nonfilers.

E. The Need for Greater Participation in the Initiative by the IRS's District Offices.

Notwithstanding the Service's national Initiative and even the summer nonfiler program by its Baltimore and Richmond Districts, we found that these same Districts were not as quick as we had hoped in responding to our effort to put our nonfiler program into place. Because our initial meeting was delayed by District officials until late January 1993, we were unable to put our program in place until late in the filing season. Even though we ultimately received valuable assistance from the Baltimore District, this did not provide us with adequate opportunity to "institutionalize" the program or publicize it as much as we would have wished. We understand that a

nonfiler program was not initiated within the Richmond District until after the end of the filing season. Moreover, notwithstanding our repeated offers of assistance, we were not contacted by the Baltimore District with regard to its nonfiler days this past summer until only eight days before the first-scheduled session. This made it difficult for us to organize staffing during the vacation season, although we were ultimately successful in placing our volunteer attorneys at each of the two sites on each of the three nonfiler days sponsored by the Baltimore District in this area. We understand from Baltimore District officials that the ABA Section of Taxation attorney who was to marshal volunteer attorneys in the Baltimore area was not informed in advance about the Baltimore District's nonfiler days in the Baltimore metropolitan area. As a result, no volunteer legal assistance was offered to Baltimore area nonfilers who appeared at Baltimore area nonfiler sites operated by the IRS Baltimore District.

F. The Need for Coordination with the Government of the District of Columbia.

Lastly, our Taxation Section is obviously disappointed with the lack of cooperation that it has received to date from the District of Columbia Department of Finance and Revenue. While we hoped for a resolution of this problem even after our April TAX DAYS, we understand that no formal cooperation with or endorsement by the District of Columbia was obtained in time for the Baltimore District's nonfiler days three months after our Section's TAX DAYS.

VII. Conclusion.

In closing, it is our Section's view that the Nonfiler Initiative is a most worthwhile program. Assuming its cost-effectiveness -- and that nonfilers see it as a real benefit -- it should be continued for a long enough time period to yield significant results.

John S. Nolan, Lipman Redman and Scott P. Crampton of the ABA Section of Taxation have devoted much time to the Initiative -- John Nolan in coordinating the program nationally through the ABA Section of Taxation and Lipman Redman and Scott Crampton as the ABA representatives in this area. I have also worked closely with John F. Kelly and James H. Maloney, tax attorneys in Richmond and Arlington, Virginia, respectively, and I know that they are most enthusiastic about the program. Dominic LaPonzina, the Baltimore District's Public Affairs Officer, has been most helpful.

Significant thanks must go to our Section's Steering Committee and Tax Policy Task Force who have been consistently concerned about the administration of the program in a manner that serves our local community and who have allocated our Section's financial resources to ensure the program's success. In the last analysis, I cannot thank enough our Taxation Section's enthusiastic group of volunteer attorneys who rearranged their schedules on short notice and dedicated their weekends to this project. With increased cooperation from the Internal Revenue Service's Baltimore and Richmond Districts, the District of Columbia Government and the press, our Section remains convinced that we can perpetuate a valuable service to our citizenry and the Federal taxing system.

Thank you again for providing me with the opportunity to testify before you.

Respectfully submitted,


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Attachments

TAXATION SECTION



The District of Columbia Bar

Serving Committees:
 Patricia G. Lewis, co-chair
 Colin A. Ready, co-chair
 Glenn R. Carrington
 Stephen J. Cooney
 Ellen A. Hennessey
 F. David Lake Jr.
 Charles B. Tomlin

James S. Gurelick
 D.C. Bar President
 Mark H. Tenney, III
 D.C. Bar President-Elect
 Katherine A. Manafem
 D.C. Bar Executive Director

March 24, 1993

MEMORANDUM

Colin A. Ready
 Chair, Council on Sections
 Barbara J. Knif
 Vice Chair, Council on Sections
 Edna Soback
 Board of Governors Liaison
 Carol Ann Cunningham
 Sections Manager

TO: Attorney Volunteers for April 3 and 17 Non-File Assistance Days
FROM: Jane C. Bergner
RE: Instructions and Background Materials

Committees:
 Corporation Tax
 Employee Benefits
 Estate Planning/Death Related Taxes
 Exempt Organizations
 International Tax
 Post-Through Entities and Real Estate
 Tax Audits and Litigation

My sincere thanks to each of you for volunteering your time to counsel delinquent taxpayers as part of the Nonfiler TAX DAYS. If you will not be able to participate as originally planned, you must notify me as soon as possible. My office telephone, which is supported by both Voice Mail and an operator, is (202) 223-8959. My telecopier number is (202) 822-8106. My home telephone in cases of emergency is (301) 229-8886. I am trying to locate a mobile phone for the TAX DAYS, in which case I will inform your location captain of the number.

LOCATION. Those of you who are volunteering for April 3 will find the location to which you have been assigned and the hours it will be open on an attachment to this memorandum. April-17 volunteers will receive a subsequent notice of their locations. Keep this memorandum and accompanying material handy and associate it with your subsequent location notification.

Some of you may have to travel to reach your assigned site. If you do so by car, please be aware that there is convenient parking either on the street or in a parking lot. All sites are safe, and you may wish to investigate traveling by Metro. The sites open at 9:30 AM. We will have made arrangements for you to enter the sites at 9:15 AM; accordingly, please try and arrive at your assigned site at 9:15 AM or earlier so that you will be ready for business upon the site's formal opening. Captains (see below) should be at the sites with the forms, etc. at 9:00 AM.

Please introduce yourself to the other attorney and TCE/VITA volunteers. Remember that these individuals are performing a valuable service in working together with us on this project and be courteous and considerate of what may be their concerns with respect to the preparation of certain return forms. *Remind the return preparers to ask the walk-in nonfilers whether they wish to talk with an attorney before they begin the preparation process. Also remind the preparers that they should solicit reasonable-cause statements from the taxpayers if the taxpayers wish to be considered for waivers of the failure-to-file and failure-to-pay penalties. You may be able to assist the walk-in taxpayers in drafting these statements. (See the discussion below on the informational data enclosed).*

MEDIA. If members of the media show up at a non-filer assistance site and wish to film the activity or interview you and/or the taxpayers, they should be allowed into the facility only if they agree not to film or interview anyone without first receiving the individual's express permission. If you are consulted by a taxpayer, you should point out that by providing an interview, he/she is destroying his/her anonymity.

SUPERVISION. Each site will be supervised by an attorney "captain." The captain of each site will receive an additional attachment to this memorandum, listing the volunteer attorneys who have been assigned to the site. Each captain will be responsible for purchasing and making name tags for all volunteers and for liaison with the TCE or VITA volunteers who will be preparing returns, including providing the preparers with past-due return forms which the captain should arrange to obtain from me.

ENCLOSURES WITH THIS MEMORANDUM. Your packet also contains: a number of copies of (1) an engagement letter; (2) a form that the taxpayers whom you counsel may use to request copies of their Forms W-2 and 1099 from the IRS; (3) pre-addressed envelopes, one of which should be used by each taxpayer to mail his information request to the IRS; and (4) a form letter to be used to accompany each past-due return to be filed by each taxpayer (the VITA and TCE volunteers who prepare the returns should have filing envelopes to be used for mailing the returns, but each return in each envelope should be accompanied by a copy of this letter signed by the taxpayer(s)).

I have also enclosed important informational data (described below) and a Non-Filer Assistance Program Feedback Form, which should be completed and returned to me.

Our news release and flyer, also enclosed, will apprise you of what we have told taxpayers about our program.

NAME TAGS AND DRESS. Please be certain to wear a tag for identification. Please dress in a professional manner, as you would in the office.

THE ENGAGEMENT LETTER. You should sign two (2) originals of the enclosed standard engagement letter, and each taxpayer should also be asked to sign the two originals. One original is to be retained by you, and the other original is for the taxpayer's records. This should be done at the outset of your discussion, after a brief introduction by you. The engagement letter is for your protection and serves the additional purpose of answering some key questions about the applicability of the Program (limited to persons whose income comes entirely from legal sources).

OUR ROLE. Please note that our role does not include actual return preparation. Each site will be staffed by either VITA or TCE volunteers who are trained in the preparation of past years' returns. Although we will not be preparing the returns, we will be available to answer questions put by either the preparer or the taxpayer before being turned over to the preparer. *Given the qualification tests listed in the Engagement Letter, you should use your discretion in terms of emphasizing such factors as (a) the absence of any illegal income, (b) the need for all returns to be complete and correct and (c) the confidentiality of your meeting with the taxpayer.*

Our primary role is to educate the walk-in delinquent taxpayers to the principles of the IRS Non-Filer Program and to counsel them, on a confidential basis, with respect to any questions or concerns that they may have. The principal advantages of qualifying for the program are (1) freedom from criminal prosecution; (2) the IRS ordinarily will not require non-filers to file returns for more than 6 prior years (*i.e.*, not prior to 1986); (3) liberal extended-payment terms and consideration of offers in compromise if the taxpayer's assets and income justify it; and (4) fair consideration of waiver of civil penalties if the circumstances evidence reasonable cause.

Taxpayers will generally qualify for the program if they meet the following requirements:

1. Their income is solely from legal sources.
2. They make the disclosure of non-filing prior to being contacted by the IRS. In this context, "contact by the IRS" means that the taxpayer or the taxpayer's representative has received notification by the IRS by telephone call, letter or personal visit that the taxpayer is under criminal investigation. Therefore, unless the taxpayer has been contacted by a member of the IRS's Criminal Investigation Division, he or she can qualify for the program, notwithstanding other contact from the IRS concerning the taxpayer's civil liability.
3. The taxpayer either filed a true and correct tax return or is cooperating with the IRS in ascertaining the correct tax liability.
4. The taxpayer pays the full amount due, or in those situations where the taxpayer is unable to make full payment, makes *bona-fide* arrangements to pay.

Obviously, if taxpayers do not meet the above requirements, you should advise them that they do not qualify for the program and that they risk criminal prosecution if they elect to proceed.

INFORMATIONAL DATA ENCLOSED. I have enclosed copies of the following: (1) IRS News Release 92-94, describing the program; (2) a letter from former Commissioner Shirley Peterson, accompanied by a number of questions and answers which should provide valuable information to you in counseling nonfilers; (3) IRS News Release 92-114; (4) December 4, 1992 letter from former Acting Assistant Attorney General James A. Bruton of the Tax Division, Department of Justice; (5) Reasonable cause guidelines from the Internal Revenue Manual; and (6) a description of the nonfiler program as it relates to tax practitioners who themselves may have failed to file returns for prior years, as well as a Tax Coordinator explanation of the program as it relates to practitioners. You should review this material thoroughly before participating in TAX DAY, so that you are able to properly counsel taxpayers and practitioners.

OBTAINING INFORMATION FROM THE IRS. You will want to review with taxpayers what data they have brought with them. Some taxpayers may not have enough information to enable them to submit an accurate return. It is important that the returns submitted be accurate, because the Nonfiler Program does not extend to inaccurate returns. Moreover, our TCE and VITA volunteers cannot be asked to prepare returns for years for which taxpayers do not present adequate documentation.

In some instances, taxpayers will need to obtain records of their income for the years for which they intend to file returns. The IRS maintains copies of all Forms W-2 and 1099 filed by employers and payors for the years for which it is requiring past-due returns under the Nonfiler Program. As noted above, your packet includes several copies of a letter that can be used by taxpayers to obtain this information from the Service. The taxpayers must complete the letter by including their name(s), addresses, telephone numbers and social security numbers(s). They should then circle the appropriate tax years for which they need income information as well as the copies of the forms that they need, either W-2s or 1099s. You also have pre-addressed envelopes in your packet that can be used to mail the form letter. Obviously, the taxpayers will have to provide the postage.

Alternatively, taxpayers can request the missing information by calling the telephone numbers listed at the top of the form letter, but it may be difficult to reach the IRS at this time of year.

The IRS is generally able to supply taxpayers with copies of the forms requested within one month. **Be aware** that taxpayers who request copies of W-2s and 1099s are given approximately eight (8) weeks by the IRS from the time that such information is mailed to them to file the back-due returns for the years for which the information was requested. If they fail to file their returns within the 8-week period, they will be contacted by IRS personnel, and if they continue to fail to file, they will not remain eligible for the Nonfiler Program and may be subject to criminal and civil penalties. Thus, the taxpayers whom you counsel should be made aware of the fact that once they initiate their request to the IRS, they must follow through. They will be at risk if they fail to do so.

With respect to obtaining information, as with the entire program, the Service is "speaking softly and carrying a 'big stick.'" If taxpayers do not come forward now to take advantage of the Service's goodwill, they may subsequently be subject to civil and criminal penalties, and the Service will not be forgiving.

TAX-RETURN PREPARATION. Our role does not extend to return preparation. As noted, VITA and TCE volunteers will be preparing the returns. These volunteers will have one copy of each adjoining state or D.C. return for each of the years 1986-1991 on file with them. The standard engagement letter deals with the federal government's sharing information with state taxing authorities. This is important, because taxpayers may ask you questions about this aspect of filing out-of-time returns. Taxpayers should be encouraged to file state returns for the same years for which they are filing past-due federal returns, but if they are reluctant to do so, they should be permitted to go ahead and file their federal returns without the state returns.

It is my understanding from talking with the Baltimore District Director and his staff members that Maryland state taxing authorities have indicated that they will administer the Maryland program in a manner similar to the IRS initiative. I do not know about the Virginia policy. With regard to the District of Columbia, we have attempted to reach officials repeatedly by phone and mail, but they have not replied. Accordingly, and regrettably, we can offer no assurance that D.C. will administer a program in the same manner as the federal program, requiring, for example, only six years of past-due returns and exhibiting leniency as to reasonable cause. You must be honest with taxpayers on this issue, but the engagement letter should make your response easier.

LETTERS TO ACCOMPANY PAST-DUE RETURNS. Your packet contains several copies of a letter to be used to accompany each return filed. This is important, because the IRS must know that the late-filed returns are being filed under its Nonfiler Program. If a taxpayer is going "next-door" to the VITA or TCE volunteer to have his/her return(s) prepared, have him/her complete and sign one (1) original of the letter and then xerox as many copies of the letter as years for which he/she is filing back-due returns. The Service Center has requested that each return for each year be mailed in a separate envelope; thus, the need for multiple copies. If a taxpayer will be filing his/her returns subsequently and/or is awaiting further information, you may wish to provide him/her with a blank copy of the letter, with instructions as to how it is to be completed and filed with the return(s).

REASONABLE-CAUSE STATEMENTS. As noted above, you should be alert to the necessity of submitting reasonable-cause statements with the late-filed returns so that taxpayers may be considered for waivers of the failure-to-file and failure-to-pay penalties. You may wish to assist taxpayers in drafting such statements to accompany the returns. They may be hand-written.

There is no reasonable cause defense for underpayment of estimated tax which is also a penalty that can be imposed.

You -- and the taxpayers whom you counsel -- should understand that this is not an amnesty program where penalties are automatically forgiven. Interest liabilities can never be waived, although interest can be compromised as part of an offer in compromise. If the Service does not believe that reasonable cause exists, a taxpayer will be afforded his/her normal administrative appeal rights if he/she wishes to challenge the IRS's determination.

If a taxpayer does not wish to discuss the reasons that he/she did not file, he/she should not be pressured to respond.

EXTENDED-PAYMENT OPPORTUNITIES. We will have both Installment Agreement Forms and Offer in Compromise Forms, as well as supporting financial-data forms, available at our TAX DAY sites.

Installment Agreements. Taxpayers who want time to pay whatever tax is due may file the appropriate Installment Agreement. It can be completed with whatever payment program a taxpayer wishes to suggest, but (s)he must be told that there is no guarantee that the Service will accept it and (s)he will be contacted directly by the Service at a later date.

Any taxpayer who has a total tax, interest (and penalties, if applicable) bill of not more than \$10,000 and can pay it off in three years should be assured that such a proposal will most likely be acceptable to the IRS. Installment agreements for larger amounts may also be submitted, but there is no guaranty of immediate acceptance, and they may have to be supported by taxpayer financial data.

The IRS has developed a form that can be submitted with a return to indicate that a taxpayer is proposing an installment agreement. My understanding is that such form must be attached to the top of the return. I am attempting to have these forms at the sites.

Cases involving larger deficiencies will be immediately referred to the IRS's Collection Division and/or Taxpayer Service for contact regarding extended installment agreements, etc.

Offers in Compromise. As noted in your informational data, the IRS has made extensive revisions to the Offer in Compromise program. Please study questions 16-20 annexed to former Commissioner Peterson's letter.

Briefly, to be processable, an offer should fully identify the taxpayer and the liability on the Form 656. The instructions to the form should be complied with and all parties named in the offer must sign the form. Taxpayers are encouraged to provide written, detailed statements of the facts and reasons that support acceptance of their offers, and these must relate to doubt as to liability, collectibility or both. The statement "I can't pay" is generally inadequate. A completed collection information statement must accompany an offer. A joint offer can be filed only by a husband and wife wanting to compromise joint liabilities.

IRS ASSISTANCE. If taxpayers need further assistance, such as in computing interest, discussing reasonable cause, working out an installment agreement or entering into an offer in compromise (or if you and a taxpayer determine that the taxpayer has a particularly difficult problem), the IRS Baltimore District Director has detailed a specific employee in the Washington, D.C. office to contact. Her name and address are as follows:

Revenue Officer Kay Ann Mills
Internal Revenue Service
500 North Capitol Street, N.W.
Washington, D.C.
(202) 874-0068

It is my understanding that Ms. Mills knows that she is the designated IRS staff person to work on the Nonfiler Program in this geographical area. Taxpayers who contact her should be instructed to inform her that they received her name at the TAX DAY sponsored by the D.C. Bar Section of Taxation in cooperation with IRS Baltimore District Director William Caine.

GOOD LUCK. Beyond these lengthy comments and the enclosures, there is not much more that I can tell you. You will be "on your own," except for reaching me by mobile phone. You are all competent tax attorneys, and I am certain that with your professional knowledge and the help of the enclosures, you will do a terrific job! Please remember to get your Feedback Forms to me as soon as possible following your work. For April-3 volunteers, I would like to have your views before the April-17 TAX DAY. Thanks once again.

Jane C. Bergner, Esq.
1201 Connecticut Ave., N.W.
Suite 750
Washington, D.C. 20036
(202) 223-8959
Fax: (202) 822-8106

Date: _____

TO: Name:
Address:

Dear _____:

The Internal Revenue Service (IRS) has announced its "Non-Filer Program," designed to make it easier for persons who have not been filing federal income tax returns to get back in the system. You have come to me as one of the volunteer lawyers working with the Program, to help you decide whether to participate.

In making that decision, you should know about the possibility of various types of penalties. Although it is not possible to offer any guarantees, the IRS public announcements do make it relatively clear that there will be no criminal prosecution or other criminal penalties if you meet certain tests, namely that:

1. To your actual knowledge as of this date, you are not under investigation by the IRS for any matter, including your failure to file the "Missing Returns."

2. Your income from all sources required to be reported on the Missing Returns is solely from legal sources. In other words, *your income is not to any extent, illegal income*, such as, for example, income from drugs, illegal gambling, theft, embezzlement or other such sources.

If you meet these tests, the Program calls for you to file the Missing Returns for no more than six (6) years back (even though you may not have filed returns for longer than that).

As stated, because the IRS Program is new, I cannot and do not guarantee that if you file the Missing Returns, you will in fact not be subject to any criminal punishment or civil fines. However, both my experience and a logical interpretation of the relevant IRS public statements make it likely that if you satisfy the tests listed above and file complete and accurate Missing Returns, you will not be subject to criminal prosecution and will not incur any criminal penalties. Also you may be able to avoid civil penalties if there is a reasonable explanation for your failure to file the Missing Returns.

In addition, I have explained to you, and you understand the following:

1. Even though you may avoid penalties, you will be required to pay the tax, if any, which is due on filing the Missing Returns, and interest on that tax (interest varies by year and probably ranges from 7% to 12% per year and is compounded, which means that you pay interest on the unpaid tax for each year and also on that interest).

However, the public announcements indicate that the IRS will cooperate in working out a payment plan that will let you pay that debt over a period of time. The details depend upon such things as your current income and assets.

2. The law requires the IRS to respond to certain requests for information from state tax groups and other government agencies (federal and state and the District of Columbia); however, the IRS has indicated that in the "true" voluntary disclosure, it will not volunteer such information.

I am offering to advise you with regard to the Missing Returns without fee, and although I am giving you my best professional advice, I cannot and do not offer any guarantees of "success" or of your satisfaction in any respect. I emphasize this, not to frighten you, but rather to make sure that you understand that the Non-Filer Program is new and experimental, subject to the IRS's discretionary judgment, and because you and I have not met before.

I have signed two identical originals of this letter. Please also sign each original of this letter as your consent to my advising you as to the IRS Non-Filer Program, subject to all of the conditions stated above. I shall keep one signed original and shall return the other signed original to you for you to keep.

Very truly yours,

My name printed:
Lawyer

I have read, understand and consent to all terms and conditions of this Engagement Letter.

Taxpayer' Signature:

Taxpayer's name printed:

Date:

Internal Revenue Service
P.O. Box 538
Baltimore, MD 21203

Attn: Correspondence Unit

Tel. Nos: 1-800-829-1040
1-410-962-2590

Re: Name(s) of Taxpayer:
SSN:
SSN:

Address of Taxpayer:

Tel. No. (Home):

Tel. No. (Work):

Forms: 1040

Tax Year(s):

Dear Sir or Madam:

I (we) am the above-identified taxpayer(s). I (we) are aware of the IRS program for nonfilers.

This letter constitutes a voluntary disclosure that I (we) have failed to file Federal income tax returns, Forms 1040, for the following years, which I (we) have circled:

1986, 1987, 1988, 1989, 1990, 1991

I (we) am presently attempting to complete my return(s) for the years identified above and plan to file the returns as soon as possible with the Internal Revenue Service. In order to complete the returns, however, I (we) need additional information from the Internal Revenue Service.

Would you please send to me (us) at the above address copies of the following forms for the following years which you have in your records. I (we) have circled the forms needed and the years for which such forms are needed:

<u>Form(s)</u>	<u>Years</u>
Form 1099	1986, 1987, 1988, 1989, 1990, 1991
Form W-2	1986, 1987, 1988, 1989, 1990, 1991

Thank you.

Sincerely,

Date: _____

Internal Revenue Service Center
Philadelphia, PA 19255

Re: Name(s) of Taxpayer:
SSN:
SSN:

Address of Taxpayer:

Tel. No. (Home):

Tel. No. (Work)

Form: 1040

Sir:

Under the IRS Non-Filer Program, I am now filing my (our) federal income tax returns for the following years (circle the correct year or years):

1986 1987 1988 1989 1990 1991 1992

Pursuant to instructions from the IRS, each return is being mailed in a separate envelope with a copy of this letter.

This voluntary action on my (our) part is being taken pursuant to and as a part of the IRS Non-Filer Program.

Very truly yours,

My Signature

TAX HELP FOR NONFILERS

If you have not filed your tax returns for one or more years, the IRS has announced a nationwide program to make it easy for you to get back into the tax-paying system.

A group of local tax lawyers and tax-return preparers is participating in that program without fee or other cost to you. This group will be available to advise you without any exposure to the IRS. On April 3, 1993 these lawyers will be sponsoring a TAX DAY so that you can learn more about the IRS program. Assuming that you have legal (and not illegal) income, this may be the best -- and possibly the last -- opportunity for you to solve your tax return and payment problems at the lowest possible cost. There should be no criminal prosecution or other criminal penalties if you meet certain tests. The IRS will consider any reasonable explanation for failing to file returns in deciding whether there should be any civil penalties.

IF YOU COME TO THE TAX DAY IN YOUR AREA, YOU WILL SEE THAT YOU HAVE EVERYTHING TO GAIN AND NOTHING TO LOSE AND THAT THERE IS A RELATIVELY PAINLESS WAY FOR YOU TO SOLVE YOUR PROBLEM.

Come with your questions and/or bring whatever records you have for each year for which you want to file a "catch-up" return to the most-convenient of the following TAX DAY locations between 9:30 AM and 1:00 PM on April 3 where there will be local tax lawyers to advise you. If you have the necessary information with you, volunteers will assist you in preparing your returns.

Chevy Chase Community Center in Chevy Chase, D.C.
5601 Connecticut Avenue, N.W.

Fort Davis Branch Library
Alabama Avenue and 37th Street, S.E.

Lamont Riggs Library
South Dakota Avenue and Kennedy Street, N.E., and

Woodridge Library
Rhode Island Avenue and 18th Street, N.E.

An additional TAX DAY will be held on Saturday, April 17 from 9:30 AM to 1:00 PM at the Martin Luther King Library.

If you have them, you should bring with you forms that you may have received from people for whom you have worked, cancelled checks showing taxes paid and medical, interest and charitable contributions and a copy of the last tax return that you may have filed.

TAX HELP FOR NONFILERS

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Come with your questions and/or bring whatever records you have for each year for which you want to file a "catch-up" return to the following TAX DAY location between 9:30 AM and 1:00 PM on April 17 where there will be local tax lawyers to advise you. If you have the necessary information with you, volunteers will assist you in preparing your returns.

Martin Luther King Branch Library
901 G Street, N.W.
Washington, D.C.

If you have them, you should bring with you forms that you may have received from people for whom you have worked, cancelled checks showing taxes paid and medical, interest and charitable contributions and a copy of the last tax return that you may have filed.

NEWS RELEASE

For Release March 22, 1993

District of Columbia Bar Section of Taxation
 Contact: Jane C. Bergner, Esq.
 1201 Connecticut Ave., N.W.
 Suite 750
 Washington, DC 20036
 Tel: (202) 223-8959
 Fax: (202) 822-8106

**D.C. Bar Section of Taxation Offers Free Help
 In Filing Overdue Tax Returns**

Washington, D.C. Beginning Saturday, April 3, 1993, the District of Columbia Bar Section of Taxation will be offering free special assistance to special taxpayers -- those who have not filed a tax return for more than a year and who want to get back into the tax-paying system. The IRS has recently announced a nationwide program to make it easy for nonfilers to reenter the system, and D.C. tax lawyers have announced a series of TAX DAYS to counsel metropolitan Washington area taxpayers in what steps must be taken to file past-due returns, how to arrange for payment to the IRS over an extended time period and how to obtain missing information. The lawyers will be assisted by trained VITA volunteers who will prepare past-due returns for those taxpayers who have the necessary documentation with them.

The IRS Initiative

Dom LaPonzina, IRS Public Affairs Officer for Maryland and D.C., has stated that "We know from experience that some people have not filed because of confusion over tax law changes or because they are unable to pay the tax owed. Others may have moved from one geographical area to another, lost their records, or suffered family hardships such as divorce or death of a family member. Starting up a new business or the failure of a business can also result in someone's failure to file. While the IRS will eventually locate 'nonfilers,' right now is a good time for them to come forward voluntarily and get right with their government."

IRS public announcements make it relatively clear that, assuming that income is from legal and not illegal sources, there will be no criminal prosecution or other criminal penalties if taxpayers meet certain tests. Those announcements indicate also that the IRS will consider

(more)

any reasonable explanation for failing to file returns in deciding whether there should be any civil penalties. The IRS initiative may be the best — and possibly the last — opportunity for taxpayers to solve their tax-return problems at the lowest possible cost.

Some taxpayers may be due refunds, but refunds are lost if not claimed within three years. Loss of other benefits such as tax credits, including the earned income credit, or Social Security payments is also a cost of not filing. Self-employed individuals who do not file returns may lose credits toward their social security coverage in retirement or for disability. They won't have a work history to qualify them for social security benefits when they retire if they have not filed a federal tax returns.

Of particular importance for lawyers or other professionals admitted to practice before the Internal Revenue Service, special arrangements have been made with the IRS Director of Practice which may make it possible for those professionals to file their late returns without jeopardizing their right to practice before the Service.

What's the Plan?

Assistance by D.C. Bar Section of Taxation members will be given without fee or other cost. This may range from providing basic instructions and guidance on how to organize records and prepare specific prior-year forms/schedules to arranging follow-up appointments for the more-complex issues. *Advice will be confidential with no names being reported to the IRS by the volunteers.*

Taxpayers are encouraged to visit the TAX DAY sites on April 3 and to try and locate and bring with them whatever records they have for each year for which they want to file a catch-up return. These records can include such available information as Forms W-2 and 1099 and other payment information from employers or customers, cancelled checks reflecting taxes paid and such deductible items as medical, interest, charitable contributions and miscellaneous expense payments and a copy of the last return that was filed. The D.C. tax lawyers will explain how nonfilers can obtain missing information, how to document income and expenses and how to arrange for an extended-payment plan. VITA volunteers will be available to assist in filling out overdue returns. The TAX DAY sites will be prepared with copies of prior-year tax forms.

(more)

Will nonfilers face criminal charges?

The IRS has never recommended criminal prosecution when taxpayers come forward and make a true voluntary disclosure of failing to file returns and then file those returns accurately. However, the IRS has also indicated that those who willfully continue to fail to file their tax returns will be subject to criminal prosecution.

Date, Time and Location of the TAX DAY sites.

Nonfilers should bring questions and/or whatever records they have for each year for which they want to file a "catch-up" return and come to one of the following four locations between 9:30 AM and 1:00 PM on April 3, 1993 where there will be local tax lawyers to advise them:

Chevy Chase Community Center in Chevy Chase, D.C.
5601 Connecticut Avenue, N.W.

Fort Davis Branch Library
Alabama Avenue and 37th Street, S.W.

Lamont Riggs Library
South Dakota Avenue and Kennedy Street, N.E., and

Woodridge Library
Rhode Island Avenue and 18th Street, N.E.

An additional TAX DAY will be held on Saturday, April 17 from 9:30 AM to 1:00 PM at:

Martin Luther King Library
901 G Street, N.W.

TAX DAYS are planned for suburban Maryland and Northern Virginia locations. If there is sufficient interest, additional D.C. sites will be open on April 17 as well as on later Saturdays in the year.

Additional Information

Additional information concerning the D.C. Bar Section of Taxation Program can be obtained by calling (202) 331-4364. Information concerning the IRS Nonfiler Initiative can be obtained by calling the IRS toll-free at 1-800-829-1040. For State of Maryland information, call toll-free 1-800-MD-TAXES.

FOR IMMEDIATE RELEASE Contact Person:

Jane C. Bergner, Esq.
 1201 Connecticut Ave., N.W.
 Suite 750
 Washington, DC 20036
 Tel: (202) 223-8959
 Fax: (202) 82208106

NON-FILER PROGRAM

Radio and TV Ad

If you have not filed your tax returns for one or more years, the IRS has announced a nationwide program to make it easy for you to get back into the tax-paying system.

A group of local tax lawyers and tax-return preparers is participating in that program without fee or other cost to you. This group will be available to advise you without any exposure to the IRS. On April 3, these lawyers will be sponsoring a TAX DAY so that you can learn more about the IRS program. Assuming that you have legal income, this may be the best -- and possibly the last -- opportunity for you to solve your tax return problems at the lowest possible cost.

Bring whatever records you have for each year for which you want to file a "catch-up" return and come to one of the following locations between 9:30 AM and 1:00 PM on April 3 where there will be local tax lawyers to advise you:

Chevy Chase Community Center in Chevy Chase, D.C.
 5601 Connecticut Avenue, N.W.

Fort Davis Branch Library
 Alabama Avenue and 37th Street, S.W.

Lamont Riggs Library
 South Dakota Avenue and Kennedy Street, N.E., and

Woodridge Library
 Rhode Island Avenue and 18th Street, N.E.

An additional TAX DAY will be held on Saturday, April 17 from 9:30 AM to 1:00 PM at the Martin Luther King Library. Come to the site nearest to you and bring whatever documentation you can find -- such things as forms that you may have received from people for whom you have worked, cancelled checks showing taxes paid and medical, interest and charitable contributions and a copy of the last tax return that you may have filed.

Remember that in order to be eligible for this program, your income must be from legal -- and not illegal -- sources. If you have any further questions, please call 202-331-4364.

Chairman PICKLE. Let me ask you, who do you represent? Are you a private practitioner?

Ms. BERGNER. I am a private practitioner, but my views have been approved by the D.C. Bar taxation section, and the program that I ran in the District of Columbia was a program that really was a program of the taxation section of the D.C. Bar. At the same time, however, I am on the ABA task force.

Chairman PICKLE. You keep making reference to all these examples that we are not able to do this and we could not address this. Do you represent an organization or do you—

Ms. BERGNER. That was the taxation section of the D.C. Bar.

Chairman PICKLE. You are an individual practitioner, but you do a lot of this type of representation for nonfilers for ABA and for—

Ms. BERGNER. Well, I do that and I was chair of the tax audit and litigation section and have done a lot of tax litigation and audit work, so I had the experience.

I also was in the tax division at the Department of Justice at the same time as Mr. Saltzman.

Chairman PICKLE. But your recommendations are good. I won't try to go through all of them. I was impressed with your first recommendation that you use some of these ads and appeals to come in as nonfilers and you need more.

Ms. BERGNER. We do.

Chairman PICKLE. And IRS ought to be more productive. I would think they would be the source of producing these ads or appeals.

Ms. BERGNER. I would think so. We found that when the IRS went to the Hispanic radio station, they got our spots on and those spots were notably successful. Radio and TV were the most successful.

Chairman PICKLE. In all your publishing ads or appeals, did you as an organization ever pay for any of the ads to see that they run?

Ms. BERGNER. No, we didn't pay for anything. I did all the press releases.

Chairman PICKLE. How do we get them to run the ads? Does IRS pay for any?

I don't think so. I don't know where I have heard many instances where the ABA or other organizations or CPA's actually run these ads and try to get people in as a courtesy. Maybe they do. Apparently it is a question of paying it to the media, if not paid, they won't run it.

Ms. BERGNER. We expended significant resources on this program.

Chairman PICKLE. I know that. You question whether the Internal Revenue is derelict in not mentioning possible relief and civil penalties, something we ought to find out. Are you saying that they don't purposely mention that?

Ms. BERGNER. I don't know that it is purposeful. They do publicize the relief from criminal prosecution, but I am suggesting that perhaps publicity could be more effective in bringing people in if they were to mention civil-penalty relief.

Chairman PICKLE. Have you made these recommendations to the IRS?

Ms. BERGNER. Yes.

Chairman PICKLE. Nationally or to local directors or what?

Ms. BERGNER. Principally, to the national office through Mr. Voskuil. He is the coordinator.

Chairman PICKLE. What did he say about keeping the revenue officers, someone on at night, to listen to cases or if you are preparing for a hearing, public meeting, at least have one of the testifiers accompanied, did he comment about that?

Ms. BERGNER. No, he didn't. I think that is a budgetary determination that is probably beyond his authority.

Chairman PICKLE. At least they didn't respond to it?

Ms. BERGNER. No, they didn't, but would comment that some of the revenue officers who assisted us told us that they found this work gratifying, as opposed to some of the other kinds of enforcement that they are required to perform.

Chairman PICKLE. Do you think we ought to waive the independent contractor approach and go directly to W-2's?

Ms. BERGNER. I don't think that is the answer. I think that in some instances, greater education has to be out there so that people understand what can be done.

Chairman PICKLE. Your entire statement will be in the record and we will also try to get responses from IRS on these recommendations.

STATEMENT OF CLAUDIA HILL, ENROLLED AGENT, CHAIR, GOVERNMENT RELATIONS COMMITTEE, NATIONAL ASSOCIATION OF ENROLLED AGENTS

Chairman PICKLE. I would like to hear from Ms. Hill, representing the Enrolled Agents.

Ms. HILL. Thank you, Mr. Chairman.

I am Claudia Hill, representing the National Association of Enrolled Agents. Our members have been very much involved in responding to the needs of taxpayers seeking their assistance in filing delinquent returns, and we are involved with the program in Texas that you heard about earlier today.

Not only is the issue timely, but it is one that has generated a number of comments from our members because we see it as an important step in restoring confidence in the voluntary assessment system. Over a year ago, Commissioner Peterson went on "Good Morning America" letting the Nation know about the 10 million people who had failed to file their 1990 returns. The reaction of many reliable, honest, compliant taxpayers was, "what took them so long?" The reaction of the people who heard about the media campaign from IRS, "get to us before we get to you," were frightened.

We saw examples of this in letters to "Dear Abby" which we have included in our written testimony. The reaction of the professional tax community was that the mechanics of implementing such a widespread program were not in place. Practitioners were given little guidance in how to deal with the system. Fortunately, IRS responded to those basic mechanical problems quickly and most of the ones that we had at that time have been dealt with to date.

The concerns we face today really reflect the experience we have gained over the past year in working with the system. These experiences are best illustrated by the six case studies that we have compiled in the format requested by this committee that are in-

cluded in the written comments. Those six case studies are three taxpayers from Texas and three from California giving age, sex, and employment history and the mechanics of what happened with their delinquency. We believe these are typical of the taxpayers that are coming forward under this program.

But we have noted seven concerns that we have with the program that are illustrated by the case studies. The first we have found is that almost half the taxpayers presenting themselves with requests for assistance have never seen the Substitute for Return documents previously issued on their accounts.

IRS testified earlier that this program, SFR, is one of the most successful techniques they have to date. It is where IRS creates a substitute tax return based on information that they have. The problem is, they mailed this SFR to the taxpayer's last known address in their records, and that is usually the one filed with the last return ever filed.

As we are seeing, approximately half never receive this SFR document. The reason they are coming in for assistance is that after the SFR assessment is into the collection stream and their wages are being levied or their bank accounts are being levied, they come forward to find out what is going on and asking how to clear it up. We believe IRS needs to do a better job of obtaining current addresses to make the program more effective.

Chairman PICKLE. I think I would agree, but how?

Ms. HILL. One section of the Internal Revenue Service, the Automated Collection Centers uses private sector methods to locate people when they try to find them to tell them that they owe money. A similar technique is not being used by the group of people working in the Service Center Collection Branch who are creating the SFR documents. In one of the case studies that I have, the taxpayer had worked for the same employer for the 5 years of delinquency. The way IRS got in touch with her was by sending a SFR document to her last known address. The notice was sent out of Brookhaven, N.Y., even though she had lived in California for 5 years, and had the same employer for 5 years. The way she was contacted was with the SFR document being sent certified to her parents, who live in Oklahoma. They contacted her and said, what have you gotten yourself into?

I believe that there are mechanisms available to them that they just aren't using. I talked a little bit earlier with Mr. Monks, who is the IRS Ombudsman, and he has agreed that they are going to pursue a program to see what better mechanism they can use in this regard.

Chairman PICKLE. I think they should. Are you saying that they would make more effort if they have a refund to give somebody?

Ms. HILL. No. If they believe that they have gone through the process of creating a substitute for a return and they have determined that the taxpayer owes the IRS money, after a period of time and notices they have the authority under section 6020-B to start trying to collect the money. The division of IRS that works with actually collecting the funds is more resourceful in tracking people down. That is what I am saying.

The second concern we have is with the inconsistent treatment of taxpayers regarding penalty abatement criteria. When Commis-

sioner Peterson announced the program, the phrase, "we are willing to consider abatement of penalties if you have a reasonable cause for not filing" became closely recognized as one of the carrots being offered those to come forward voluntarily.

Our experience with the program to date has been that penalty abatement criteria is inconsistently applied, that some taxpayers get a better deal depending on what district they live in. Some practitioners report that abatements are handed out liberally at the larger, public nonfiling programs.

Chairman PICKLE. Some taxpayers get a better deal depending on the district they live in—you mean New York gives a better deal than Texas?

Ms. HILL. Boston was giving a great sale this summer as opposed to San Francisco who was saying every one of them goes on there. The Service Centers were instructed to apply the penalties consistently on everyone that comes in and wait until later to consider reasonable cause.

Chairman PICKLE. You agree the penalties ought to be the same?

Ms. HILL. The program should be set up with a definition of reasonable cause, and the people should know and have the criteria available to them.

Chairman PICKLE. Doesn't IRS give you the criteria?

Ms. HILL. They have made progress in this, definitely.

Chairman PICKLE. Each district is a free agent to interpret the standards?

Ms. HILL. It has the appearance of that sometimes. So we believe IRS can do a better job of training their employees and the practitioner community and public in abatement procedures so we don't hear stories of people getting better deals at different points in the system.

A third issue that we have seen is that the statute of limitations bars refunds from closed years. In most cases, it is presumed that unless a taxpayer files within 3 years to claim the withholding or estimated taxes that have been set aside for that period, they lose the right to later claim those credits.

Recently, two court decisions interpreted a 2-year rule if information documents have been filed by third parties. Many taxpayers who have failed to file or file late, do not understand these rules. Many times the taxpayers are in a hardship situation caused by their accumulated delinquencies and it is compounded by the inability to have barred year refunds used as offsets against the accumulation of penalties and interest on years when they owe money.

We are asking, is it possible for a legislative change that would permit refunds barred by statute to at least be applied against taxes due in the subsequent years—maybe not totally refunded to the person, but simply used as a nonrefundable credit. We have seen situations where it makes sense to at least let them have credit for the money that was paid in to be used to offset money they owe.

A fourth area of concern does have to do with refund offsets because IRS is sometimes inconsistent in making offset. It is difficult to work with people who are filing their returns late and to help them understand their total liabilities, especially when they have

a mixture of refunds and balance due years. But problems are created if they receive refunds when they actually own IRS money. Especially after we, the preparers of the returns, have flagged the return to ask that any refunds be offset against balances due.

I can think of more than one taxpayer who has gotten a check from IRS, immediately cashed it and then weeks later when IRS sent them a bill saying you owe us money, had no money available to pay it. We believe IRS can help eliminate this problem by establishing special processing addresses at each Service Center for the submission of delinquent returns and looking more carefully at their procedures to see if they can be processed as packages rather than as individual returns going through the system.

Along that same line, we are concerned about the confusion caused when a taxpayer has not only individual returns to file but related small business and employment tax returns. An amazing barrage of correspondence is unleashed when all of the delinquent returns hits the Service Center and the correspondences are not tied to each other.

Processing returns as a package with a consolidated response to the taxpayer submitting, saying this is what you owe, consolidated into one sheet would be more helpful than the kind of correspondence we get now which is separate for every period of returns being filed late.

We are starting to be concerned that IRS is not devoting enough staff to accommodate those who are coming forward voluntarily and practitioners who represent the late filer. We are starting to wonder if IRS is drowning in its own success? The number of nonfilers reached to date is really the tip of the iceberg. If IRS is going to invite people back into the system, they should have enough trained personnel to handle the responses for those people who are coming forward.

Finally, we have a concern because nonattorney practitioners lack privileged communications when working with delinquent taxpayers. Some nonattorney practitioners, enrolled agents, and CPA's refuse to work with delinquent taxpayers. Failing to file tax returns is a crime and without the ability to have privileged communications with their taxpayer-client, they fear the potential for involvement in future litigation regarding the taxpayer.

The thought of being forced to testify against a person whose return they prepared, whether it was for compensation or at a pro bono tax clinic, and later being sued by that person for disclosing such information, is really chilling. This issue, too, would require a legislative change.

Before I close, I would like to mention the exhibits included in our written testimony. The first being the Dear Abby column that illustrates how people's fears keep them from filing and what encouragement they need to come into the system.

But the second exhibit is a survey summarizing our California affiliates' 24 case studies that their members submitted. Significant in this survey was the reason people failed to file timely; 47.7 percent of those people who requested the EA's assistance said that their initial failure was the result of either divorce or some other traumatic event; 31.6 percent indicated it was because they had no money to pay the taxes they feared they owed. Also, significant

from the survey is the manner in which the balances due with the late returns is being satisfied; 22.2 percent of the people had refunds available from other years that could offset the amounts due. Only 11 percent who owed a net balance due with the accumulated returns actually had the cash available to pay it at the time they filed; 44.4 percent had requested installment payment arrangements and 16.6 percent had requested an offer-in-compromise.

My concern is that with the enormous amount of people coming into the program who are not able to satisfy their liabilities at the time they are due, we will have a delayed effect with collection of the funds.

Chairman PICKLE. What length of—is the California study, how many pages?

Ms. HILL. I have summarized it into 2 pages in the written comment.

Chairman PICKLE. That will be made part of the record as well as your other exhibits.

Have you submitted these recommendations to IRS?

Ms. HILL. Our organization has a liaison meeting coming up November 8, where this topic will be discussed.

Chairman PICKLE. Keep after them and let our committee know what they say to you.

[The prepared statement and attachments follow:]

TESTIMONY OF CLAUDIA HILL NATIONAL ASSOCIATION OF ENROLLED AGENTS

The National Association of Enrolled Agents appreciates the opportunity to comment on this very timely issue, and one of great significance to our members. Our organization represents 8300 Enrolled Agents—specialists in representation of individual and small business taxpayers. Enrolled Agents work with more than four million individual taxpayers annually, and have been very much involved in responding to the needs of taxpayers seeking their assistance in filing delinquent tax returns.

On September 30, 1992 then Commissioner Shirley Peterson appeared on "Good Morning America" to let the nation know about the "10 million people who failed to file their 1990 returns." She indicated that IRS was initiating an all-out effort to contact those people and "get them back into the system."

The reaction of many reliable, honest, compliant taxpayers was, "What took them so long?!"

People who heard about IRS's "get to us before we get to you" media campaign, and knew they were the target, began contacting Enrolled Agents for assistance. They were frightened. One taxpayer aptly described her fears in a letter to "Dear Abby". (That article is included as Exhibit A, attached.) Dear Abby referred her and those in her situation to Enrolled Agents.

The reaction of the professional tax community was that the mechanics of implementing such a widespread program were not in place. Many of our members reported that IRS personnel in the Districts, Automated Collection Sites and Service Centers were not aware of the program. Channels were not in place to expedite obtaining information available to IRS from third party reporting programs (i.e. W-2's, Forms 1099), which was important because the late filer often did not keep good records. Taxpayers complained to us that upon initial contact with IRS their fears and concerns about how they would be dealt with by the Service were met with cold responses like, "You should have known to file on time!"

Practitioners were given little guidance on how to work with the system; how to determine how many years to file for long-term delinquents, at what point in the process to request abatement of penalties, where to send delinquent returns, how to initiate dialog regarding payment options.

Fortunately IRS responded to these concerns quickly. They contacted professional tax organizations to get their feedback and made efforts to respond to our concerns. Most of the basic problems we faced in working with the system have been addressed to date. Our contacts with IRS employees find that they are very much aware of the program and ways to expedite practitioner and taxpayer requests for information. In most cases IRS employees appear to be sensitized to the fears and traumas that may have led to the original non compliance by the taxpayers.

The concerns we face today reflect the experience we have gained over the past year with the program. These experiences are best illustrated through the following six case studies we have compiled in the format requested by this Committee. We believe these to be "typical" taxpayers who have come forward as a result of this program.

Profiles of Individual Nonfilers
Compiled by Enrolled Agents in Response to
Committee on Ways and Means Hearing
Subcommittee on Oversight
October, 1993

Case One: (TX1)

Taxpayer was female, age 49;

Unemployed at time of filing; formerly a self-employed realtor.

Had not filed for five years; non filing had resulted from stress of abusive relationship. Was currently under doctor's care for stress, and wanted a fresh start. Filing of delinquent returns was a part of that, and her fiancé insisted she get her act together prior to their marriage.

Prepared returns resulted in tax assessments in excess of \$60,000 plus penalties and interest. Taxpayer filed an Offer in Compromise based on inability to pay and offered a sum in excess of her net worth, consisting of funds borrowed from her daughter. The "offer" was accepted by the IRS.

Case Two: (TX2)

Taxpayer was male, age 55;

Employed as hotel catering manager.

Had not filed for five years; he assumed money owed him by IRS was like a savings account. He had more than adequate withholding in four of the five years; was not aware that failure to file within a specific period would result in forfeiture of refunds. The filed returns reflected approximately \$1500 refunds in each of the oldest years, a balance due of \$700 in year three, and refunds of approximately \$450 in each of the more current years.

Taxpayer was distressed to learn that the two \$1500 refunds were barred by statute. The balance due, with interest and penalties in year three exceeded the two refunds from years one and two. He subsequently paid the remaining assessment.

Case Three: (TX3)

Taxpayer was male, age 45;

Self-employed as a supply salesman.

He had not filed for five years because he knew he owed money, yet had no ability to pay. In many of the delinquent years the net income from his self-employment was fully absorbed by his itemized or standard deduction and exemptions for self, spouse and three children, the tax assessed was the result of self-employment taxes.

All delinquent returns have now been filed; taxpayer is working with IRS Collection division regarding the balance due.

Case Four: (CA1)

Taxpayer was female, age 48;

Employed as an occupational therapist.

When she appeared in the EA's office, she had not filed for four years, had her 1992 return on extension, and had collected several years of IRS correspondence--mostly unopened. She wanted to refinance her residence, but was aware that IRS had filed a Federal Tax Lien on the property and her tax liabilities needed to be resolved before a lender would work

with her. She admitted she had no reasonable cause for failure to file; she simply had "procrastinated." In the oldest year she knew she owed money--that's what had caused her to delay at that time. When she hadn't heard from IRS after a year, "It was easy to not file the next year."

IRS had prepared "Substitute for Returns" for two of the years involved basing assessments on information documents they had available for wages and interest income. Although information was available to IRS about mortgage interest she had paid, that information was not considered in the computations.

Of the years involved, the taxpayer was liable for unpaid taxes plus interest and penalties now totaling over \$8000 in the oldest year. One year's refund of approximately \$1200 was lost to barred statute. The refunds from years three and two as well as the current 1992 year were used as an offset to pay the oldest year liability. She received a balance of refunds of approximately \$2300.

Difficulty encountered in processing these returns related to IRS failure to offset the balance due with refunds, without regard to our instructions filed with the returns that a balance due year should be offset with refund years. Taxpayer was cooperative in asking the EA to return IRS refund checks she received to be used to pay the balance due. In addition, taxpayer was confused by correspondence she received from IRS as they processed the various years, out of sequence, failing to consolidate the various billings and credits.

Case Five: (CA2)

Taxpayer was female, age 53;

A County assessors office employee.

She had been married and living in the same city during all five years of non-filing. Taxpayer honestly believed her husband had filed the returns. The delinquent years were the same years taxpayer was married. She became aware of the problem when the IRS Service Center in Brookhaven, NY sent a certified mailing addressed in her maiden name to her parent's home in Oklahoma. Her parents contacted her.

Substitute for Returns (SFR) had been prepared by IRS for years 1987, 1988 and 1989. Statutory Notices of Deficiency had also been filed for each of those years. (Those were the notices that her parents received certified.) Since she had been married and lived in California during the entire period at issue, it was necessary to obtain information about her community income, and reflect it equally to her and her husband. Although she was in the middle of a divorce at the time she visited the EA, he agreed to provide a Power of Attorney for purposes of gathering information needed to file her returns. It took 12 weeks to obtain information documents from IRS regarding his income during the periods needed (her's were available from the SFR documents for the first three years; she had the more recent two years data). Upon receipt of the information, allocations of the income and withholdings were made so she could file married, filing separate returns. She owed approximately \$350 tax plus interest and penalties for each delinquent year.

Requests for abatement of failure to file penalties were requested with the filings; they were ignored. Upon questioning IRS as to when we could revisit the penalty issue, EA was informed that after the delinquency was paid in full, a claim could be filed. EA assisted taxpayer obtaining an installment arrangement for payment of balances due.

Difficulty encountered, in addition to the penalty issue: Four months after filing of returns with Brookhaven, and on the same day installment arrangements were arranged with the IRS Collection division in California, EA was contacted by the local District's Examination division about taxpayer's "failure to file returns for years 1988 and 1989."

Interestingly, taxpayer's spouse has not come forward to file the delinquent returns for which information is now available.

Case Six: (CA3)

Taxpayer is male, age 34;

In most of the delinquent years he was self-employed as a graphic artist.

Upon contact with EA, taxpayer was very motivated by the receipt of a levy notice by his "employer/contractor." IRS had prepared Substitute for Returns for him, and in the absence of response, the amount assessed had become collectible. He very much did not want IRS to take the approximately \$12,000 he was due under his contract. EA made arrangements to place a hold on the levy notice to permit the taxpayer time to complete delinquent returns.

Taxpayer initially indicated he hadn't filed for two years. As the case developed EA became aware that more years were involved. It was finally determined that six years had not been filed. Taxpayer originally wanted to report only that income reported to IRS by third party payors. When that information seemed inconsistent with his ability to have supported himself during the years involved, and this fact was called to his attention by the EA (combined with her decision to withdraw from representation if he didn't report all income completely) he agreed to work more diligently to reconstruct his records of income and expense.

Although all years have not been completed to date, it is expected that outstanding assessments will total over \$75,000 including interest and penalties. The taxpayer was self-employed; no estimated taxes had been paid.

Concerns Illustrated by These Case Studies

(1) Concern: almost half of the taxpayers presenting themselves with requests for assistance have never seen the SFR document previously issued on their account. The SFR program appears to be the most successful technique IRS is using to encourage non filers to make contact. IRS mails the SFR to the taxpayer's "last known address"--usually the one on the last return they filed many years before, and they never receive it. They come in for assistance when the SFR assessment is being levied from their wages. *IRS needs to do a better job of obtaining current addresses to make this program more effective, and hopefully reach taxpayers quicker when resolving their problem is less complex.*

(2) Concern: inconsistent treatment of taxpayers regarding penalty abatement criteria. When Commissioner Peterson announced the program, the phrase "We are willing to consider abatement of penalties if you had a 'reasonable cause' for not filing," became closely recognized with the program as the carrot being offered those who came forward. Our experience with the program to date has been that penalty abatement criteria is inconsistently applied; that some taxpayers get a better deal in different IRS districts. Some practitioners report that abatements are handed out liberally at the larger "Non Filer Days" promotions, yet the Service Centers apply all applicable penalties even if a reasonable cause is cited with the filing. *IRS could do a better job of training their employees and the practitioner community in penalty abatement criteria and procedures. Information regarding requests for abatement of penalties pre-assessment, after assessment but before full payment, and after payment should be addressed.*

(3) Concern: statute of limitation rules bar refunds from "closed" years. Most circuit courts honor the three year rule; some interpreted a two-year rule if information documents have been filed by third parties. *Is it possible for a legislative change that would permit refunds barred by statute to at least be applied against taxes in subsequent years?* Although contrary decisions from multiple circuits create confusion, it would be helpful if IRS were taking a consistent position on this matter nationwide.

(4) Concern: refund offsets are not consistently made when multiple year returns are filed at one time. We believe IRS can help eliminate this problem by establishing special processing addresses at each Service Center for the submission of delinquent returns. In the absence of a special address, we ask that practitioners be encouraged to submit them to the "Priority Case Processing" address at each Service Center.

(5) Concern: IRS has not devoted enough staffing to accommodate those that are coming forward voluntarily and practitioners who represent the late filer. Several of our members expressed concern about the length of time it takes to obtain information documents from IRS, non responsiveness of Practitioner Hot Lines when asked to expedite handling of information requests. One member participated in a telephone call-in television program on the non filer program and was amazed how many callers indicated that they could not get through to IRS on the toll-free numbers, and some indicated that when they did, their questions were not fully resolved. *If IRS is going to invite people back into the system, they should have trained enough personnel to handle the responses. Delays may give the procrastinator an additional excuse for not attending to the filings.*

(6) Concern: the confusion caused when a taxpayer has not only individual returns to file, but related small business and employment tax returns. An amazing barrage of correspondence is unleashed when all of the delinquent returns hit the Service Center. *Processing the returns as a "package" and a consolidated response to all of the late filed returns submitted by a single taxpayer would be greatly appreciated.*

(7) Concern: non-attorney practitioners are concerned with lack of privileged communications when working with delinquent taxpayers. The thought of being asked to testify against a person whose return you prepared at a pro bono clinic or for compensation, and later being sued by that person is chilling. *This issue would require a legislative change.*

Additional information regarding the non filer initiative as perceived by the Enrolled Agent community can be obtained by referring to Exhibit B, Summary of Non Filer Report Forms submitted by members of the California Society of Enrolled Agents and Exhibit C. IRS/EA joint efforts to encourage non filers to come forward are characterized as successful by our members, (Exhibit C describes efforts in Florida and Texas).

Summary of NAEA Reactions to the Non filer Initiative

NAEA believes the non filer initiative has been a moderately successful program to date. We believe it is a step that will help restore confidence in the tax system for the average compliant taxpayer, who voluntarily pays his fair share annually. We commend Regional Commissioner Richard Voskuil for conceiving the program, Commissioner Shirley Peterson for initiating it nationwide, and Commissioner Margaret Richardson for continuing to support it.

We believe that the problems we have experienced in this first full year of operation are related to the start up of the program. It took a year for the implementation and training; the program is still in its infancy. We encourage IRS and Congress to continue support for the program. Until IRS is able to move through the backlog of known nonfilers and begin a program approaching those serious nonfilers who have income totally outside the system as it exists today, the average taxpayer will still face April 15 thinking that they are shouldering more than their own fair share.

NAEA appreciates the opportunity to have responded on this issue. If there are questions regarding this testimony we would be pleased to address them. Our National office is also available for follow-up concerns.

IRS troubles:

Woman puts off filing and owes \$3,000

Dear Abby, Please help me. I did a foolish thing, and now I'm afraid I'll lose everything and possibly wind up in jail!

Back in 1980, I was alone and raising my son and a younger brother. I figured out my taxes, and I owed \$100. Abby, we didn't have enough money to eat the day before payday, and I wasn't able to come up with \$5, let alone \$100. I panicked and didn't file at all!

The following year, I was afraid to file because I was afraid their computer would show that I didn't file the year before and I would be in big trouble. Out of fear and stupidity, I have not filed since.

I have dug myself into a very deep hole. The IRS now says I owe \$3,000. I am willing to pay the money, but I can't pay it all at once. I am afraid the IRS will contact my employer and I will lose my job, or even get sent to jail. I need to know what to do.

— In Deep Trouble

Dear Deep,

It is time to take action. "Enrolled (tax) agents" are equipped to handle the most complex tax returns and, should it be necessary, are authorized to represent taxpayers before all administrative levels of the Internal Revenue Service. Many enrolled agents are former employees of the IRS and have undergone extensive training and testing in tax matters. You may find one by writing to: The National Association of Enrolled Agents, 6000 Executive Blvd., Suite 205, Rockville, Md. 20852. The 24-hour message number is 1-800-424-4339.

According to Joseph T. Davis, executive vice president of the National Association of Enrolled Agents: "It is best to tell the IRS the truth, because they have heard all the stories. Your employer will not be notified, you will not lose your job, and you will not go to jail."

You can expect to be penalized monetarily for your failure to file, but those who come



Dear Abby

Abigail Van Buren

forward voluntarily receive more generous treatment than those whom the IRS "catches." The longer one waits, the stiffer the penalties.

Dear Abby,

The letter from "Forgotten Relatives," who wondered why they had not received wedding gifts from this brother-in-law and that sister-in-law, brought back memories.

When I married my beloved husband 20 years ago, his whole family disapproved of me because I was divorced, had a 1-year-old son and was three years older than the bridegroom. My divorce had left me penniless (long story), and I had little more than the clothes on my back.

No one gave me a shower, and our wedding gifts were (1) three sets of bedsheets, and (2) a chip-and-dip bowl.

Yes, it hurt, but on my wedding day, I received the greatest gift in the world — my wonderful husband. I never regretted our meager beginning; it developed character in me.

Now after all these years, his family treats me with love and respect. "Forgotten Relatives" should forget about wedding gifts they never received and be thankful for what she has. Life is too precious to waste energy on greed.

— Thankful in Madera, Calif.

Dear Thankful,

Your husband also received one of the greatest gifts in the world on his wedding day: a wife with values who appreciates and adores him.

Taxpayers with fear of filing can get the help they need

DEAR ABBY: On May 11, 1992, you responded to an individual who wrote to say that because of a series of extenuating circumstances, she did not file her tax return one year.

As she missed filing once, she was afraid to file again the following year for fear of the consequences, so she had not filed since. You referred her to Enrolled Agents (EAs), who are authorized to represent taxpayers before all administrative levels of the IRS, and can help get people "back on track" with the government.

The response to your column was astounding! Here at the headquarters of the National Association of Enrolled Agents (NAEA), we received more than 10,000 telephone inquiries from people who had



Dear Abby

Abigail Van Buren

failed to file their tax returns — thanks to our 24-hour EA Referral Service hotline (800) 424-4339). We responded to each request from these concerned individuals (within 48 hours) with a list of member EAs in their area. Furthermore, for those who called our main business line (because they were wary of divulging their mailing address), we provided the names of EAs on the spot.

The time has finally come for

non-filers to stop living in fear and to get on with their lives.

NAEA now offers a free informational brochure designed especially for non-filers titled "Enrolled Agents — Taxpayer Representatives on Your Side," which is available by calling the 24-hour hotline, or writing or faxing your request to: NAEA, 6000 Executive Blvd., Suite 205, Rockville, Md. 20852-3813. Fax: (301) 231-8961. We treat all requests confidentially.

—DEBORAH B. VIEDER, DIRECTOR OF PUBLIC RELATIONS, NAEA

DEAR READERS: Be advised that the fees charged by Enrolled Agents vary according to location and services.

EXHIBIT B

Summary of Non Filer Report Forms

Submitted by Members of the California Society of Enrolled Agents
Documenting their Experience with Taxpayers coming forward under
the IRS Non Filer Initiative

January-July, 1993

Early this year the California Society of Enrolled Agents polled its over 3400 members for their reactions to the IRS non filer initiative. Realizing this is not a scientific survey, we present a summary of the 24 reports submitted.

Not all categories had responses; percentages reflect the incidence in which there was a response.

1. Number of days from contact by taxpayer to completion of returns for the taxpayer:

Less than 10 days	36.4%
10 to 30 days	18.2%
30 to 90 days	27.3%
More than 90 days	18.1%

2. What initiated the taxpayers coming forward at this time?

District contact	12.5%
IRS Media	12.5%
Service Center contact	20.8%
State tax agency contact	12.5%
Scared, worried	29.2%
Other	12.5%

3. Why did taxpayer initially fail to file?

Traumatic event/divorce	15.8%
Traumatic event/other	31.6%
No money to pay tax	31.6%
Other	21.0%

4. Number years delinquent at time of contact:

One	13.6%
Two	31.8%
Three	13.6%
Four	13.6%
Five or more	27.4%

5. Balance due, refund, or both?

Balance due	55.5%
Refund only	NONE
Both balance due & refund	44.5%

5a. Where there were both refund and balance due,

Refund lost to statute	22.1%
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6. How were balance due returns satisfied?

Paid in full with return	11.1%
Installment agreement requested	44.4%
Offer in Compromise . requested	16.6%
Offset from other years	22.2%
Other	5.7%

7. Regarding penalties, was "reasonable cause" present?

No, taxpayer did not qualify	13.6%
Yes, abatement requested	36.4%
No response to this question	50.0%

8. If information documents were requested, from whom?

Employer	40.0%
Internal Revenue	40.0%
Bank	20.0%

Exhibit C

"August 21, 1993 was the largest "Non Filer Day" in the history of the Dallas IRS District.

Members of the Texas Society of Enrolled Agents, affiliate of the National Association of Enrolled Agents partnered with the Dallas District of the Internal Revenue Service in providing eleven sites where delinquent taxpayers could receive "free" tax assistance. These eleven sites included the Ft. Worth and Dallas metroplex.

Advertising for this event included mailed advertising and prepared radio spots for all news media in the metroplex. In addition, participation in local area radio programs was provided. At least three separate shows ran promoting this event. Beth Tucker, IRS Compliance Coordinator and Beanna J. Whitlock, EA participated in an hour long radio program on KCBI. The format consisted of a brief explanation of the non filer program and one-half hour of call-in by listeners.

This day resulted in over 263 taxpayers being helped and over 1000 tax returns being filed with assessments in excess of \$1,000,000. Almost \$30,000 in revenue was collected that day.

The event was particularly successful due to the "one stop" service being offered. The returns were prepared, Revenue Officers were there to set up payment agreements or to discuss Offers in Compromise. Enrolled Agents were there to further assist the taxpayer with representation.

It was a "WIN-WIN" for everyone, especially the taxpayer!"

Beanna J. Whitlock, EA

"Florida Society of Enrolled Agents team with IRS for Florida's "Non Filer Days" program September 10 and 11, 1993. Project deemed an unprecedented success.

Five thousand hours were contributed by EA members and over 2,600 filers came forward with good results. The participating members were pleased with the attitude IRS personnel displayed in working with and encouraging reasonable arrangements for payment. That the word had finally filtered down and IRS was making reasonable attempts to get non-filers aboard was obvious.

The time that had elapsed since participants in this event had last filed returns ranged from one year to as many as fifteen years. The occupation listed for the non filers spanned a wide spectrum from former prisoners to doctors and lawyers."

Marjorie Joder, EA

STATEMENT OF DEBORAH WALKER, VICE CHAIRMAN OF THE TAX EXECUTIVE COMMITTEE, TAX DIVISION, AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Chairman PICKLE. Ms. Walker.

Ms. WALKER. Good afternoon. I am Deborah Walker, vice chairman of the Tax Executive Committee of the American Institute of Certified Public Accountants.

We appreciate your invitation to be with you today and consider the IRS nonfiler strategy. These initiatives, the nonfiler strategies, represent the formalization of an existing policy through an aggressive campaign to bring nonfilers back into the voluntary income tax system.

Obviously, the AICPA condemns nonfiling and we strongly support the IRS's program as an important step in the right direction. In asking us to appear before you today, you have asked for specific information on nonfilers. The anecdotal information that we get tells us that they are from all walks of life and there are many personal reasons for not filing tax returns. We have heard a lot of them today—divorce, bankruptcy, personal problems.

Although they come from many walks of life and they all have personal reasons for having dropped out of the system, the one thing that does seem true for all of them is that once they are noncompliant, they stay noncompliant for a long time. And this has a lot to do with what Richard pointed out, that they are afraid to come back in. It is easy to fall out of the system and it is hard to get back in.

Why do we have a nonfiler program? We have defined three reasons, most of which have been mentioned today, although the final one hasn't been touched on as much as it needs to be. The first, of course, are the budgetary limitations and the policy decisions that were made at the IRS level to not focus on nonfilers but rather to focus on collections, and that, as Ms. Richardson said, has been reversed.

The second, in part, deals with the complexities and procedures for paying and how to file. Nonfilers don't know what to do and how to get back in.

Finally, there is the complexity of the tax law that got them into being nonfilers in the first place. As one of the individuals mentioned, it requires too much recordkeeping and hard work. The IRS has made a substantial commitment, which we enthusiastically support, to secure delinquent returns, and we think that it is a good idea that they are utilizing the resources from examination, collection, criminal investigation, taxpayer service, and public affairs. We also appreciate the major efforts they took to involve the preparer community.

Based on feedback, there are a number of recommendations included in our written statement. A few of them have been mentioned by other speakers.

I would like to focus on three: Offers-in-compromise and installment agreements, IRS and State cooperation, and preparer penalties.

Many nonfilers are delinquent on a number of returns and consequently they owe a significant amount of money. The IRS has revised its guidelines and procedures for offers-in-compromise, situa-

tions where people are going to pay less than they owe in order to satisfy the liability and get right with IRS, so to speak.

Examiners have been given the authority in certain instances to enter into installment agreements when taxpayers are unable to pay their deficiencies. Our suggestions for this program focus on improving the efficiency, consistency, and effectiveness of the program. For example, the appointment of one officer responsible for offers-in-compromise within each district to increase the consistency with which offers-in-compromise are administered.

Chairman PICKLE. In each district IRS office?

Ms. WALKER. Yes; so that they will be focused on people within the district and everything will become more consistent. Revenue officers need to understand the importance of the program, that in fact getting people into the system, getting these nonfiler cases cleaned up in the long run will save money for the IRS and the taxpayer. The idea is not to drag the cases on but to get them in and cleaned up and ended.

Certain standards should apply in determining offers-in-compromise, such as having a set method of determining what a taxpayer's assets are. We believe forced liquidation value should be used for figuring out the assets that a taxpayer has. There should be specific guidance on allowable expenses for certain categories of taxpayers. We hear complaints that the expenses that are allowed in offers-in-compromise are not consistent among the different districts or different agents.

Finally, collateral agreements, where agreement to pay is based contingent upon future earnings, should be used only in unusual situations. In other words, the idea is when you find a nonfiler, to look at the situation, enter into installment payments or offers-in-compromise, but close the situation and get this person treated as a filing taxpayer.

Looking at Federal and State information exchange programs, the IRS does notify the States of delinquent filers and we need a certain level of cooperation between the IRS and the States.

Chairman PICKLE. You are not getting—we are not getting that cooperation now?

Ms. WALKER. In some cases, the States want more returns than the IRS is going after, so in some cases, the States are being harsher than the IRS. Sometimes the IRS doesn't take into account the State tax liability in figuring out what kind of net assets individuals have in order to pay the taxes, so it is not a recognized liability in the offers-in-compromise.

Finally, representing delinquent taxpayers is a specialized area of tax practice and I think that includes enhanced risk. Therefore, there are a lot of people that are concerned about return preparer penalties. Although I don't believe it is a good idea to eliminate the return preparer penalties for these types of returns, there does need to be special guidance as to how these penalties would be assessed.

We believe the IRS has begun an important program. We hope that you see our comments as constructive criticism. We have consistently told the IRS and reiterate here that we support their nonfiler initiative and hope that it can be continued. We, however, believe there are additional steps that they can take.

Also, Congress should recognize and react to the fact that the nonfiler penalty comes about by the complications in our tax law and the inability of the taxpayers to deal with that complexity, which also makes it more difficult for the IRS to administer the system. It seems to me that if some of the complications were solved, we would find that we wouldn't be here talking about nonfilers as such a big problem.

Thank you.

[The prepared statement follows:]

TESTIMONY OF DEBORAH WALKER
VICE CHAIRMAN OF THE TAX EXECUTIVE COMMITTEE
OF THE TAX DIVISION
OF THE
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Good afternoon. I am Deborah Walker, Vice Chairman of the Tax Executive Committee of the American Institute of Certified Public Accountants. Unfortunately, our Executive Committee Chairman, Harvey Coustan, is unable to be with you today, but I am privileged to replace him in representing our 310,000 members. The AICPA is the national, professional organization of CPAs of whom many (if not most) advise clients on tax matters and prepare returns for millions of taxpayers.

IRS' recent nonfiler initiatives represent the formalization of existing policy through an aggressive campaign to bring nonfilers back into the voluntary income tax system. The AICPA has worked for many years to remove the stumbling blocks that deter voluntary compliance; we strongly support this program as a step in the right direction. We also applaud your efforts, Mr. Chairman, in trying to assist the Service with their very important, but difficult to achieve, objectives. Thank you for providing us an opportunity to express our views.

The AICPA condemns nonfiling by any individual. Early in the program's implementation, the IRS informed us there were indications that tax professionals, including CPAs, were among the ranks of nonfilers. This completely unacceptable situation prompted us to enter into a year-long effort to educate our members, and the state CPA societies, about the program and to encourage nonfilers to come forward. Numerous discussions and meetings with IRS, in part, resulted in the issuance in February of Announcement 93-36 which allows professional firms to obtain a "fact-of-filing" confirmation on their partners and employees.

We have also considered ways in which we could enter into a broader campaign to assist the public. Once again, however, our profession's lack of privileged client communications has hindered our involvement. Despite the privilege problem, as well as preparer penalty concerns which I will comment on later, a number of state CPA societies have organized programs to assist nonfilers.

In asking us to appear before your committee you requested specific information about nonfilers. The anecdotal information our members have provided us indicates nonfilers come from all walks of life. They include automobile wholesalers, CPAs, lawyers, doctors, paramedics, computer consultants, contractors, small business owners, couriers, managers, corporate executives, manufacturers representatives, schoolteachers, retailers, laborers, and florists. They work in, among others, the trucking, airline, real estate, security, and entertainment industries. The reasons these taxpayers first joined the ranks of the noncompliant seem to be as varied as the taxpayers themselves but include divorce, prolonged overseas assignments, nonresident aliens who stay in the U.S. longer than originally intended, inability to pay large balances owed, books and records not updated, procrastination, personal problems, bankruptcy and other financial or business difficulties, illness and just plain ignorance. Some nonfilers are simply expressing disdain for a system where IRS' audit coverage is below one percent. They have no other reason for becoming a nonfiler other than they know, or think, they won't get caught.

Although nonfilers come from many different walks of life and become nonfilers for various reasons, there is one thread of commonality -- once they become nonfilers, their noncompliance is likely to last for a while because, in most cases, of their fear of the consequences of coming forward. One of our members indicated hearing of an individual who hadn't filed returns for twelve years!

Genesis of the Problem

Why do we have a nonfiler problem to begin with? We believe there are three major reasons. We understand that budgetary limitations and policy decisions have, for many years, caused the IRS to shelve taxpayer delinquency investigations and concentrate its efforts on collection cases where taxpayers had not paid taxes already assessed. The very high rate of nonfilers is, in part, attributable to the complexities of the procedures for payment where taxpayers were not able to pay and the past lack of emphasis by the IRS. In addition, we believe the complexity of the tax law has also contributed to the current problems.

The AICPA has, for some years now, been emphasizing the need for simplification in our tax system. Year after year, statistics indicate that approximately one-half of individual taxpayers feel it necessary to hire a professional preparer to comply with their tax return obligations. Many of our members are beneficiaries of this fact; nonetheless, we are strong believers in the need for constant attention to simplicity as an important tenet of a tax system that aims for voluntary compliance.

The IRS has now made a substantial commitment - which we enthusiastically support - to securing delinquent returns, in an effort utilizing resources from the Examination, Collection, Criminal Investigation, Taxpayer Service, and Public Affairs functions. We believe this new emphasis to be appropriate. We also want you to be aware of the major efforts the Service undertook to involve the preparer community in commenting on the program and in its implementation. This collegial process is reminiscent of your efforts, Mr. Chairman, just a few short years ago in achieving significant improvements to the penalty system.

Recommendations to Improve the Nonfiler Program

Offers in Compromise and Installment Agreements

As I previously mentioned, many nonfilers are delinquent on a number of returns and consequently, owe significant amounts. The IRS has revised its guidelines and procedures for offers in compromise (an agreement between the taxpayer and the IRS to pay less than the required amount in full satisfaction of the liability) to facilitate the resolution of unpaid accounts. In addition, examiners have been given the authority, in certain circumstances,

to enter into installment agreements when taxpayers are unable to pay deficiencies in full. To help implement these programs and to assist IRS with meeting their expectations, as set forth in their public relations efforts, we suggest the following:

1. One person in each district office should be appointed as the offer in compromise manager accountable for the timeliness of acceptance or rejection of all offers in that district. This manager should be willing and empowered to make decisions necessary to further resolution of the case. Any officer could seek assistance and guidance from this offer manager.
2. The IRS should explain in detail to the taxpayer, and to the taxpayer's representative, why an offer is not accepted so that another offer can be presented which has a realistic possibility of being accepted. The IRS should point out which assets, if any, it believes are undervalued or which expenses are too high. While, the revenue officer does not need to inform the taxpayer what amount would be acceptable, the IRS should focus the taxpayer on problems present in the offer being rejected.
3. When an offer is not going to be accepted, the taxpayer should be immediately notified so they can decide to make another offer or appeal the decision relatively quickly.
4. The IRS should analyze why revenue officers are reluctant to make decisions and accept offers. Perhaps they fear being second guessed when the offer is placed in the public record or fear setting an unfavorable precedent. These reasons should be determined and policies revised to encourage prompt decisions.

These four suggestions help alleviate the concerns expressed to us that revenue officers are often reluctant to consider an offer or afraid to make a decision. In addition, taxpayers are not advised of the reason an offer is insufficient, and oftentimes not even advised the offer is not going to be accepted. The revenue officer is waiting for a revised offer, but the taxpayer assumes the original offer is "just still in the works." The general slowness of the process and the consistency of application within offices are also common complaints.

5. The IRS National Office needs to emphasize to revenue officers that accepting offers does not create a "giveaway" program for taxpayers. Rather, revenue officers should stress program benefits; i.e., cost effectiveness, long range savings, and the ability of IRS collection employees to focus on more productive collection efforts. In general, we believe the IRS should increase explanations of the program to revenue officers to promote an understanding of why this is important.

This suggestion is necessary because it appears some IRS offices are not executing the new policy in accordance with the National Office instructions. The message the IRS' National Office gave to the public is still "trickling down" to the trenches. Possibly the official word has filtered down but the spirit of the new policy is not always being followed. In some instances, revenue officers still continue to be adversarial and contrary.

6. Except in unusual circumstances, a "forced liquidation" value should be used for asset valuations. All revenue officers should understand and adhere to this policy decision.

Disagreements on the valuation of taxpayers' assets continue to be the major stumbling block in accepting an offer. While some districts have issued instructions stating fair market value is a "forced liquidation" value, certain local offices within these districts do not apply this definition. Other districts have not issued such instructions. Standardization of the valuation policy will enhance the offer in compromise process significantly.

7. The IRS should more extensively train its revenue officers in decision making and negotiating skills. In addition, more guidance should be provided on acceptable lifestyles for various taxpayers, including, allowances for children's educational expenses, other relatives cared for, etc.

While we agree taxpayers who have had a high-income life style can, and should, cut back that life style, they probably cannot quickly adjust expenses to live on some small fraction of their normal yearly income. Fixed expenses can often not be reduced in the short term. We are told it is common for revenue officers not to understand this. In addition, no consideration is given to the costs of continuing to earn a high income in order to have the funds available to pay the IRS; e.g., clothes necessary to maintain a job, automobile to use in work, necessary business expenses, etc. Severe cutbacks may be counterproductive to future income generation. We believe current calculations of the present value of a taxpayer's income stream contain too many adjustments which result in unrealistic expense amounts and raise the amount needed for the offer. Also, revenue officers do not understand that assets might be cross collateralized and effectively prevent their sale for any net realizable funds.

8. The IRS National Office should develop procedures which specify that the use of collateral agreements are the exception and should not be routinely solicited.

Collateral agreements (where IRS seeks payment contingent on future income) are still routinely being requested. This effectively voids the offer in compromise. We believe that the compromise would be more appealing to a wider range of taxpayers if collateral agreements were limited to tax benefits available to the taxpayer. In our view, an offer in compromise should be approached in the same manner as a bankruptcy. We would suggest that if an offer is accepted and the offer amount is paid, the taxpayer should be free of debt related to nonfilings included in the offer. With a collateral agreement for future income, the taxpayer does not know when the debt will be eliminated or the exact amount to be paid. The contingency nature of a collateral agreement discourages settlement and is a disincentive to future income generation.

9. Once an installment agreement is accepted, late payment penalties should stop accruing.

In a nonfiler context, where a number of returns may be delinquent, the continuing accrual of penalties may create an unmanageable situation. While a statutory change may be the most efficient means of achieving this, the IRS could have a policy of being lenient in waiving penalties once an agreement is reached. Such a policy should be communicated to revenue officers and other IRS personnel. Deviations from the policy should be an exception.

IRS/State Cooperation

Under federal/state information exchange programs, the IRS does notify the states of delinquent filers who come forward. It would seem to us, in light of the information exchange, that an appropriate level of cooperation and coordination should follow. We therefore suggest:

1. IRS' FedState Relations Division should inform the states of consistency problems and continue to work to achieve additional coordination.
2. The IRS National Office should clarify that the state tax liability is an important, real component in considering offers in compromise or installment payments arrangements.

The IRS and some states have had problems properly coordinating their nonfiler efforts. For example, the Service has an established policy of normally requesting up to six years of delinquent returns. Some states, however, are not adhering to that number and are insisting on additional years' returns. Also, our members indicate the IRS will not accept a state's tax liability for delinquent taxes as an expense component in working out an offer in compromise or an installment payment arrangement for the federal tax liability.

Preparer Penalty Concerns

Representing delinquent taxpayers is a specialized area of tax practice and carries with it enhanced risks for the assertion of return preparer penalties. Therefore:

1. The IRS needs to develop special guidance, perhaps including special rules for using estimates where records are not readily available, for return preparers under this program.

IRS' reluctance to establish some kind of special rules for return preparer penalties has been a problem for our profession. Fear, especially by small firms or individual practitioners, that the nonfiler client would typically have no records - or very inaccurate records - causes members to have great concerns about accepting engagements to prepare

delinquent returns. We have previously expressed our concern to the IRS over the inconsistent administration of the preparer penalty system. Potential preparer penalty assertions in these nonfiler cases dramatizes the need for national coordination by the IRS.

Conclusion

We believe the IRS has begun an important program with significant implications for bringing nonfilers back into the system. The Service should be particularly commended for its outreach to the preparer community in developing and implementing the nonfiler program. We hope our comments will be viewed as constructive criticism: we have consistently told IRS, and reiterate here, that we strongly support its nonfiler initiative and hope it can be continued. We do believe, however, that some additional steps, such as we are recommending, can significantly increase the yield on the Service's investment of resources.

Also, Congress should recognize and react to the fact that the current nonfiler problem finds a large part of its roots in the complexity of the tax system and in IRS' difficulty in administering the system as it currently exists.

* * * * *

Once again, we appreciate the opportunity to present our views here today.

Chairman PICKLE. I think you are correct that we can eliminate some of these complications because the process to begin with is complicated and if you are not educated, or you get behind, or are in distress, or you have no money, it is hard to separate it. It gets more confusing all the time.

Have you made these recommendations to IRS?

Ms. WALKER. Yes; Peggy Richardson.

Chairman PICKLE. I am going to ask the staff to be sure that we take each one of these recommendations and see that IRS responds to us. I think the program is a good one. I am a little bit leery of starting a program that people might think each year they can get nonfiler relief. It is important they not get that because we ought to have a proper demonstration project or appeal to come in and then if they think they can get relief every year, that hurts the system.

It also, I think, hurts the system if they hear that there are 10 million out there that are not paying income taxes. That person will say, hey, that is a pretty good number. I will be 10 million and 1. That is not the case, because I didn't mean tax cheaters. I just mean altogether, for a lot of reasons and if that is—if we are getting returns from 95 percent we will say, if that group of 10 million only represents 5 percent, that is not a bad thing.

On the surface, though, it gives the wrong impression, so we have to be careful they don't understand it is that big a number. I will try to get responses.

I mentioned that we have instances where CPA's are filling out returns and are not filing income tax returns for themselves. What does your organization do about that?

Ms. WALKER. Well, the AICPA, which is the organization that I represent today, is voluntary. We have a code of conduct which doesn't accept not filing tax returns.

Chairman PICKLE. I started to ask IRS today do they have any instance where they have barred anybody from practice before the Agency. Do you know of any instances where CPA's have been disbarred? I would like to have that for the record.

Ms. WALKER. Basically, what happens in many of the CPA firms, if a CPA is found not to be filing tax returns, they are asked to resign from the partnership.

Chairman PICKLE. How many of them, what instances. I would like to have a handle on that to see how much is going on.

Ms. WALKER. The IRS currently has a fact of filing program.

Chairman PICKLE. What do you think about a CPA who takes a poor person and fills out his return and then charges him \$100 for it, when he doesn't have to file it in the first place and he knows that?

Ms. WALKER. When the individual who had their tax return completed doesn't have to file it in the first place, the CPA should have explained it to the taxpayer that he was below the poverty level.

Chairman PICKLE. We have instances where he didn't have to file it and yet he charged the people. What would your organization do about that?

Ms. WALKER. In our conduct of professional ethics, our code of professional conduct—

Chairman PICKLE. I have no instance that you have ever disbarred anybody for doing that.

Ms. WALKER. For rendering services that we don't believe—in some cases—I don't know of any instances. I can tell you some taxpayers will say to us, you may tell me I don't have to file but I am scared, I want to file anyway.

Chairman PICKLE. It has been suggested that one thing we ought to do is make everybody file whether they owe money or not. Under the present law, we have instances where CPA's make the returns out, knowing they don't have to file it and yet charge them. You ought to disbar them because your reaction is that you are taking money from people who need it and they ought not be charged. I think all organizations ought to be looking at themselves, you have your code of ethics and you ought to enforce it.

I want to make it clear, I have had excellent cooperation from the ABA and AICPA when we are working on projects together, particularly in civil penalty reform. I am not making accusations. I am saying that is going on out there and I would hope your organizations would have a stricter enforcement of their codes.

Ms. WALKER. To the extent the taxpayer says, I don't care whether I have to file or not, I want to file—

Chairman PICKLE. I hear you. I have no way of knowing how often that happens, but it sounds good. Each recommendation is good and they are from people out there who are talking individually with people who need the help, there is a recognition now that IRS will give more help in that field and not concentrate just on collection but try to concentrate on getting nonfilers back in the system. Some of these recommendations I don't understand why we can't put them into effect now. We will pass them on and we may have additional hearings.

Thank you. I know it is late and long but it goes that way sometimes.

I thank you very much for your testimony. I am going to declare this committee adjourned.

The committee is adjourned.

[Whereupon, at 6:15 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT SUBMITTED BY THE HONORABLE ANDY JACOBS, JR.
TO THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
OCTOBER 26, 1993

Mr. Chairman:

It is difficult to think about non-collection of federal income taxes without at the same time thinking about the genuine conscientious objectors to war and their practice of withholding portions of their income tax which they in good conscience do not believe should go for military purposes. Accordingly, I introduced H.R. 2019, to create the United States Peace Tax Fund.

In some real ways, the legislation probably ought to be called The Federal Revenue Collection Enhancement Act.

Conscientious objectors in many cases are refusing to pay their full tax obligations because to pay the military portion would violate deeply held religious or ethical beliefs. Most of us believe that our taxes should cover national defense. And most of us believe that in time of American war we should serve in the military if we are capable of doing so. But conscientious objection has been recognized since before George Washington's time. He favored accommodation of the consciences of sincere objectors and recognized that for the citizens of sincere conscience in opposition to war, there is no choice.

This bill is a win - win proposition. It would simply allow a bona fide conscientious objector to be assured that none of his or her taxes would go to military purposes. Instead those taxes would be earmarked for WIC, Head Start, the U.S. Institute of Peace and the Peace Corps.

In no way would the bill change the priorities voted by the Congress. The Defense Department would get exactly as much money as the Congress and the President determined to be appropriate and the WIC Program and others listed in the bill would get no more than the Congress and the President decided. The bill would simply allow the conscientious objectors to pay their full taxes in good conscience. It seems a common sense solution to me.

Right now the government is spending a considerable amount of money to track down the conscientious objectors and take them to court in order to collect the money. Why not do it the easy way? It is the same money.

In fact it is more money since the expense of collection would be eliminated.

There is another group of conscientious objectors who avoid taxes perfectly legally. They simply give up their professions and businesses and live on the land thus incurring no income tax obligation. If this bill were passed, many of those people would probably pursue careers that produce income subject to federal tax and they would pay it.

Everybody wins. This is a true definition of peace.

The following statements are submitted in support of legislation which would permit sincere conscientious objectors to pay their full obligation without violating deeply held religious beliefs.

The statements include:

Church of the Brethren
Jewish Peace Fellowship
National Campaign for a Peace Tax Fund
John K. Stoner, Akron, Pa.
Patricia A. Washburn, Estes Park, Colo.

CHURCH OF THE BRETHERN

Testimony Regarding The US Peace Tax Fund (HR 2019)

Submitted to the Oversight Subcommittee of the

House Ways and Means Committee

November 11, 1993

The Church of the Brethren expresses support for HR 2019, the US Peace Tax Fund, as means through which members of our church who are conscientiously opposed to war may pay their entire tax obligation.

The Church of the Brethren consistently through its history has stated its condemnation of warfare, military conscription and use of tax monies for military purposes. Our members do not agree with the government's present stewardship of resources. While Brethren generally support the traditional biblical interpretations that all taxes must be paid, church members and congregations have consistently been urged to continue to work for alternative legislation for the payment of taxes and specifically to support the United States Peace Tax Fund.

Annual Conference, the highest decision making body of our denomination, has consistently supported a Peace Tax Fund bill. In 1961, in its STUDY OF THE PACIFIST MOVEMENT, Annual Conference directed the General Board of the Church of the Brethren to "...work out a proposal for an alternative tax arrangement so that the taxes of those who object to war on conscientious grounds may be used for peaceful and constructive goals of government."

Many members of our church who are conscientiously opposed to participation in war in any form feel the only choices available to them are non-compliance with the Internal Revenue System (IRS), through which heavy penalties and sometimes jail sentences are imposed upon them, or maintenance of income below taxable levels. Either option places substantial burdens on the civil and religious liberties of those who for reasons of religious belief have concluded that they cannot willingly pay taxes which support war.

The 1980 Annual Conference called on Brethren to place a high priority on study and discussion of "war tax resistance, including Biblical examination of the Christian responsibility to civil authority, consideration of refusal to pay the portion of federal taxes used for militarism as a response to Christ's call to discipleship and obedience, and pledging by congregations and individuals of spiritual, emotional, legal, and material support to members who withhold war taxes." And, again, in 1987, the Annual Conference received a 'REPORT OF THE WAR TAX STUDY COMMITTEE.' This report states: "...Annual Conference has stated its opposition to the use of taxes by the government for war purposes and military expenditures, and specifically recognized those who are conscientiously opposed to paying taxes for these purposes..."

Conscientious objectors to war tax payments within our church seek to fully abide by federal law and comply fully with IRS regulations. However, in lieu of a legal means to do so, such as would be provided through the US Peace Tax Fund, many members of the Church of the Brethren feel they are not permitted to pay 100% of their tax obligation without violating deeply held religious and ethical beliefs.

We urge you to carefully consider the US Peace Tax Fund as the best means through which Christian conscientious objectors to military taxes may fully comply with the IRS regulations of the federal government. The Brethren, as a people of faith, hold to a higher power which we understand to be a God of peace. Our denomination has consistently and purposefully said "no" to any participation in war. For persons who hold, for religious reasons of conscience, that conscription of people and conscription of tax dollars for war are wrong, the United States Peace Tax Fund is an alternative which would permit legal participation in government while holding one's religious beliefs paramount.

Timothy A. McElwee
Director
Church of the Brethren Washington Office
110 Maryland Avenue NE, Box 50
Washington, DC 20002
202-546-3202

JEWISH PEACE FELLOWSHIP TESTIMONY

ON BEHALF OF THE U.S. PEACE TAX FUND BILL

HR 2019

Capacity of The Witness

This testimony in support of HR 2019 The U. S. Peace Tax Fund Bill, is submitted by Rabbi Philip J. Bentley, President of the Jewish Peace Fellowship (JPF). The JPF was founded in 1941 to support the needs of Jewish conscientious objectors to war, to promote the teaching of Jewish traditions of peace and peace-making, and to participate in efforts to prevent or end armed conflicts throughout the world. Our membership is about 3200 and includes Jews from every religious movement in Judaism as well as secular Jews. We are a part of the Fellowship of Reconciliation, a well-known inter-religious pacifist organization.

Personally I have identified myself as a pacifist since my early teens and have been actively involved in anti-war efforts and movements since that time. I sought to be classified with the Selective Service System as a Conscientious Objector (I-O), but entered rabbinic school and received a IV-D divinity student exemption before my draft board made any decision on that application. I have always paid my federal income tax, but it has always pained me deeply to know that a major portion of my tax contribution would go toward paying for wars past, present and future. At one time I actually wrote on my checks to the IRS "for non-military purposes only," which I knew would have no effect, but which eased my mind a little. The idea of a Peace Tax Fund as described in HR 1870 fits exactly what I have always hoped for as a tax-payer - the possibility of paying the taxes I owe with the confidence that my money will not go towards paying for activities which are morally repugnant to me. The enactment of this bill would be, in my opinion, a great act of decency in allowing for the fuller participation of a religious and spiritual minority in the American polity.

The Jewish Tradition on Taxation

Judaism has the distinction of being the religion of a people which has had its own state three times in its history (The Biblical Kingdom of Judah, The Second Commonwealth in Hellenistic and Roman times, and the contemporary State of Israel) as well as local autonomous governments at several times and places. Obviously such entities had to collect taxes in order to function.

The Torah (the first five books of the Bible), which is one basis of Jewish legal tradition mandates a first and second tithe on income and productivity as well as the half-shekel head-tax. In addition there were a variety of special levies, as well as taxes of various kinds imposed by ruling authorities. These taxes are elaborated on in the Talmud and other Jewish legal sources.

Autonomous Jewish communities are required to provide a number of services including education, public works, defense, relief for the poor, a judicial system, regulation of commerce, and religious institutions depending on the size and situation of the community. Taxes for these various functions were levied separately because some were equally incumbent on all citizens, some were incumbent only on certain sections of the population, and some were more incumbent on some people than others. Everyone on the tax rolls usually had to participate in paying for education and public works; the former because education was considered an absolute obligation of every community and of everyone in the community, and the latter because everyone benefitted directly from the building and maintenance of roads, bridges, water supply and so forth.

Taxation for security measures was a much more complicated matter. Each situation gave rise to the particular form of taxation. In a time and place of great danger everyone was taxed for such security measures as town walls and gates, guards and militia. In a situation where the problem was banditry those who were wealthy and those who lived close to the town wall (in the medieval period), meaning those most in jeopardy, were the ones to pay for the security measures. In some situations only permanent residents or only property owners paid levies for this purpose. The important factor to remember is that security, unlike most other governmental functions, depended on actual risk in the current situation. It must be kept in mind, however, that Jewish ethics tends toward the avoidance of conflict, especially armed conflict wherever any other solution to a problem can be found.

The Jewish Tradition on War and Peace

On the one hand there can be no doubt that Jewish tradition allows for and discusses the institution of warfare; on the other hand there can equally be no doubt that Jewish tradition has a strong distaste for war and a love of and desire for peaceful solution of conflict.

Since the Biblical period only a war of defense against an actual and possibly an immediately imminent invasion may be considered "just" (the Hebrew term used means "obligatory"). All other wars are considered to be at the option of the government and come under many restrictions including the obligation to seek peace before going to war. Jews do not celebrate military victories and our heroes are not soldiers but scholars and communal leaders.

While conscientious objection to war is not a mainstream Jewish position it is clearly a position which may be taken by individuals within the context of our religious tradition and as a direct result of the tenets of our tradition.

The Hebrew word shalom is familiar even to non-Jews. It is usually translated as "peace." This translation does not do justice to this word. "Shalom" comes from a verb that means "to complete." Related words indicate such ideas as "wholeness," "well-being," and "perfection." Shalom is not simply a political concept, it is an expression of a perfect state of human affairs. Every major blessing ends with a prayer for shalom. We greet each other and bid each other farewell with this word.

In our system of mitzvot (religious obligations, literally "commandments")

peace-making has a very special place. "Seek peace and pursue it." (Psalm 34:15) All other mitzvot are to be observed or performed when the occasion arises, but for this one we do not await the occasion but are obliged to go and seek opportunities to perform it.

In Jewish tradition there is a whole literature of teachings, ethics, prayers and polemics against war and for peace. Even in the state of Israel where the military is of such importance, war is considered a tragic necessity. Military victories are not celebrated. Golda Meir, who was certainly no pacifist, once said, "We can forgive the Arabs for killing our boys, but we cannot forgive them for making our boys kill their boys." The Israeli peace movement is vigorous and there are hundreds of organizations working for peaceful relations between Jews and Arabs. Israel's popular culture includes songs, drama, literature and art which passionately express hatred of war and yearning for peace.

Jewish tradition on Communal Priorities

In the Bible we already find not only a distaste for war, but a distrust in the military for public security.

When Moses sent twelve spies into the Land of Canaan to investigate conditions there and the prospects for the invasion G-d had commanded (Numbers 13-14), according to an old tradition he gave some interesting advice to the spies. If the cities of the Canaanites are without walls and fortifications, then these people are strong and confident and we will not prevail against them; but if their cities have high walls and strong fortifications then these people are weak and afraid and we will prevail. All twelve of the spies saw the same thing - high walls and strong fortifications - but ten ignored Moses' advice and spoke against going forward while two of them, Joshua and Caleb, remembered the advice and tried to encourage the people. Because the people listened to the ten the entire nation was told that their entire generation would have to die in the wilderness until a new generation would grow up and be ready to occupy the Land and establish their state under the leadership of Joshua and Caleb, the only two who would survive. This was the reason for the forty years of wandering. This day, on which the people succumbed to conventional military logic, was the darkest day in Jewish history - the ninth of Av.

Jeremiah preached against the militaristic nationalism of his day. He called on the king and the people not to trust in military might, but in higher values. "Cursed be he who trusts in man, who makes mere flesh his strength." (17:5) Because his warnings were not heeded Judah entered into a disastrous alliance with Egypt and against Babylon and rebelled resulting in the destruction of Jerusalem and the Temple and the exile of the people again on the 9th of Av.

Even the well-known holiday of Hannukah does not celebrate the victory of the Maccabees, but the triumph and survival of Jewish tradition. The Rabbis emphasized this by selecting as the prophetic reading for the Sabbath during that holiday the prophetic passage which includes the verse, "Not by might and not by power, but by My spirit says the Lord of Hosts." (Zechariah 4:6)

King David, who is famous as a warrior king, wanted to build a house for the Lord, but was told not because there was too much blood on his hands. His son Solomon (the name means "peace-maker") would have that honor. In his Psalms David wrote not only the line "Seek peace and pursue it" but other lines which expressed his belief that reliance on military strength is not the best source of security. "Kings are not delivered by a large force; warriors are not saved by great strength; horses are a false hope for deliverance; for all their great power they provide no escape."

Possibly the most famous Biblical passage on this subject is the one which we have from two prophets, Isaiah (2:2-4) and Micah (4:1-5). Both prophecies contain the words, "They shall beat their swords into plowshares and their spears into pruning-hooks; nation shall not take up sword against nation; they shall never again train for war." What is known today as economic conversion (from production of military hardware to production of consumer goods) was already envisioned so long ago.

There is a story of two rabbis who were sent to investigate social conditions in the Jewish communities of the Land of Israel. When they would arrive in a town they would ask to see "The Guardians of the City." The militia would be brought before them and they would say, "These are not the Guardians of the City, but the destroyers of the city." The people asked, "Who, then, are the Guardians of the City?" The Rabbis answered, "Your teachers who teach your children are the Guardians of the City."

This story illustrates the point of all of these quotations from Jewish tradition. We do not believe that a powerful military is the source of true security for a nation. The best source of security is in strong social institutions and in a society where the people are educated and prosperous, people who maintain high ideals. Conscientious Objectors do not reject war only out of moral displeasure but out of the belief that war and preparation for war do more harm than good.

Why We Support This Bill

Those of us who are conscientious objectors to war are distressed at having to pay for and support wars with our tax dollars. We believe that war-making is morally wrong. The words "just," "moral," and "right" cannot, in our view, ever be used to describe a war.

We object also to the use of our tax dollars to promote the manufacture of weapons, which encourages and abets a trade in deadly force to whoever has the money to pay for it. Jewish law says that whoever sells a weapon bears responsibility for its use. We are pained at the thought that we support such sales with our tax payments.

We feel that the strength of our nation resides in its people and not in its arms. We feel that the money spent on the military actually weakens us in the long-run. The Soviet Union collapsed not only because of an unworkable and corrupt economic system but because they wasted so much of their wealth on "defense." We should take heed.

The Peace Tax Fund Act will allow those of us who feel this way and who follow the traditions which have been very briefly described here to pay our taxes with a good conscience. It will allow those who have refused to pay part or all of their federal taxes to pay those taxes without feeling they betray their deeply held convictions. Enactment of this bill would be both right and wise.

TESTIMONY OF THE
NATIONAL CAMPAIGN FOR A PEACE TAX FUND
2121 DECATUR PLACE, N.W.
WASHINGTON, D.C. 20003
TEL: 202-483-3751
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TO: Ways & Means Subcommittee on Oversight

November 15, 1993

BASIC QUESTION

We would like to work with Congress and the Administration on this basic question: Is there a way to permit sincere conscientious objectors to pay 100% of their tax obligation without violating deeply held religious or ethical beliefs?

We are grateful to have an opportunity to respond to issues raised in your subcommittee's hearing on income tax non-filers. We write on behalf of citizens who are seeking a way to pay 100% of their tax within the law, but currently are not paying or not filing because of conscience.

CONSCIENTIOUS OBJECTORS

These people are unlike the ten million non-filers in this country who seek to circumvent the federal tax system. Rather, they are loyal United States residents who cannot pay their taxes, because in doing so, they would violate their deepest and most fundamental beliefs.

CONSCIENTIOUS OBJECTION DEFINED

Citizens who are conscientious objectors to participation in war are now forced to support a program antithetical to their intensely held beliefs, or to face heavy penalties. This places a substantial burden on their civil and religious liberties. These persons live with the risk of fines and even jail sentences. The Peace Tax Fund offers one practical way to accommodate the religious beliefs of conscientious objectors *within* the law.

Our central affirmation is that each individual has the right not to be coerced into participation in killing other human beings—whether that participation is physical or financial. Ultimately this right is based in the freedom to exercise religion according to the dictates of conscience.

This Bill is designed to address issues related to conscientious objection rather than concerns about specific national policies or spending priorities. The Bill uses the same legal definition of conscientious objection to war as the Military Selective Service Act. Conscientious objectors say that it is the ultimate right of the conscience not to participate in the killing of another human being – whether that participation be physical or financial. Although the belief of conscientious objectors necessarily implies criticism of the existing order, they are not subversive of social aims and values. Rather, their belief encompasses their whole life and the search for justice and peace for all is a goal of their active existence. They have nothing to gain financially or in terms of self-interest except preservation of their religious and conscientious integrity. If the Bill passes, many people who now do not pay taxes, will willingly pay, and some of those who do not file, will file.

THE PROBLEM FOR INDIVIDUALS IN THEIR OWN WORDS:
QUOTES FROM TESTIMONY OF PEACE TAX FUND
PROponents AND WAR TAX RESISTERS

We write on behalf of the many such person whose letters reach our office. These people seek to pay their entire tax obligation without violating their most fundamental religious beliefs. We will let them speak for themselves in the quotes that follow.

TAX RESISTENCE, NOT AVOIDANCE

"My tax payment is held in escrow, to be released to the government when the government, in acknowledgment of the right to free exercise of religion will agree to use the money for nonmilitary purposes and not for war or preparations for war. Passage of a bill such as the Peace Tax Fund Bill would give an administrative way to do this. The rights of conscience are inalienable rights, not privileges."

Rosa Covington Packard, Greenwich, CT

"I would be willing to increase my income substantially and pay the resulting tax happily, if I knew I was not supporting war and preparation for war. Legally or illegally, thousands of C.O.s are avoiding tax payments. Let them contribute in good conscience."

Gary Duell, Portland, OR

"I recently protested, in an open and honest manner, the spending on my federal taxes for military purposes; the IRS responded by taking \$500 more, telling me I had filed a 'frivolous' return. Representatives, this is not a frivolous matter, but a question of deep religious conviction. I am not trying to find a way to pay less taxes. For religious reasons I give my entire earnings to the Catholic community to which I belong."

Anne-Marie Boucher, Little Sisters of Jesus, Lumberton, NC

EXPERIENCE WITH LEVIES, LIENS & FINES / IRS COST OF COLLECTION

"...Starting with my first letter to the IRS, I have continued to state that I will pay my taxes – even the fines – if I know they will not go to military purposes. Frankly I don't make very much money, and I am sure that my case is similar to many others: The government is spending more than I owe in trying to get me to pay."

Lisa Kiser, Washington, DC

"In the past, on four different occasions, we have expressed the depth of our convictions on this matter by publicly attempting to refuse to pay [the military] portion of our income taxes. In each case we were fined. In two cases, we were refused a trial to argue our case. ...On our second attempt we were harassed with a \$1,000 fine for attempted fraud, which was dropped without apology on our challenge thereof. Secondly, on traveling nearly 400 miles to Washington, D.C. for a hearing before a judge as to whether or not we could have a trial our request was declared frivolous and we were fined \$2,000."

Donald and Marion Lathrop, Cassan, NY

The impelling character of conscience in relation to conscientious objection to military taxation is revealed by these voices:

FROM MEMBERS OF RELIGIOUS DENOMINATIONS

"I follow the principles of my denomination (Presbyterian) one of which is that "God alone is Lord of the conscience." This applies to matters of spiritual belief, and I believe that how one spends one's money is ultimately a spiritual question, especially when the wrong spending of it (for more weapons) directly contributes to wounding and killing other people, all of whom are created in the image of God."

Daniel R. Erdman, Albuquerque, NM

"...Our conscientious objection to all war is now officially recognized by our denomination [Presbyterian Church (U.S.A.)]...."

Jean Edwards/George Edwards, Louisville, TN

"...So too, as a follower of this Jesus, I find it morally repugnant to pay taxes which I know support these evil weapons and the war machine which creates them. ... I cannot in conscience fully contribute my share when I know that a large percentage of my taxes pay for war. I must follow my conscience in this aspect of my citizenship just as I try to let it guide me in my relationships and all other aspects of my life."

Dawn Green, Omaha, NE

"...When one cannot follow one's conscience, there is tremendous inner conflict and psychological cost. One represses one's feelings and becomes numb... When a nation loses its conscience, it loses its soul. I feel I am in danger of losing my soul. Please give people whose religious and moral beliefs are violated at tax time, a legal alternative by passing the Peace Tax Fund Bill."

Ann Marie Judson (mother of 5), Lemoyne, PA

"...He who lives by the sword will perish by the sword!" Jesus said. Thus, let those of our people who feel that they cannot support a war machine have a way of paying their taxes knowing they will go to other national expenses."

Erl Cunningham, Pastor Tod Avenue United Methodist Church, Warren, OH

"[My ancestors refused] on theological grounds to wield the sword. ...The basis of this affirmation was not political theory but biblical fidelity. My conscientious objection to taxes for war rests on that foundation."

Ken Schestod, Baptist Peace Fellowship Memphis, TN

"As a committed Christian, I believe that I cannot in conscience kill another person because of my commitment to Jesus Christ. As an American I believe strongly in religious freedom and separation of church and state; I believe that the state should have a way for people like myself to contribute to many, many important things that the country does so well without contributing to what in conscience we feel is wrong."

Ronald J. Sider, Professor of Theology & Culture, Eastern Baptist Theological Seminary, Wynnewood, PA

"The Jewish Peace Fellowship has recently celebrated its 50th anniversary of dedication to nonviolence in the Jewish tradition. Our members sign a statement committing themselves to conscientious objection to war. We believe that this conviction follows to the support of any spending for the military. Our faith leads us to support the Peace Tax Fund."

Joyce Brestler, Jewish Peace Fellowship, Nyack, NY

"I think it is the responsibility of [Members of Congress] to recognize that not only persons of draft age are persons of conscience in matters of war. Some of us have held this position for many years, even after serving our country as I did in world War II. It has been a deepening conviction of mine through the last thirty years that war is morally wrong."

Bishop L. David Brown, Northeast Iowa Synod, Evangelical Lutheran Church in America, Waverly, IA

"During the 16th, 17th and 18th centuries, my ancestors, European Anabaptists, were persecuted, tortured and slaughtered by the thousands because they refused to take up the sword. Today it is our tax money that kills far more effectively than soldiers... So how can I, who am conscientiously opposed to war, pay taxes to support these modern weapons which destroy so effectively?"

Loretta Finger, Chicago, IL

"The Quaker faith posits that there is something of God in every human being. Believing this, I cannot kill, or strike, or intentionally hurt or insult, or even ignore another human being without doing the same to the God that is within him or her. Thus the position against killing is absolute: I cannot kill or pay for the killing of a human being without killing that portion of God that is within."

William Hayden, Dearborn, MI

"As a member of the Mennnite Church, which has emphasized a peace witness for more than 450 years, I am a conscientious objector to war. As a follower of Jesus Christ, I am called to love my enemies and to do good to all. This not only forbids participation in war, it also raises ethical questions about my payment through taxes for weapons of war...it is not our bodies which are required...but our tax dollars. I do not object to taxation as such. I am glad to pay taxes for services which help needy people and which establish a more just society. However, my conscience is deeply violated when I am required to pay taxes for the support of a military machine and military actions which are contrary to my faith in Jesus Christ."

Janet Jennings, Sterling IL

"For a long time I have been seeking a way to be a loyal and law-abiding citizen without doing violence to my conscience, and I have found none. The Peace Tax Fund Bill will provide for such a way. I believe in taxation as I believe in community service. By enabling me to pay taxes toward building up the community of nations – rather than destroying other nations – you make it possible for me to be a better citizen."

Alfred Krass, Pastor, United Christian Church (UCC), Levittown, PA

"...I have wanted to support my government as is counseled in Scripture but have not wanted to pay for weapons and wars that simply do more harm than good in the long run. Now there seems to be a way for me to both support the state and honor my beliefs."

Steven Jones, Kettering, OH

"We are Christian pacifists and members of the Church of the Brethren.... For every year since 1969 that we've earned enough to be taxed we have refused to pay the military portion of the tax, most of those years redirecting those funds to organizations dedicated to peacemaking by peaceful means. Both our religious convictions and our moral scruples forbid our bodily participation in war. ...For this conscientious war tax refusal, we have been harassed by IRS agents, had funds seized from our bank account, wages garnished, and on one occasion had four Revenue agents seize our 3 year old van (...used for family...and variety of church activities) and put it up for public auction. Such retribution makes a mockery of "freedom of religion." Please understand we would go to jail before we would willingly pay taxes for war."

Philip W. & Louise B. Rieman, Grundy Center, IA

"...In earlier centuries members suffered deprivation, loss of property and homeland, and endured persecution rather than pay taxes levied for supporting the military."

George & Dorly Albertz, Norfolk, CT and Richard and Carolyn Kurtz, Farmington, PA

"...It is a great grief to me, a great moral problem, that my federal taxes are used for war and preparation for war, for weapons and for public relations attempts to make war activities acceptable to us all. ...The Peace Tax Fund Bill would enable me to support my government in all but its war-related activities, without violating my conscience."

Edith Chadenodes, Friday Harbor, WA

OBJECTION BASED ON CONSCIENCE & THE CONSTITUTION

"The decision to challenge federal law is a weighty matter, and tax resistance has, for each of us, been undertaken only after serious consideration... If we are striving, in all our different professions, to preserve and uphold human life, it poses a significant dilemma to be asked to use part of the income from our work to pay for weapons and military forces which are unquestionably destructive of human life... The framers of the Constitution felt its [conscience's] force so strongly that the principle of freedom of conscience became the very foundation upon which our government was based."

Signed by nine C.O.s to military taxation, Austin, TX

"I have spent more than 10 years resisting federal taxes which use money to build nuclear weapons, and a lifetime as a physician in support of human services. I shouldn't be considered a criminal. Please closely consider the morality of this bill."

Robert Mastroianni, M.D., Lakewood, CA

HARDSHIP OF LIVING BELOW TAXABLE INCOME LEVEL / LOSS TO SOCIETY

"For the last two years I have finally begun to withhold as much as possible of the proportion of my taxes that would be spent on killing people. I am finally at one with my conscience, but at the cost of becoming a lawbreaker... Last year the IRS collected my withheld war taxes from my salary, making me again an unwilling contributor to killing. To prevent this from happening again, this year I will drop out of a career in which I am very productive... My contributions as a good technical writer will be lost as well as the taxes and contributions I would pay toward human needs."

Lenore Lurcher, Watsonville, CA

"It is not easy to raise a family, living below the taxable level. We continually struggle with making ends meet and providing for our family needs, but for us it would be impossible and unacceptable to raise our level of income if it meant supporting the military with our taxes. We will continue to see simple living as a challenge and a vehicle for our expressions of faith. The Peace Tax Fund would allow us to earn more and channel more money into the rebuilding and nurturing of our society. To grant a nation the freedom of religious and then bind its member's creative abilities by forcing its very life blood into planning for war is not freedom of religion at all. We love our country and its people and want desperately to find avenues that will allow our involvement in the healing of our nation. We believe it is only a matter of time for a nation built on principles of truth and justice to recognize this and allow its members with a conscience towards peace to fulfill their convictions and participation as tax paying citizens."

Laurie Wilson Heesed & Larry Mann Heesed, Pawnee Rock, KS

"In the late 1940s I began keeping my income below the IRS taxable level -- then \$600/year -- because I was conscientiously opposed to paying any money to be used for military purposes. Over many years since then I was able to live on such a small income, deliberately holding my earnings down, owning no car, and giving much income away for charitable deductions. ...When my income went over the taxable limits I then refused to pay that portion of my income tax owed which went for 'current military expenditures,' explaining to IRS that I had religious convictions against supporting military expenditures. Eventually IRS would levy the unpaid amount [and penalties from my bank account. ...A good Peace Tax Fund bill would relive me of being forced to pay such a heavy dollar price for practicing my religion."

Franklin Zahn (age 84), Los Angeles, CA

NUREMBERG PRINCIPLES/ HIGHER LAW

"...I believe it is illegal for me to pay taxes for immoral purposes, as it is illegal for IRS to require those taxes... I believe that the decisions of the Nuremberg Tribunal give strong support for this view. But even were it not for this support, I state unequivocally that I would not commit murder even if ordered to do so by any agency of the government. ...To pay taxes for war is to participate in murder."

Roger Lorenz, Oroville, WA

PEACE TAX FUND DEFINED

The U.S. Peace Tax Fund Bill is intended to accommodate the religious beliefs of those who are conscientiously opposed to war, to insure that legal penalties are not imposed because of those convictions. It is also designed to provide a more just tax system and to increase revenues in the process.

This proposal does not erode the integrity of the tax structure nor does it remove any individual's responsibility to pay his or her taxes in full.

The Bill establishes the United States Peace Tax Fund as a special trust fund within the U.S. Treasury. There is no financial benefit to those who contribute their taxes to the Fund. What the Bill achieves is protection of conscience in the context of the free exercise of religion.

Peace Tax Fund Bill's own statement of purpose:

- (a) to improve revenue collections and to allow conscientious objectors to pay their full tax liability without violating their moral, ethical, or religious beliefs;
- (b) to reduce the present administrative and judicial burden created by conscientious objectors who violate the tax laws rather than violate their consciences;
- (c) to recognize conscientious objector status with regard to the payment of taxes for military purposes; and
- (d) to provide a mechanism for congressional appropriation of such funds for nonmilitary purposes.

DOES THE BILL OPEN THE DOOR FOR A "FLOOD" OF SPECIAL EXEMPTIONS?

Here is the answer to that question by the Congressional Research Service:

"We know that for members of Congress this could potentially be a problem. However, historically and legally, objection to war has held a unique place in our nation. Most of the American colonial governments made special provision for conscientious objectors beginning with Rhode Island in 1662. The first Continental Congress resolved in 1775 that it would recognize the rights of those who would not bear arms because of religious scruples [2 Journals of the Continental Congress 189 (1905)]. By the time of the Civil War numerous states exempted C.O.s from conscription on religious grounds from their militias. In the Federal Militia Act of 1862, the control of conscription was left primarily to the States but the Federal Conscription Act of 1863 contained commutation and substitution provisions, and the Draft Act of 1864 extended exemptions to conscientious objectors who were members of certain religious denominations. In the latter year, the Confederacy also exempted certain pacifist sects from military duty."

Statement of National Campaign for a Peace Tax Fund
 November 15, 1993 - Taxpayers Who Fail to File Returns
 Submitted by: Peter Goldberger, Attorney-Adviser

The National Campaign for a Peace Tax Fund appreciates this opportunity to express our concerns to the subcommittee about the problem of non-filing of income tax returns. Among our constituents and among the congregants of the churches who support the Campaign, are numerous conscientious objectors to participation in war. Many of them find that their religious beliefs require them to resist in some way not only the forced conscription of themselves or their sons, but also the conscription of their dollars to fund the one third or more of federal expenditures which today go to support a variety of military activities. They are not "tax protesters," although the IRS mistakenly labels them as such. On the contrary, their heightened sense of personal responsibility for the well-being of their fellows prompts them to refuse to participate, even indirectly, in the funding of the military. They do not have political or economic objections to the concept of federal taxation; their concerns are religious in origin and focus upon the question of personal responsibility for the uses to which their taxes are put. Needless to say, the tax system at present does not accommodate these convictions. We believe that it should.

Conscientious Non-Fileers. There are certainly many thousands of Americans who have scruples concerning military spending arising from deeply held moral beliefs about war in any form, or at least about war in all its contemporary forms. Probably the vast majority of resisters limit their protest to public statements, lobbying in various forms, public education, and letters to public officials. No doubt, under the law as it is now written and interpreted, most such persons pay the taxes which are due from them, despite considerable personal anguish over contributing to, and thus participating in, what they know is fundamentally wrong. Others deliberately adopt low income lifestyles which incur little or no tax obligation in order to avoid personal financial support for war or military activities. Many other such persons, however, simply cannot bring themselves to participate with their dollars any more than they could with their bodies. They therefore refuse to pay some or all of the income taxes which are due under the law. Some file honest and candid returns, but openly refuse to pay, having avoided withholding through self-employment or other means.

Others, however, do not file at all, becoming part of the burgeoning "underground" economy. Recognizing that the act of filing a tax return facilitates the IRS's job of collecting the tax due, they refuse to file altogether. By thus further protecting their tax money from eventual collection, they are in a better position to devote those funds to the financing of political, educational and social causes that meet what they see as the true needs of society. Whether through reduced taxes paid by the deliberately underemployed or as a result of outright refusal to pay, the Treasury is unnecessarily deprived of needed receipts.

Furthermore, for some, the overwhelming dominance of military spending in the Federal budget has made morally illegitimate both the Federal government and the IRS. They therefore consider that they have no obligation to cooperate with the authorities in any way, and they hope by not filing to minimize the likelihood of forced collection or criminal charges for actions which they are morally compelled to take.

The act of complete non-cooperation with a governmental agency devoted to what are seen as immoral practices has highly respectable precedent in our history. Indeed, the Underground Railroad is today often hailed as one of the shining actions in our nation's history -- a time when individuals chose to defy the legitimate officials bent on enforcing slavery and the Fugitive Slave Acts. For the members of the Underground Railroad it was clearly not sufficient simply to voice their opposition to slavery and the laws which supported it, and then to hand over

the fugitive slaves. They understood their religious and moral responsibility to include the physical protection of the slaves themselves, even if this required maintaining secrecy from government authorities.

Likewise, many tax resisters cannot in good conscience limit their protest to military spending to a mere protest, or even to an open refusal to pay the tax as shown on a return. Instead, they refuse to file, making much more difficult the process of forcing them to turn over money which will then be used to pay for the massive killing capacity of the military.

The attempts by the IRS to bring back into the system those who have in the past failed to file their income tax returns do not begin to address the dilemma which drives war tax resisters to refuse to file their returns. Those conscientious military tax objectors who do not file any forms with the IRS follow the only course available to them to make sure that they are in no way complicitous in the nation's massive military expenditure. Their conscience will dictate the continuation of their policy of non-filing, or non-cooperation, as long as they have no alternative way of protecting their tax money from military use.

Interim Accommodation. Current enforcement efforts can work severe hardship and injustice on these conscientious resisters. Levies on bank accounts and wages are common. IRS seizures of personal property, including automobiles, and even of homes are also permitted under the law. Such seizures have occurred in many parts of the country.

Military tax objectors are frequently subjected to civil tax penalties when they attempt to carry out their beliefs, and occasionally to criminal prosecution. In addition to interest charges, delinquency penalties can reach 25 percent (at five percent per month) for failure to file, and another 25 percent (at one half to one percent per month) for failure to pay. 26 U.S.C. ("IRC") § 6651. Additional 20 percent add-ons for willful disregard of rules and regulations (raised from five percent in 1990) are not uncommon. IRC § 6662 (formerly § 6653). Fraud penalties, formerly 50% and now 75%, IRC § 6663, while rarely applicable under the law and facts, see Muste v. CIR, 35 T.C. 913 (1961), are occasionally asserted and must be challenged by administrative appeals or in court to get them removed. (Very few religious objectors engage in fraudulent evasion schemes. A deep-seated personal honesty that extends fully to their dealings with their government is generally characteristic of these conscientious objectors.)

The Justice Department has generally shown a commendable restraint and sound discretion in not bringing criminal prosecutions. But one elderly midwestern activist was prosecuted, convicted, and imprisoned only a few years ago for willful refusal to pay. See United States v. Catlett, 584 F.2d 864 (8th Cir. 1978). Others have gone to jail for contempt of court after refusing on grounds of principle to provide information in response to IRS administrative summonses. Most of the individuals who were subjected to these prosecutions would have been able to comply with the tax law, and would willingly have paid in full, if any sort of reasonable accommodation had been in place.

Because the courts have refused and Congress has not so far seen fit to accommodate them, most of those who are called by conscience to a witness of military tax resistance have been prepared to suffer the consequences of their beliefs, out of respect for the legal order and for the freedoms this country does afford to religious minorities. Others are forced to compromise their most deeply held beliefs in the face of IRS pressure, or to suffer cruel financial hardship. The subcommittee should therefore do what it can to alleviate the unintended and needless suffering of these scrupled individuals.

Whether or not the nonfiling of some conscientious objectors is condoned, the fact that their motives and methods are of the highest order of integrity seems unquestionable. The imposition of unnecessary penalties is therefore unduly harsh and unfair both from a financial standpoint, and also because of the

implication that the religious objector is acting out of negligence rather than moral imperative and that her actions lack "reasonable cause." Code § 6651. Furthermore, since such objectors often work in relatively low-paying social service jobs, their financial reserves are often non-existent and the penalties imposed by the IRS represent a substantial hardship.

We are well aware that religious beliefs do not, under the Code and the U.S. Constitution as currently interpreted by the courts, excuse one from filing returns or paying the tax. However, such beliefs should be recognized as affording "reasonable cause" for her failure to file. Similarly, a principled and honest approach should be accepted as establishing that acts of noncompliance are neither a "willful" disregard of responsibilities nor "negligent" as described in statutes giving rise to the penalties often imposed.

The circumstances of a conscientious objector should be recognized as affording a "cause" for nonfiling just as "reasonable" as the standard examples. As the official IRS Policy states, "any reason for delinquency in filing or making ... payments which establishes that the taxpayer exercised ordinary business care and prudence but was nevertheless unable to comply within the prescribed time will be accepted as reasonable cause." Policy Statement P-2-7, IRS Handbook. Certainly, it is no contradiction of ordinary care and prudence for a person to adhere to her religious principles in the conduct of her business, nor is there any doubt that one's religious beliefs may render one "unable to comply" with the requirements of the Code. While this affords the objector no immunity from tax, and thus none from forced collection, it does give rise to grounds to excuse the penalties.

In Employment Division v. Smith, 494 U.S. 872, 108 L.Ed.2d 876 (1990), the Supreme Court held that the Free Exercise Clause of the First Amendment does not require that an exemption be granted on religious grounds from compliance with a uniform, nondiscriminatory governmental regulation. But Smith goes on to hold that the Free Exercise Clause does not permit rejection of a demand for accommodation of religious conscience where the law in question, like the unemployment compensation laws at issue in certain precedents distinguished in Smith, provides for an "individualized governmental assessment of the reasons for the relevant conduct." 108 L.Ed.2d at 889. In the unemployment cases discussed in Smith this was the "good cause" provision for voluntary quitting one's job; here, Congress's instruction not to impose a penalty when there is "reasonable cause" for the taxpayer's actions demands the same accommodation. Under Smith, where a mechanism for discretionary exceptions and judgments based on reasonableness is built into a system, religious objections cannot be excluded from equal consideration.

These principles were recently reaffirmed by the Supreme Court in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. --, 124 L.Ed.2d 472 (June 11, 1993). There, the Court said, "As we noted in Smith, in circumstances in which individualized exemptions from a general requirement are available, the government 'may not refuse to extend that system to cases of 'religious hardship' without compelling reason'." 124 L.Ed.2d at 493. Under the Smith and Church of Lukumi decisions, the presence of a reasonableness exception in Code § 6651 means that the Service "may not refuse to extend that system to cases of 'religious hardship' without compelling reason." Id. For this reason, the Free Exercise Clause requires that the IRS spare the religious conscience in the exercise of discretion whether to impose or abate penalties. The subcommittee should exercise its oversight function in this regard.

A Real Solution to the Dilemma. There is only one way to bring war objectors who do not file their tax returns back into the IRS system: by recognizing a right of conscientious objection for taxpayers who, on religious or moral grounds, cannot participate in the funding of warmaking, war preparation, or other military activity. Since 1972, efforts have been underway in Congress to establish a right of conscientious objection for taxpayers who, on religious grounds, cannot participate in the

funding of warmaking, war preparation, or other military activity. Under this proposed legislation, the objectors would pay the full amount of taxes owed, but the law would provide a mechanism to assure that their contributions would not be spent in violation of their fundamental beliefs.

Known as the U.S. Peace Tax Fund Act, this legislation was substantially revised and reintroduced in this Session in its current form. In the 103d Congress, with bi-partisan co-sponsorship, it is known in the House as H.R. 2019. In the Senate its principal sponsor is Sen. Hatfield, of Oregon. A copy is attached. While this legislation, if enacted, might not satisfy every person on either side of the question, it is apparent from this example that a solution to the dilemma is possible and from the perspectives of both the affected individuals and the overburdened IRS, desirable.

If the Peace Tax Fund Bill were enacted, it would not be the first time that Congress has moved to accommodate a religious objection to the operation of the tax system. For many years, upon approval of a proper application, full-time ministers have been able to exempt themselves from the Federal Insurance Contributions Act (Social Security). See IRC § 1402(e). And even more to the point, based solely on their absolute theological objection, certain minority religious adherents, notably the Amish, have been permitted to opt out of Social Security as well. *Id.* § 1402(g). The Peace Tax Fund provision is just as practical, and far less constitutionally problematic, than these existing and unchallenged provisions. First, it reaches a far broader and less sectarian spectrum of religious objections. Second, it creates a mechanism under which the full amount of funds are available for appropriated purposes, not for an exemption from paying the level of tax otherwise due. Such arrangements are plainly constitutional under the Supreme Court's decisions in *Gillette v. United States*, 401 U.S. 437 (1971), and *Arver v. United States*, 245 U.S. 366, 389-90 (1918), which confirm that Congress may properly set the limits of exemption or accommodation granted to conscientious objectors.

This Committee should lend a highly skeptical ear to any argument advanced by IRS lawyers that any accommodation, or that this particular accommodation, is unworkable and would threaten the either tax administration or the budgeting and appropriations process. In *United States v. Lee*, 455 U.S. 252 (1982), the government advanced the same kind of argument, which was accepted by the Supreme Court: that no further Social Security exemption for the Amish could be allowed without risking the soundness of the system. But this alarmist testimony proved false in fact. In the 1988 Tax Bill, Congress enacted the precise expansion of the Amish exemption that the *Lee* Court had held impossible. Pub.L. 100-647, § 8007 (Oct. 22, 1988), adding new IRC § 3127. The Social Security system has not collapsed, or even suffered, as a result. The Committee should treat this history as a cautionary tale against accepting mere argument in lieu of proof of government claims of inability to accommodate.

If the Selective Service System and the military branches can administer their provisions for recognition of conscientious objectors, even in wartime -- see 50 U.S.C.Appx. § 456(j); 32 C.F.R., pt. 75 -- then surely the Treasury and the Comptroller General can manage the far less cumbersome provisions established by this Bill. Indeed, the Peace Tax Fund would not even be the first provision of the Internal Revenue Code allowing individuals to choose how their tax money is to be spent. The Presidential Election Campaign Fund works this way, with the familiar check-off on the front of the Form 1040. See 26 U.S.C. §§ 6096 (taxpayer choice), 9006(a) (transfers to Fund). The Peace Tax Fund would not be significantly more difficult to administer than the Presidential Election Campaign Fund check-off system. In its own very different way, the Peace Tax Fund would serve the cause of democracy just as well as public financing of elections.

Legislation of this kind has a noble history in our country. In a 1790 letter to Philadelphia Yearly Meeting of the Religious Society of Friends, President George Washington wrote:

Government being, among other purposes, instituted to protect the Persons and Consciences of men from oppression, it certainly is the duty of Rulers, not only to abstain from it themselves, but according to their stations, to prevent it in others. ...

Your principles & conduct are well known to me. ... I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy & tenderness, and it is my wish and desire that the Laws may always be as extensively accomodated to them, as a due regard to the Protection and essential Injerests of the Nation may Justify, and permit.

During World War II, the Treasury Department created an alternative "Civilian Public Service Bond" for those who wished to support the National effort but could not buy "War Bonds." As already noted, provisions for conscientious objection to the draft and direct military service have slowly but steadily become more available. The whole history of our Nation's laws in this regard is one of gradual Congressional broadening of accommodations to religiously-scrupled conscientious objectors to participation in war. Two hundred years after President Washington sent his letter to the Philadelphia Quakers, the time for a United States Peace Tax Fund has come.

Conclusion

Military tax objectors are not able to ignore their consciences. As a result, some will refuse to file, and will continue to be subjected to various Internal Revenue Code penalties and enforcement efforts. The reform suggested above would go a long way to alleviating the unfairness and unnecessary harshness that now exists for many of these sincere and faithful people. Ultimately, however, only passage of the U.S. Peace Tax Fund Bill can accommodate the religious scruples of those who are compelled to separate themselves from the tax system.

¹ Spelling, capitalization and punctuation as in the signed original of this letter in the Quaker Collection at the Haverford College Library, Haverford, Pennsylvania.

JOHN K. STONER
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November 3, 1993

The Honorable J. J. Pickle, Chairman
Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth House Office Building
Washington DC 20515

WRITTEN COMMENT TO HEARINGS ON INCOME TAX NON-FILERS

Dear Mr. Pickle:

I write as an adherent of the Mennonite church, which has roots in 16th century Europe. The Mennonite Anabaptist tradition holds that Christian loyalty to Jesus Christ categorically prohibits the killing of fellow human beings. This makes me a conscientious objector to the human institution of war, as well as a conscientious objector to the human institutions of slavery, torture and premeditated executions by the state.

My vocation is working for peace, in the community, the nation and the world. For most of the past 30 years I have been paid by the church, through the relief and development agency of the Mennonite churches, the Mennonite Central Committee, to speak, write and organize alternatives to violence and war. Currently I am employed part time by New Call to Peacemaking, a cooperative peacemaking program of the Church of the Brethren, Religious Society of Friends (Quakers) and Mennonites. My vocation, I admit, is a bit unusual. If it were not, if there were as many people trying to secure the nation by peaceful means as there are by military and violent means, I would be discouraged by the state of affairs. But I continue to see much hope, because far more energy, resources and taxes could be invested in nonviolent methods of peacemaking.

The taxing authority of the United States government mandates the collection of taxes to maintain the institution of war. The Internal Revenue System inflicts an intense moral dilemma on me and many other people. Our sense of moral responsibility forbids us not only to kill people, but also to pay for the killing of people. What are we to do, caught between what the state, on the one hand, says we must do and what God and our conscience, on the other, say we must do?

This commitment unconditionally to respect the life of our human brothers and sisters should not seem like a surprising pledge for persons of active religious devotion to make to the Creator of all the human family, but unfortunately it is somewhat unusual. I know that most adherents of the Christian religion do not feel bound to obey the teaching of Jesus that all people, including enemies, shall be loved, but this breach of our spiritual leader's words is a source of continuing amazement and perplexity to me. It is not clear why people should want to be identified with a man who loved his enemies and taught his followers to do the same, when they disagree with this fundamental tenet of his moral teaching.

Their minority status notwithstanding, there are in every branch of the Christian religion, and in every other major world religion, large numbers of individuals who will not kill people nor willingly support institutions, even of the state, which sanction homicide. I write on behalf of myself and all such people in the United States who are oppressed by the government's legalization of homicide in warfare and forced collection of taxes to fund the same. I write to say that a democratic government owes these people the freedom to practice their religion without intimidation, coercion or punishment. The First Amendment is indeed a treasure of American democracy, if it as practiced as well as preached.

The Internal Revenue Service is an oppressive instrument of government insofar as it forces persons of faith and conscience to pay taxes for the outrageous practice of killing people. It would hardly seem necessary to point out (yet obviously it is) that American society is not so steeped in compassionate respect for human life that it can well afford to pursue and punish its members whose consciences forbid them to support violence and killing.

There are persons of conscience who do not file their federal income tax because the income tax system is the linchpin for funding the most deadly and hideous instrumentalities of homicide which the world has ever seen. Others avoid the income tax system and undermine the capitalist system by living below the taxable income level. To follow the highest good we know seems the most patriotic service we can render our country. Why should people be forced to pay for nuclear bombs, chemical warfare, Star Wars, boot camps which train people to kill people and guns, guns, guns, all of which have no purpose but to kill human beings?

I hope that I may be forgiven for writing with some passion, but I have noticed that wars are fought with passion, even if they are funded with sanitized dispassion, and that the military training which overrides the natural human revulsion against homicide is pursued with passion. The alternative to national security defined as superior homicidal force is national security defined as superior passion for truth, love and beauty. Human beings, and nations, can be transformed and bonded into communities of healing, grace and fun by these qualities. They can only be killed by superior homicidal force.

So, the Peace Tax Fund legislation which would permit persons of conscience against killing people to pay their taxes in full for healthy, community building purposes still awaits passage by the US Congress. Every citizen has a stake in seeing that legislation passed. Until it is enacted, the IRS is the enforcer of an unjust and oppressive system of taxation, and certainly no employee or legislative overseer of that system can participate in it with an easy conscience. Until it becomes legal to do what is right, those of us for whom right is defined by our understanding of Jesus Christ have no freedom to do what is legal.

I plead for you help to make good the promise of America, the promise of democracy, of religious freedom and a tax system which respects the sincere conscience of American citizens.

Sincerely yours,



John K. Stoner

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Dear Chairman Pickle and members of the Subcommittee on Oversight of the Committee on Ways and Means:

I have been asked to submit this written testimony to be included in the record of the Committee hearings with respect to taxpayers who fail to file Federal Income Tax returns, held October 25, 1993. My name is Patricia Washburn, and during the years 1990-92 I did not file my Federal Income Tax return as a conscientious objector to military taxes. In May of 1992, I presented testimony in support of HR 1870, the National Peace Tax Bill, in which I detailed my reasons for being a conscientious objector. That testimony is reprinted in the Hearing Record of the Subcommittee on Select Revenue Measures dated May 21, 1992 should you wish to refer to it.

My purpose in this statement is to comment on the program of the IRS designed to "help get such taxpayers back into the tax system" (Press release #6, March 25, 1993). My hope is that by sharing my personal experience with this program I can help to modify it on behalf of persons like myself who feel that for reasons of religious conscience they cannot currently cooperate.

I am represented in this tax matter by Nancy P. Bigbee, a Quaker lawyer and former clerk of Mountain View Friends Meeting in Denver. She has attempted over the course of the past two years to work with various IRS agents to negotiate a settlement which would both honor the needs of the IRS to collect taxes due, and to honor my needs as a religious conscientious objector. On September 8th, she wrote to Mr. Todd Korak, Revenue Officer in Fort Collins, Colorado:

"Ms. Washburn is not willing at this time to enter into a voluntary installment payment arrangement. Her reason is the fact that any such arrangement would be made contingent upon her agreement to file all returns and pay all taxes due in the future. Since she is conscientiously opposed to paying that portion of her taxes which support military operations, a promise to pay all future taxes would conflict with her religious objection in the future just as it does now. Ms. Washburn would again like to stress that she does not object to paying that portion of her taxes used for non-military purposes. If the pending Peace Tax Fund Bill were enacted into law, allowing religious conscientious objectors an alternative to paying taxes to support the military, that change could address Ms. Washburn's concern about promising to pay taxes she is opposed to paying."

As a result of that letter Mr. Korak proceeded to levy my salary both at The First Unitarian Church where I am employed as a Religious Educator, and at the Iliff School of Theology where I serve as an adjunct faculty member. The IRS also levied my bank account and registered a notice of lien with Larimer County where I live, causing me great financial and personal stress. My Church community also experienced this stress having to wrestle with the threats of severe penalty and personal liability .

On October 8th, Ms. Bigbee attempted once again to convey our concern to the IRS through the Ogden Office. In that letter she stated:

"Unfortunately it was not possible to negotiate a plan with Mr. Korak on behalf of Ms. Washburn because he stated that he could only arrange a plan under which Ms. Washburn would be required to agree to and pay the full amount of taxes due for the period in question....Ms. Washburn has asked me to make it clear to you that she does not object to paying her taxes per se,...

Like religious conscientious objectors who have chosen to perform non-military alternative service in the face of the draft, Ms. Washburn, for reasons of conscience, cannot pay to support the country's defense spending. Such conscientious objectors have been given alternatives to military service through the Selective Service System; couldn't the IRS provide or dialogue with me and my client about providing some comparable alternative?"

To date there has been no reply to this inquiry. I believe it is important to continue to reiterate that those of us who are in this terrible dilemma are not opposed to paying our taxes. During the May 21st hearings it was pointed out repeatedly that we are not trying to avoid paying our taxes, but rather want to pay them in a manner that is congruent with our religious beliefs. However the IRS does not seem to have the vision or the flexibility to help us in that desire. As Congressman John Conyers pointed out in his testimony "H.R. 1870 is, in fact, revenue positive, allowing a significant population to pay their taxes without violating their principles, and reducing the costs to the government, both administrative and financial." In her letter of October 8th, Ms. Bigbee made a similar assertion: "Surely the discretion granted the IRS under the existing tax code is broad enough to allow some compromise with the religious convictions of Ms. Washburn while carrying out the Service's duty to collect taxes due. A creative solution would not only increase revenues collected (albeit incrementally) but would free up personnel and resources for the collection of other tax underpayments."

The irony of this dilemma is that while I began in 1989 owing less than \$1,000.00 to the IRS, (I had paid the nonmilitary 50% when I filed my return); with the penalties and interest accrued to this time, I now owe over \$5,000 for the same year. There is an inequity in this which compounds the irony. Dr. Martin Luther King spoke to my condition when he said "We are caught in an inescapable network of mutuality, tied in a single garment of destiny...injustice anywhere is a threat to justice everywhere....There are some things in our social system to which all of us ought to be maladjusted...Hatred and bitterness can never cure the disease of fear, only love can do that...We must evolve for all human conflict a method which rejects revenge, aggression and retaliation...The foundation of such a method is love..."

I love my country. I am a mother of four and a grandmother of three. I want them to have the freedom to live in a just and humane society, where citizens are treated with decency and respect. I have not experienced this with the IRS. I have felt victimized, terrorized, and intimidated. Congressman Conyers echoed my feelings when he said "There is another dimension of this I want to speak to, and that is the IRS itself, a system that picks on the little guys and lets the big guys off Scot-free." I often feel under siege by the IRS, and I am clear that this is their intention.

Those of you from a Christian tradition may remember that Jesus once invited the tax collectors to dinner. In August of 1989, I wrote to the then director of the IRS, Lawrence Gibbs, a letter in which I said "I would like to invite you to dinner. This is not a glib offer, but it comes after much prayer and listening to the leading of the Holy Spirit."

I then went on to exegete the passage from the Gospel of Matthew in which the pharisees asked after he had invited Matthew to dinner 'why does your teacher eat with such people?' I then asked Mr. Gibbs "If you are familiar with the text, Jesus responds by saying, 'It is kindness that I want...I have not come to call respectable people but outcasts.' I cannot help but wonder if with all the current adverse publicity about the IRS, whether you sometimes feel like an outcast. I would like to be able to converse with you, while breaking bread, as a way of showing the sort of kindness which the Gospel requires." Mr. Gibbs never responded to my invitation.

Perhaps what I am attempting to say here is that I would very much like to pay my taxes, to "get back into the tax system" as the IRS memo suggests. I have attempted faithfully to dialogue with the IRS over a period of 10 years. I do not have the experience of a reciprocal interest on their part. I pray that this committee will hear the plea of conscience which I share, and provide some respite from the continued harassment and intimidation of the IRS which we religious conscientious objectors have experienced. I continue to believe that the Peace Tax Fund offers an appropriate alternative to many of us, but until it is enacted into law many of us live under threat. I do not believe that was the original intention of voluntary taxation initiated by the founding fathers of our country. As I stated in the conclusion of my testimony before the Subcommittee on Select Revenue Measures:

"I respectfully request this Committee to hear my plea and provide me an ethical option that does not force me to violate the law of the land in order to honor the law of conscience. My colleague John Stoner has said: "We are War Tax Resisters because we have discovered some doubt as to what belongs to Caesar and what belongs to God, and have decided to give the benefit of the doubt to God".

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I. OVERVIEW

The purpose of this statement is to make known to Congress IRS' current deceit regarding its current voluntary disclosure/amnesty program.

We are certainly in favor of the voluntary disclosure/ amnesty program, but oppose IRS' deceit with respect to the issue.

II. ELEMENTS OF IRS DECEIT

We submit that IRS is deceitful in the following respects:

1. IRS refuses to call their program "amnesty" despite the fact that IRS promises no criminal prosecution if delinquent taxpayers come to IRS before IRS comes to them. Amnesty means forgiveness. IRS is willing to forgive with respect to potential criminal prosecution.

2. IRS will not put its promise of no criminal prosecution in writing.

3. There is one case currently pending in which our client, a nonfiler, got back into the system by filing his returns prior to any contact by IRS, civil or criminal. Despite this, IRS has recommended criminal prosecution and the Justice Department has decided to prosecute for willful failure to file timely federal income tax returns, 26 U.S.C. Sec. 7203.

4. Even if IRS promises no criminal prosecution, they share the information with the state and IRS' promise is not binding on the state.

5. If one is a nonfiler for a number of years, to file delinquent returns immediately may be bad advice. This is because one might want to eliminate the tax debt through a Chapter 13 bankruptcy by first filing the bankruptcy petition; then filing the returns;

6. IRS is working with accountants and attorneys to assist taxpayers for free in preparing and filing your returns. IRS' brief brochure tells one to "file your returns NOW, even if you can't pay."

But here is the risk to immediately filing:

- a. Criminal prosecution by state or IRS;
- b. IRS assesses, files a lien and becomes a secured creditor to client's assets, including present value of pension;

c. Serious collection problems, including levy on wages and assets;

7. Thus, one option which IRS does not disclose: file Chapter 13 and then file returns. Result: all tax debts but the last three years are eliminated and IRS is not secured to your assets, which means you keep more of your assets;

8. IRS claims that they will work out a payment plan or you can settle by an Offer in Compromise, but there are no guarantees and no written promises. Our experience: very few offers in compromise are accepted.

9. IRS makes it sound easy to have penalties and interest waived. No true.

10. IRS Publication 908 - Bankruptcy, is deceitful because it fails to properly advise taxpayers about the legal rules for elimination of income tax debts through bankruptcy. For example, tax debts can be eliminated in a Chapter 13, even where the taxpayer has not filed a return, has filed late within the last two years, or committed fraud.

11. IRS Publication 1 - Your Rights as a Taxpayers, is deceitful because it does not inform taxpayers of one viable option with respect to money owed IRS that the taxpayer cannot afford to pay: bankruptcy.

III. SUMMARY AND CONCLUSION

We have repeatedly placed IRS on written and verbal notice concerning their deceitful practices. We now turn to you to remedy this serious problem. IRS claims that over 10 million people do not file returns which they are required to file. IRS also complains about the growing tax gap: over \$100 Billion per year.

IRS has its solution: tax amnesty. We agree. However, we believe it is the obligation of public servants to be absolutely truthful with the citizens of this country. We expect no less from IRS.

Yours truly,



Donald W. MacPherson
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 Board Certified Specialist -
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DWM/dsa

Tax Amnesty:
An Old Debate as Viewed From Current Public Choices

Gerald P. Moran

I. INTRODUCTION

The Clinton administration arrived with specific, well-advertised goals: job creation, a comprehensive national health care program, economic recovery and a commitment to reduce the constantly increasing federal deficit.¹ There is no question that President Clinton has established these policy objectives as the primary criteria upon which he desires his forthcoming leadership efforts to be judged by the electorate. Success on these domestic issues would enhance his position for re-election in 1996, and would merit well-deserved respect for leadership and judgment. Whether all of these separate but related goals can be achieved within both the short and long term, without being counter-productive to each other, presents one of the more intriguing enigmas faced by the administration.

Job creation and a comprehensive national health care program will necessarily consume more revenue in the short term. Consequently, the federal deficit will increase unless new resources are found to pay the costs of these programs and unless acquisition of such resources does not significantly impair the economic recovery in progress. Indeed, the current economic recovery can, on its own, deliver significant dividends. Nevertheless, the search for resources will be one of the more consuming and politically sensitive issues facing President Clinton. The new resources may be generated by any of the following items: (1) a cut in government expenditures, including mandatory programs; (2) an economic dividend generated through restructuring of the health delivery system;² and (3) an increase in tax revenues.³ Notwithstanding the anticipated economic dividend to be generated from the restructuring of a health delivery system, it is likely that only cuts in federal expenditures coupled with increased tax revenues will provide the funds necessary to attain and sustain President Clinton's goals as laid out in his State of the Union Address.

The normal political jousting conducted during the presidential campaign—i.e., do the numbers add up—is now irrelevant to the more pressing search for new resources in light of the recently revised report of the Office of Management and Budget (the "OMB") that the deficits for fiscal year 1994 and the out years are greater than the original estimates of the Bush Administration.⁴ Apart from the debate as to whether the increase in the estimate of deficits was a true "surprise,"⁵ the expectation of greatly increased deficits approaching \$50 billion a year, over and above the previously projected figures for the out years, has been accepted as reasonably accurate for present planning purposes by both the administration and Congress. Thus, federal deficits, both accumulated and recently revised, have greatly reduced the administration's discretionary choices with respect to the design of programs necessary to attain its policy objectives. This is particularly true as rhetoric gave way to the birth of specific Clinton prescriptions, set forth in his State of the Union Address, and their anticipated enactment, with or without congressional modifications. Because of the opportunity for political manipulation of OMB projections, President Clinton's goal of a \$140 billion cut in the projected deficits for 1997 will now be based upon the perhaps less politically sensitive budget projections of the Congressional Budget Office.⁶

The American electorate likely will support the President when he effects a significant change in his political policy—for example, by recommending increases in taxes without providing tax relief to the middle class—if the facts necessitating such change are candidly set forth. President Clinton's inaugural address highlighted the need for equal sharing of the sacrifice. The State of the Union Address filled in some painful details which illustrate the meaning of commitment to shared sacrifice. The President

said that all Americans must share the burdens of government if more of us are to realize the promises of a right to liberty in its full empirical reality: a place to live, a quality education, a job, comprehensive health care and the full opportunity to realize our individual potential. The initial public response suggests that the body politic is willing to support the President's comprehensive economic and tax program.⁷

President Clinton has selected experienced policy advisers who will effectively represent his position as the comprehensive program moves through Congress. Secretary of the Treasury Lloyd Bentsen and OMB Director Leon Panetta, among others, provide an exceptional combination of experience,⁸ legislative expertise, and judgment to defend President Clinton's recommendations with respect to cuts in government expenditures and increases in taxes.

To fund his comprehensive economic plan, President Clinton recommended that Congress immediately enact a tax package containing the following elements:

1. An energy tax based on British thermal unit or heat content as well as a continuation of a federal gasoline tax.
2. An increase in the highest marginal rate to thirty-six percent on incomes in excess of \$140,000 for people filing a joint return and a surtax on taxable income in excess of \$250,000.
3. Disallowance of business expense deductions by corporations for compensation of a corporate officer or director in excess of \$1 million dollars, except where compensation is based upon productivity.
4. An increase in tax collected on the incomes of foreign businesses through enhanced enforcement of section 482 of the Internal Revenue Code or the enactment of amendments which may be necessary to tax foreign corporations on profits made in the United States.
5. An increase in the tax rate to thirty-six percent for corporations the taxable income of which exceeds \$10 million.
6. An increase in the percentage of social security benefits which are subject to the income tax from fifty percent to eighty-five percent for a single person whose income is in excess of \$25,000 and for couples whose income is in excess of \$32,000.
7. A reduction in the amount of deductible entertainment expenses from eighty percent to fifty percent and the elimination of any deduction for club dues.
8. An expansion of the earned income tax credit to cover more low income taxpayers.
9. The enactment of an investment tax credit (permanent for small business and temporary for large corporations).
10. The enactment of enterprise zones, under which numerous tax benefits would be available to businesses operating in such zones.⁹

It is the purpose of this article to suggest that there be incorporated in the tax package a comprehensive federal tax amnesty program to secure additional tax revenues *which will not otherwise be recovered by the government*. Although a federal tax amnesty program has often been discussed,¹⁰ the Internal Revenue Service has consistently opposed the adoption of such a program. In light of the pressing need for more revenue and anticipated significant increases in federal expenditures to fund a comprehensive health program,¹¹ the matter of a tax amnesty program deserves a full review. If we are to reinvent the government as the President has proposed, we must be able to review prior policy conclusions to see whether they remain appropriate from the perspective of current conditions.¹²

The sections set forth below discuss (1) the "tax gap"; (2) the recently announced nonfiling program of the Internal Revenue Service; (3) the administrative enforcement options available to the Internal Revenue Service; (4) an overview of a comprehensive

tax amnesty program; (5) the traditional response of the Internal Revenue Service to a proposed amnesty program; and (6) a proposed model for a comprehensive tax amnesty program.

II. THE TAX GAP AND TAXPAYER RATIONALIZATION

The loss of revenue from noncompliance presents one of the more vexing and frustrating matters faced by tax administrators. The most recent Internal Revenue Service estimate of income tax revenue loss due to noncompliance has grown to between \$110 and \$127 billion a year,¹³ an amount almost equal to President Clinton's goal of cutting the deficit in 1997 by \$140 billion.¹⁴ The revenue loss due to noncompliance is referred to as the "tax gap."¹⁵ The tax gap does not include losses due to noncompliance with respect to employment taxes, excise taxes, or illegal sources of income.¹⁶ Consequently, the actual revenue loss due to noncompliance each year certainly exceeds the President's deficit reduction goal.¹⁷ A consumption type of system or a national sales tax may reduce the effects of noncompliance, but would present many other problems.¹⁸

For the short term, the issue of tax compliance under the existing income tax system, as it relates to nonfilers, tax avoiders and evaders, is a matter of national urgency. The tax gap and the consequent annual loss of billions of dollars has been reviewed by the Internal Revenue Service and Congress, as well as independent experts. The most important question is not the amount of the revenue lost, or whether the percentage of compliance is decreasing, improving or remaining the same,¹⁹ but rather how can the amount of the revenue loss be reduced.

A separate but important part of the milieu in which nonfilers, tax avoiders and evaders often interact is the broad social structure of the "underground economy." The underground economy is actively supported by many of our citizens *sub silentio*. Unfortunately, they frequently view the issue of noncompliance with a certain degree of "gleeful joy" that one of them is escaping payment of taxes, rather than recognizing such conduct as it truly is, theft from every taxpayer who pays his or her fair share. This phenomenon is analogous to the public's support for the continuing illegal escapades of John Dillinger in the 1930's. Ideally, of course, the obligation to pay taxes should be viewed as a compact among all citizens to pay for the variety of services produced by the government such as insuring our savings accounts, guaranteeing minimum social security benefits, providing for health care and economic assistance in the event of a disaster, as well as providing police and armed forces protection for our basic security.

The extent to which people voluntarily enter into this compact can be affected by their perceptions of how well the government fulfills its purpose. Some believe that the government too often assumes a life of its own, independent of its purpose. It sometimes adopts policies which may violate common sense standards, for example, "he had to destroy the village to save it;"²⁰ and it attempts, consciously or not, to accumulate more power while providing less service and attempting to avoid accountability. The basic institutional attitudes of some careerist members of the government are directed toward increasing their own job security at the cost of delivering services. For this reason, it is enormously difficult for an agency of the government to present a vision of renewal which necessarily divests some of its careerist members of their secured positions of power. This situation also occurs in private industry. Indeed, everyone exists in interacting economic and social structures, and adopts strategies for his or her own survival. Careerist members of the government and independent entrepreneurs are simply operating in different primary regimes within which they both seek security and economic freedom. Our natural antagonism toward government and its inability to deliver common sense services, when combined with a sociopathic insensitivity in the administration of the law, particularly tax laws, enrages us! Still, the inherent and institutional limitations of the government do not provide justification for failing to pay

one's fair share,²¹ nor should we smile when a citizen escapes the tax snare.

III. THE NEW INTERNAL REVENUE SERVICE POLICY WITH RESPECT TO NONFILERS-VOLUNTARY DISCLOSURE

The Internal Revenue Service has reported that the number of filed income tax returns increased from 110 million in 1988 to 114 million in 1990 and, unfortunately, that the number of nonfilers also rose.²² The report concluded that approximately ten million individuals and businesses do not file income tax returns.²³ During 1991, the inventory of nonfilers rose by thirty percent.²⁴ In response to this problem the Internal Revenue Service has recently reassigned 2000 examining agents the task of locating and contacting nonfilers.²⁵ This allocation of almost ten percent of the audit staff should both reduce the existing inventory of nonfiler cases and identify additional nonfilers. Thus, the existing inventory as of 1991 should decrease, but new nonfiler cases will likely exceed closings.

The income tax gap attributable to nonfilers for 1992 was approximately \$7 billion according to an announcement of the Internal Revenue Service on September 30, 1992.²⁶ Since the estimate of the income tax gap for nonfilers in 1987 was over \$7 billion,²⁷ one senses that either the 1987 figure was inflated or the current projection of the tax gap due to nonfilers is seriously understated. Indeed, Acting Commissioner Dolan recently testified that the tax gap for nonfilers in fiscal year 1992 was over \$10 billion.²⁸

The Internal Revenue Service has, for many years, encouraged nonfilers to get into the system through a voluntary disclosure program. Between 1934 and 1952, it was the policy of the Internal Revenue Service not to recommend criminal prosecution when the taxpayer came forward, made a true voluntary disclosure, and filed an accurate tax return.²⁹ This policy was formally abandoned on January 10, 1952.³⁰ Thereafter, voluntary disclosure was considered merely as one of the factors in deciding whether to file criminal charges.³¹

Termination of the policy in 1952 was based, in part, on the fact that it created an opportunity for taxpayers, no matter what the facts were, to claim that they had voluntarily disclosed and therefore could not be criminally prosecuted.³² In light of the resulting litigation, it was natural for the Service to modify the policy from guaranteeing no criminal prosecution to merely considering voluntary reporting as one factor in deciding whether to prosecute. There was also some concern about possible corruption by government officials arising from the discretion inherent in the original policy.³³ After the 1952 change in policy, a taxpayer could no longer argue that voluntary disclosure insulated the taxpayer from a subsequent criminal prosecution. Nevertheless, a "common law" expectation has long continued, derived in part from the past practices of the Service that voluntary disclosure generally would avoid a criminal prosecution, particularly for nonfilers.³⁴

The conclusion which can be derived from this history is that the Internal Revenue Service does not have a formal policy of immunity from prosecution by reason of voluntary disclosure, but may decline criminal prosecution after considering the evidence, including the taxpayer's voluntary disclosure. Notwithstanding the "common law" expectation, a tax adviser could never assure a taxpayer that there will not be criminal prosecution. Clearly, counsel's advice regarding voluntary disclosure presents not only a difficult question because of the potential for criminal prosecution of the client, but also because of the potential criminal and ethical exposure of the tax adviser in certain instances where voluntary compliance is not recommended.³⁵

On September 30, 1992, the Internal Revenue Service issued a notice announcing the adoption of a special program to provide comprehensive support for the ten million nonfilers.³⁶ The core of this new program was the realization that many taxpayers who failed to file for one year became frightened about filing a tax return

the next year. Thus, there was a "psychological freeze" about facing the issue in successive tax years.³⁷ As part of the program, the Service noted that those who would voluntarily come forward should not fear criminal prosecution. Commissioner Shirley Peterson explained that the Internal Revenue Service would not recommend criminal prosecution of any taxpayer for wrongdoing if such action occurred prior to the initiation of an investigation by the Service.³⁸ This is identical to the terminated voluntary disclosure program, except that it does not provide unconditional "absolute" amnesty from criminal prosecution and it is limited to nonfilers.

Tax advisers and taxpayers welcomed the adoption of this policy. Unfortunately, despite the best intentions of the Internal Revenue Service, the recent policy is still couched in conditional language. Thus, a tax adviser cannot guarantee that voluntary filing will never result in criminal prosecutions. Even Commissioner Peterson's position on the nonfiler policy does not resolve all ambiguities on the issue of criminal prosecution. In an appearance before the Tennessee Tax Institute, she stated that: "The nonfiler program is a long-term effort to improve tax compliance and the whole purpose is to get people back in the system, not to prosecute ordinary people who made a mistake (emphasis added)."³⁹ Obviously, this suggests that an "extraordinary person," for example, a drug dealer, may still be subject to criminal prosecution. Thus, although the Service's new policy has been characterized as "a virtual amnesty,"⁴⁰ that characterization is not synonymous with a formalized tax amnesty.⁴¹

Some authorities have been troubled by the degree to which a taxpayer could rely on the internal practice of the Internal Revenue Service with regard to voluntary disclosure as a bar to prosecution. The new policy, as now formalized, applies only to nonfilers of income tax returns and remains subject to certain conditions which remain entirely within the discretion of the Service. The voluntary policy would not apply to a drug dealer or anyone else whose source of income is an illegal activity or to a situation which presents an "egregious" failure to file. Nor does this new policy apply to tax evaders who have filed fraudulent income tax returns. In addition, tax practitioners who failed to file an income tax return might face disbarment from practice before the Service unless certain provisions of Internal Revenue Service Circular 230 are revised.⁴²

Unfortunately, because of the limitations on the policy with respect to nonfilers, a tax adviser cannot guarantee that voluntary filing will preclude criminal prosecution. Thus, even though the American Bar Association tax section has fully cooperated with the Internal Revenue Service in assisting taxpayers in filing income tax returns,⁴³ there is no absolute assurance that those taxpayers will not be prosecuted. It is probably true that earners of modest amounts of income who have not previously filed for a limited number of taxable periods do not have to fear criminal prosecutions, however other earners of income still face a degree of anxiety and some, such as drug dealers, face a high probability of criminal prosecution.

While one may applaud the Service with respect to its policy regarding nonfilers, the policy should be revised so that all conditions limiting its application are "formally" withdrawn. A simple and unconditional tax amnesty for nonfilers of income tax returns is appropriate. In addition, the program should not be limited to income tax returns, but should apply to all types of returns, for example, information, excise, employment or other similar returns which are required to be filed.⁴⁴ Since the government needs revenue, and participation by more taxpayers necessarily increases tax revenue, the burden of taxation will be reallocated so that each taxpayer's share of the pain will, at some point, be reduced.⁴⁵ A revised nonfiler policy of this nature allows for correction of the collective and intentional failures of those taxpayers who have, for one reason or another, failed to file a return and pay taxes. The cost will be acceptable to many so long as such policy generates substantial increases in tax revenue.

In addition to the elimination of criminal prosecution, a number of the civil tax penalties should also be waived. Under the

existing policy of the Service, certain civil penalties may be waived if the taxpayer establishes reasonable cause for his or her failure to file. It does not make sense to impose the full range of civil penalties where the amount of such penalties is in excess of the amount the nonfiling taxpayer reasonably can pay in light of his or her economic circumstances. Obviously, an increase in the number of installment agreements or offers-in-compromise due to inability of the nonfiler to pay such penalties frustrates one of the primary purposes of the program—payment of past taxes. But the imposition of penalties may limit the effectiveness of the new policy in getting taxpayers on the rolls for future tax "contributions." Indeed, it may be that fear of civil penalties is one of the reasons some taxpayers cannot come out of the cold; they cannot afford to pay. The program should be designed to reach the primary objective—voluntary compliance!

IV. ENFORCEMENT OPTIONS OF THE INTERNAL REVENUE SERVICE

The reason behind a policy of no absolute amnesty from criminal prosecution for nonfilers arises, presumably, from an internal debate between different elements of the Service. One group, composed of computer-oriented managers, recognizes that fear of prosecution and/or civil audits as the principal mechanism for voluntary tax compliance is no longer sufficient if the Service is successfully to meet its onerous administrative responsibilities into the next century. The other group believes, based largely on past practices, that the primary method of maintaining or increasing tax compliance is through increased audits⁴⁶ and criminal enforcement. According to Acting Internal Revenue Service Commissioner Dolan, data indicates that the degree of compliance is relatively stable.⁴⁷ This begs the question as to whether new approaches, such as the nonfiler program, should be tried and expanded. One senses that behind the Service's new nonfiler program and its recently adopted administrative approach known as Compliance 2000,⁴⁸ there are many careerist members within the Service who are willing, with certain restrictions, to innovate and accept responsibility for the possibility that such new programs might not succeed. There is a realization that these new programs might, indeed, provide a catalyst to increase voluntary compliance. The initial report on the nonfiler programs is that over 140,000 taxpayers have made voluntary filings of income tax returns.⁴⁹ Given the modest effort in publicizing the nonfiler program, these results are very promising.

The ongoing conflict concerning the future enforcement policy options of the Service presents a question of intense concern within the Service, and the resolution of that conflict will necessarily have an immense impact upon taxpayer compliance. The Service is facing the choice between either seeking a tremendous increase in its enforcement staff or adopting a new, innovative management approach for the administration of tax laws and effecting an enormous enhancement of its computer resources. There are inherent and serious limitations on maintaining or increasing voluntary compliance through the threat of enforcement. In truth, and apart from the debate over administrative policy, the Service has not been able to sustain the percentage of returns it audits. Over the last ten years there has been a steady decline in the rate from 1.6% of the returns filed in 1983 to less than one percent of the returns filed in 1992.⁵⁰ This significant decrease in the percentage of audits is understandable in view of the budget constraints imposed on the Service, the difficulty of training and maintaining competent agents, and the great increase in the number of returns. Furthermore, information returns and computer matching have most certainly had a positive effect on compliance. Nevertheless, the steady decline in the percentage of returns audited leads to the conclusion that primary dependency on audits by the Service is no longer viable for the long term. For that reason and others, the Service will be forced to rely on modernization of computer resources⁵¹ and more innovative approaches to maintain and improve taxpayer compliance under the user-friendly approach associated with its commitment to Compliance 2000.⁵²

V. A COMPREHENSIVE TAX AMNESTY PROGRAM

The current nonfiler program represents only a slight modification of the original administrative approach of the Service to secure voluntary compliance. The Service's recent expansion of its offer-in-compromise program is another change in policy designed with renewed concern for efficient collection of back taxes.⁵³ The nonfiler and the expanded offer-in-compromise programs, along with other similar developments, are moderately daring from the perspective of the historically draconian attitude of the Service. The early returns from these programs are somewhat promising in terms of securing additional tax revenue.⁵⁴ This fact, along with the desperate need for more tax revenue, raises the broader question of whether a comprehensive tax amnesty program ought to be considered by the Clinton administration and Congress. Quite frankly, if innovation and flexibility are the mechanism for private industry to meet the challenges of the next century, then tax amnesty at the federal level may be the mechanism for the government to address the increasingly serious problem of noncompliance.

VI. THE TRADITIONAL RESPONSE CONCERNING TAX AMNESTY: INTERNAL REVENUE SERVICE

Since the future is frequently a product of past practices, it is doubtful whether the Service can, or, for that matter, should, ever recommend the adoption of a full-scale tax amnesty program. The Service's traditional mission has been one of enforcement, and thus its organization has been functionally designed to secure compliance through the fear of civil penalties and criminal prosecution. This is not to suggest that there has not been a significant allocation of resources by the Service to develop simplified tax forms, carefully provide instructions, and provide individual taxpayer assistance;⁵⁵ nor is it to suggest that there is not a positive relationship between increasing the percentage of audits and increasing federal revenue.⁵⁶

A policy change to a user-friendly system is simply contrary to the primary mission of the Service as understood over the last 70 years. A policy of tax amnesty, despite the recent changes in the agency discussed above, remains antithetical to the purpose for which the Service was created and the interests of its careerist members who have a vital stake in the continuation of past practices. For example, it was probably not surprising that the Central Intelligence Agency (the "CIA") was totally unable to foresee the collapse of the former Soviet Union and other communist states. The CIA was created to report on the threat that such countries presented to us. It simply was not able to predict the rather startling decomposition of the communist states. Similarly, the Service is not able to be sufficiently objective about a truly radical revision of its approach to the collection of taxes, although it is obvious that harsh realities forced the creation of Compliance 2000.⁵⁷ This is not a criticism of the Service, but rather a description of the obvious nature of the limitations that preclude the Service from recommending such a policy.

More importantly, the question of whether to adopt a comprehensive tax amnesty program presents a purely political issue which must be resolved by President Clinton and Congress. Thus, it would be inappropriate for the Service, on its own, to recommend such a program.

This is not to suggest that a federal tax amnesty program would solve the deficit problem, and therefore should be instantly adopted. There are many serious and difficult matters to consider. In 1990, testifying before the House Subcommittee on Commerce, Consumer and Monetary Affairs, Committee on Government Operations, Fred T. Goldberg, former Commissioner, and Michael J. Graetz, former Deputy Assistant Secretary of the Treasury, outlined a series of significant concerns that support the rejection of a federal tax amnesty program.⁵⁸ Their individual and collective views constitute a compelling case justifying rejection of a federal tax amnesty program. The following were among their major

concerns.

1. That the states may have had successful tax amnesty programs does not necessarily mean that a federal tax amnesty program would be successful.
2. Taxpayers who have fully complied with their federal income tax obligations understandably might object to allowing noncompliant taxpayers to be relieved of criminal prosecutions, and perhaps civil tax penalties.
3. The tax amnesty program would not result in a net increase in revenue since there would be offsetting transactional costs.
4. There is no agreement as to how much additional revenue would be collected solely by reason of the tax amnesty program.
5. It is not clear that the Service has sufficient enforcement resources to provide the "stick," after the period of tax amnesty expires, to insure a full harvest of taxpayers who would chose voluntary disclosure.⁵⁹

It would be impossible to answer these and other questions without (1) analyzing recent data regarding taxpayer compliance; (2) making an effort to realistically determine the amount of net tax revenue that would be generated; (3) assessing the impact on the attitude of compliant taxpayers; (4) assessing the impact on existing civil audit and criminal tax investigations; (5) anticipating the impact on long-term compliance; and (6) determining the ability of the Service, under its current budget constraints, to successfully administer an amnesty program. In short, an intensive analysis must be conducted before these and other issues can be resolved.

It may not be possible to objectively determine whether, all things considered, it makes sense to adopt a comprehensive tax amnesty program. If one were to attempt to design a mathematical approach to answering this question, a number of factors would have to be considered. One would have to determine the present value of short-term and long-term benefits, the associated investment costs, the discounted value of the loss of future revenue, direct and indirect, from a reduction in audit and criminal enforcement activities during the amnesty period, and revenue loss from future noncompliance by present complying taxpayers (who might view such a program as unfair). Any such mathematical formulation would also take into consideration the economic value of fairness to the extent that tax amnesty would create a loss of future revenue from presently compliant taxpayers. It would not address the question of fairness, or of comparable values, from a moral point of view. That is not to suggest that the moral aspects of tax amnesty are irrelevant, but rather that such matters should be considered separately. A specific determination of the net financial increase, if any, to the government under such a comprehensive analysis would inherently be subject to uncertainty.

The present investment costs to be incurred in the implementation of a tax amnesty program may be predictable. Such costs would include not only the direct cost of management training, and advertising, but also the loss of revenue incurred by a reallocation of manpower from audit and criminal investigations to the tax amnesty program. It may be that the present value of the long-term benefits will be the most crucial element to ascertain. If there is a significant increase in new long-term contributing taxpayers, the additional tax revenues realized from them may be the most important issue to focus upon in deciding whether a federal tax amnesty program is worth the considerable risks.

Presently complying taxpayers may be opposed to a tax escape hatch at the federal level, but such taxpayers' institutional habit of compliance—i.e., servitude to following the existing tax norms—probably would not be significantly broken. One may anticipate an initial negative response by the public and some political leaders. However, with appropriate and accurate information, the disclosure of anticipated net economic benefits should be sufficient to mitigate any serious concerns.

An equally difficult question is what agency or institution should be assigned to conduct the study. It would not be unreasonable for the Government Accounting Office, along with the Joint Committee on Taxation, the Treasury Department, the Congressional Budget Office and the Internal Revenue Service to gather their respective resources to conduct the study and make appropriate recommendations. The Tax Section of the American Bar Association should also be an active participant in such research. Secretary Bentsen and Director Panetta should co-chair the study.

**VII. A PROPOSED MODEL FOR A COMPREHENSIVE
TAX AMNESTY PROGRAM**

Implementation of a comprehensive tax amnesty program would be a task even more complex than the study itself. The following is a list of suggested minimum conditions necessary to provide a realistic opportunity for a federal tax amnesty program to reach its goals.

1. The study should be conducted in secrecy to the extent allowed under existing law.
2. The President must be a participant in announcing the program and a consistent supporter during the period of tax amnesty.
3. There must be a substantial national media effort constantly reinforcing the merits of the program and the consequences of being caught after it closes.
4. The program must be ready for full implementation on the date of the announcement.
5. The duration of the program should be one year; announced on April 16 and available through April 15 of the following year.
6. There should be no conditions concerning the program's applicability during the amnesty period.
7. Tax amnesty should apply to all criminal tax prosecutions and special consideration should be given to the possible waiver of certain civil penalties. Past amnesty programs were limited to only criminal prosecutions.
8. Strict enforcement of criminal and civil tax penalties should apply for the period following the tax amnesty.⁶⁰
9. The enactment of the program should include a prohibition against enactment of a similar program for the next twenty-five years.⁶¹
10. Any taxpayer who benefits under the program, and who is convicted in a criminal tax prosecution for a later taxable period, would lose all tax benefits of the prior relief and would receive at least a minimum jail sentence.
11. Persons engaged in illegal activities may report the income from such illegal activities and information contained in such tax returns may not be used in other federal criminal prosecutions.⁶²
12. Maximum contemporaneous state participation in the program should also be obtained.⁶³
13. A specific procedure to clarify the date on which the taxpayer made the disclosure should be established; perhaps, a certified filing at a particular office of the Service should be required.

The benefits of such a tax amnesty program are not simply the additional federal revenue generated during the amnesty period, but also the entry of more taxpayers into the system, so that the revenue benefits will extend, on an annual basis, well into the next century.⁶⁴ Clearly, the most pressing question is the amount of new federal revenue generated. An accurate estimate of the tax recovery and net revenue benefit which would be generated by the adoption of a comprehensive tax amnesty program will be far more difficult to predict than our national deficits. Notwithstanding the uncertainty as to the amount of tax recovery and net revenue benefit, one senses that this is the time in our nation for

innovation and experimentation in federal tax administration.⁶⁵ The Clinton administration possesses the capacity and energy to face basic realities of health care, federal deficits, increased taxes, domestic investment in the infrastructure, economic expansion, and federal budget cuts—why not the question of a broad-based tax amnesty program? The time for a comprehensive study of a federal tax amnesty program is now.

VIII. CONCLUSION

The historic approach used to improve tax compliance has been premised on audits and criminal prosecution. In more recent years, Congress has enacted a series of new civil penalties to increase the cost of playing the audit lottery. The current change in the administrative policy to make the Service more "user-friendly" and to treat taxpayers as "customers" raises the risk of an increase in noncompliance. Nevertheless, there are other factors, such as the volume of tax returns, the inherent complexity of the tax law, and the decrease in the percentage of returns audited, forcing dissolution of the ancient regime of fear. In the next century, the Service may be forced to adopt a "user-friendly" policy because the time and cost of an enforcement regime is no longer effective. Indeed, the consistent decrease in the percentage of returns audited alone suggests that this is occurring well before a formal readjustment of administrative policy is fully developed by the Service. It is doubtful that a specific resolution of administrative choices will occur in the near future. Rather, an amalgamation of the two primary techniques will take place, with increased emphasis on one or the other for the reasons expressed herein. Hopefully, the "user-friendly" approach, as expanded through modernized computer resources, and the enactment of tax laws with administrative efficiency as a main concern, will become the primary means of achieving future tax compliance.

With respect to the principal and more specific issues discussed in this comment regarding adoption of a comprehensive tax amnesty, the case for re-examination exists and the opportunity for a broad-based review awaits the decision of the Clinton administration. A federal tax amnesty program is not a panacea, but rather a very complex and uncertain opportunity.⁶⁶

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1. See President William J. Clinton, Inaugural Address (Jan. 20, 1993), in 29 Wkly. Compilation of Presidential Documents, 75-77 (Jan. 25, 1993).

2. President William J. Clinton, Remarks on Health Care Reform and an Exchange With Reporters (Jan. 25, 1993), in 29 Wkly. Compilation of Presidential Documents, 96-98 (Feb. 1, 1993). President Clinton has consistently expressed the view that universal health insurance can be provided without incurring increased costs. In responding to a question of whether universal health coverage will increase deficits, President Clinton stated, in part, the following:

So the answer to your question is, in my judgment, if we do this right over the next 8 years, you're going to see huge savings in tax dollars and even bigger savings, more than twice the savings, in private dollars that will filter up hundreds of billions of dollars literally between now and the end of the decade to reinvest in economic growth and opportunity.

In the short run, our tough call will be how do you take savings and phase in universal coverage. Or should there be some other way to pay for that? We've got some short-term calls to make. But there's no question that in the median term, 5 to 8 years, you're looking at massive savings with universal coverage in both tax dollars and private sector dollars if we do it right.

Id. at 97-98. Obviously, President Clinton is aware that, during the short term, universal health care will impose very substantial increases in costs if such health protection is provided.

A memorandum on health care costs, written by White House advisor Ira Magaziner to health care task force leader Hillary Rodham Clinton, estimated that the annual additional cost for universal health care coverage might run between \$30 billion and \$90 billion a year by 1997. See Priscilla Painton, *The Next Dose of Medicine*, *Time*, Mar. 1, 1993, at 28. This highly confidential memorandum was leaked to the *Wall Street Journal*. Id.

3. See President William J. Clinton, *State of the Union Address* (Feb. 17, 1993), in *N.Y. Times*, Feb. 18, 1993, at A20; see also discussion *infra* text accompanying notes 8-9. Recently, President Clinton personally acknowledged that universal health care coverage would generate the need for more revenues and discussed the possibility of increased federal taxes on tobacco as a means of meeting some of these revenue demands. See Michael K. Frisby, *Clinton Signals New Tax on Cigarettes, Other Items to Finance Health Program*, *Wall St. J.*, Feb. 26, 1993, at A3. Thus, the basic choice is between cutting federal expenditures or raising taxes; as between those options, raising taxes may be the easier political choice.

4. Office of Management and Budget, *Budget Baselines, Historical Data, and Alternatives for the Future 32-37* (January, 1993). See also Office of Management and Budget, *Budget of the United States Government, Fiscal Year 1994 2* (1993) [hereinafter 1994 Budget]. There is a complicated political struggle behind the increased deficits projected in the recent budget of the Bush administration. The original budget projections for fiscal years ending 1993 through 1997, inclusive, reflected projected deficits for the respective fiscal years (independent of a national health care) of \$351 billion (1993), \$211.4 billion (1994), \$192.1 billion (1995), \$180 billion (1996) and \$181.8 billion (1997). The final report of the Bush administration, as prepared by the Office of Management and Budget ("OMB"), dated January 6, 1993, revealed projected deficits for 1994 and the out years significantly greater than original estimates made on January 29, 1992. Id. Prior estimates made by the Congressional Budget Office ("CBO"), released during August of 1992, projected deficits for the years 1993

through 1997 of \$331 billion (1993), \$268 billion (1994), \$244 billion (1995), \$254 billion (1996) and \$290 billion (1997). Congressional Budget Office, *The Economic and Budget Outlook: An Update* xii (Aug. 1992) [hereinafter *Budget Outlook*]. These estimated losses were substantially greater than the original projections of the OMB and are confirmed in the Budget of the United States for FY 1994. 1994 Budget, *supra*.

The CBO explained in its Budget Outlook that the 1990 budget agreement failed to reach its goal of control over the deficits because: "a stubbornly sluggish economy, a shortfall in tax revenues, and unexpectedly rapid growth in federal benefit programs—primarily Medicare and Medicaid—have left the federal deficit stuck near \$300 billion for the next few years and heading upward in the second half of the decade." *Budget Outlook, supra*. Because of the significant increases in the deficit projections by the CBO, Senator Pete V. Domenici (R-N.M.) expressed the view that the Clinton administration was somewhat disingenuous in its claimed "shock" regarding notice of the revised deficit projections of the OMB released on January 6, 1993. Pete V. Domenici, *The GOP's Offer*, *Wash. Post*, Feb. 21, 1993, at C7. Yet, President Clinton's team said "our legs were taken out from under us when the new OMB numbers came out." Dan Balz & Ann Devroy, *How Clinton Navigated Politics, Economics on Plan*, *Wash. Post*, Feb 21, 1993, at A1, A16.

The normally confrontational Richard Darman, former Director of the OMB, went out of his way not only to point out that candidate Clinton's economic blueprint "creates a circle that cannot be squared . . ." but also assumed that discretionary spending will be frozen for the years 1996, 1997 and 1998, after the caps established under the 1990 Budget Summit expire. George Hager, *Time Bombs for Clinton Seen in Bush's Final Budget*, 51 *Cong. Q.* 68, 71 (Jan. 9, 1993). The completely unrealistic assumption of a freeze in discretionary spending for the out years after fiscal year 1995, and the resulting increase in the projected deficits, broke the back of the promised middle class tax relief.

5. Balz & Devroy, *supra* note 4, at A16.

6. Clinton, *supra* note 3.

7. Nancy Gibbs, *Working the Crowd*, *Time*, Mar. 1, 1993, at 26. The initial public response to the economic and tax proposals was quite positive. The polls reflected very favorable support for the President's plan. *Id.*

8. See Balz & Devroy, *supra* note 4, at A16.

9. Summary of Administration's Revenue Proposals, Released by Treasury Department Feb. 25, 1993, *Daily Tax Rep.*, Special Supplement (BNA) (Feb. 26, 1993).

10. See Testimony Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations, 101st Cong., 2d Sess. (1990) (testimony of Sen. Alan J. Dixon) (available in Tax Notes, microfiche Database Doc. 90-5335 (July 30, 1990)); James P. Angelini, *Federal Tax Amnesty: Some Policy Considerations*, 36 *Tax Notes* 907 (Aug. 31, 1987); Robert M. Melia, *Is the Pen Mightier Than the Audit?*, 34 *Tax Notes* 1309 (Mar. 30, 1987) (discussing a state amnesty program); Carol Douglas, *Is a Federal Tax Amnesty the Answer to Our Deficit Problems?*, 30 *Tax Notes* 711 (Feb. 24, 1986); Richard E. Harris, *Revenue Sans Taxes: Congress Shifts Attention to Federal Tax Amnesty*, 30 *Tax Notes* 916 (Mar. 10, 1986); Leo P. Martinez, *Federal Tax Amnesty: Crime and Punishment Revisited*, 10 *Va. Tax Rev.* 535 (1991); Bonnie G. Ross, *Federal Tax Amnesty: Reflecting on the States' Experiences*, 40 *Tax Law.* 145, 149 n.24 (1986) (listing tax amnesty bills introduced in the 99th Congress); U.S. Budget: Talk of Tax Amnesty Sweeps Congress as Senate Panel Starts Work on FY 1987 Budget Plan, *Daily Tax Report*, (BNA) LL-2 (Mar. 5, 1986); *Federal Tax Amnesty: Has Its Time Come?*, U.S. News & World Rep. 16 (1986).

There have been a number of bills introduced on the topic. See Douglas, *supra* (listing bills introduced concerning a federal tax amnesty program); see also, e.g., Testimony Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations, 101st Cong., 2d Sess. (1990) (testimony of Michael J. Graetz) (available in Tax Notes, microfiche Database Doc. 90-5337 (July 30, 1990)); Testimony Before the Subcomm. on

Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations, 101st Cong., 2d Sess. (1990) (testimony of Fred T. Goldberg, Jr.) (available in Tax Notes, microfiche Database Doc. 90-5336 (July 30, 1990)); Proposals to Simplify and Streamline the Payment of Employment Taxes for Domestic Workers: Joint Hearing Before the Subcomm. on Social Security & Subcomm. on Human Resources of the House Comm. on Ways and Means, 103d Cong., 1st Sess. (1993) (containing a discussion of tax amnesty for the limited purpose of employment tax liability of household consumers in connection with employment of domestic servants).

11. See Clinton, *supra* note 2 at 97 (containing President Clinton's remarks regarding the tough choices necessary to control health care costs and provide health care for everyone).

12. See Clinton, *supra* note 3.

13. Testimony Before the Subcomm. on Treasury, Postal Service and General Government of the House Comm. on Appropriations, 103d Cong., 1st Sess. (1993) (testimony of Michael P. Dolan) (available in LEXIS, Fedtax Library, TNT File, elect. cite 93 TNT 26-49). The tax gap estimates are based on Service studies conducted in 1988 and 1990. *Id.* See Gibbs, *infra* note 16. Former Commissioner Fred T. Goldberg candidly stated that " 'We don't really know, folks,' about the size of the tax gap. 'It might be \$80 billion [a year], it might be \$200 billion. We do know its a very large number.' " Sean Ford & Marianne Evans, IRS Admittedly Has Long Way to Go On Administration, Simplification, 49 Tax Notes 1272, 1273 (Dec. 17, 1990).

14. Clinton, *supra* note 3.

15. United States General Accounting Office, Briefing Report to the Chairman, Subcomm. on Oversight, House Comm. on Ways and Means, Tax Administration: IRS' Tax Gap Studies 4 (Mar. 1988) (available in Tax Notes, microfiche Database Doc. 88-3368 (Apr. 4, 1988)). The tax gap according to the definition of the GAO is "the difference between the amount of income taxes voluntarily paid by individuals and businesses and the amount of income taxes that are owed." *Id.* The methodology used in determining such estimates relies largely on data derived from in-depth audit examinations referred to as the Taxpayer Compliance Measurement Program ("TCMP"). See Dolan, *supra* note 13.

16. See Testimony Before the Senate Budget Comm., 100th Cong., 2d Sess. (1988) (testimony of Lawrence B. Gibbs) (available in Tax Notes, microfiche Database Doc. 88-3367 (Apr. 11, 1988)). The tax gap does not include taxes not paid on income derived from illegal activities. *Id.* The Service was expected to issue similar tax gap reports concerning noncompliance in the tax areas of employment tax, excise tax, and illegal sources of income. Staff of the House Comm. on Ways and Means, 101st. Cong., 2d Sess., Overview of the Federal Tax System 195 (Comm. Print 1990) [hereinafter Overview]. This, as yet, has not occurred.

17. Clinton, *supra* note 3.

18. Among the major problems attendant to the adoption of a VAT would be that, like a national sales tax, the VAT would be a regressive tax and present numerous collection problems. See Shift to Consumption Taxation is Desirable, Says Former CEA Member, Daily Tax Report, (BNA) G-2 (Jan. 26, 1993).

19. See F.R. Nagle, IRS Takes Aim at Practitioners Amid News That Some Are Nonfilers, 58 Tax Notes 833, 834 (Feb. 15, 1993). Acting Commissioner Dolan indicated the rate of compliance remains stable at 83%. *Id.* See also Susan B. Long & David Burnham, The Numbers Game: Changes in Tax Compliance During the Last 25 Years?, 46 Tax Notes 1177 (Mar. 5, 1990); Ross, *supra* note 10, at 146 (indicating the rate of compliance in 1965 was 94%).

20. Mike Causey, Is the Bureaucracy Political Football?, The Wash. Post, Apr. 20, 1979, C2.

21. Noncompliant taxpayers resort to a wide range of rationalizations to avoid paying their taxes, including perceived improbability of detection, negative attitudes about the government and the belief that other taxpayers are not paying their taxes. See Steven M. Sheffrin & Robert K. Triest, Can Brute Deterrence Backfire?: Perceptions and Attitudes in Tax Compliance (Dec. 7-8, 1990) (available in Tax Notes, microfiche Database Doc. 90-8544

(Dec. 17, 1990)); J. Andrew Hoerner, Why Comply? Michigan Conference Focuses on Why Taxpayers Do Not, 49 Tax Notes 1294, 1295 (Dec. 17, 1990).

22. I.R.S. News Rel. 92-5 (Jan. 17, 1992), 1992 CCH ¶ 46,164.
 23. Id.
 24. Id.
 25. I.R.S. News Rel. 92-94 (Sept. 30, 1992), 1992 CCH ¶ 46,553.

26. Id.
 27. Internal Revenue Service, U.S. Dep't of the Treasury, Pub. No. 7285, Income Tax Compliance Research: Gross Tax Gap Estimates and Projections for 1973-1992 3 (Mar. 1988) (available in Tax Notes, microfiche Database Doc. 88-2718 (Mar. 28, 1988)).

28. Dolan, *supra* note 13.
 29. See Harry G. Balter, Tax Fraud and Evasion ¶ 4.01 (5th ed. 1983 & Supp. 1 1993); Theron L. Caudle, How the Department of Justice Operates in Income Tax Fraud Cases, 87 J. Acct. 206 (1949). Caudle points out that the voluntary disclosure policy began in 1934 and was publicly discussed in 1945 by then Secretary of the Treasury Frederick M. Vinson. *Id.* at 213-14. See also Denzil Y. Causey, Jr., The Tax Practitioner 7-5 to 7-6 (1984) (discussing legal strategy under current Internal Revenue Service policy); United States v. Hebel, 668 F.2d 995 (8th Cir.), cert. denied, 456 U.S. 946 (1982) (affirming convictions of taxpayers who voluntarily disclosed filing false returns).

The most comprehensive review of the voluntary disclosure policy of the Service can be found in congressional hearings. In 1952, Representative Cecil R. King, as Chairman of the Subcommittee on Administration of Internal Revenue Laws of the House Committee on Ways and Means, conducted an intensive and extensive inquiry into the internal practices of the Service with respect to how voluntary disclosure, health conditions of the taxpayer, and other relevant matters impact on the decision of the Service to recommend criminal tax prosecution. See Proposals for Strengthening Tax Administration: Hearings on Administration of the Internal Revenue Laws Before the Subcommittee on Administration of the Internal Revenue Laws of the House Committee on Ways and Means, 82d Cong., 2d Sess. (1952) [hereinafter Proposals]. Richard C. Schwartz, the then Assistant Head, Penal Division, Bureau of Internal Revenue, provided specific testimony concerning the long and ambiguous policy of the Service with respect to voluntary disclosure. *Id.* at 103-66. The internal policy was first formally adopted on August 22, 1919, although there was a prior negative policy on the compromise of criminal prosecutions dating back before September 12, 1912. *Id.* at 138-39. The 1919 policy as stated was:

In cases where voluntary disclosure is made of deficiencies through intentional evasions which, if discovered by internal revenue officers, would be made the basis of criminal prosecution, it will be the policy of the Bureau to impose maximum civil penalties and accept offers in compromise of the criminal liability, instead of instituting prosecution and insisting on jail sentence.

Id. at 139. A similar statement of internal policy was announced on July 2, 1934, in a confidential written statement from Commissioner Guy T. Helvering, which was approved by Secretary of the Treasury H. Morganthau, Jr. *Id.* at 139-142. The policy was not made public until 1945 when it was included in various announcements by Service and Treasury officials. *Id.* at 139-50. The policy was formally withdrawn on January 10, 1952. *Id.* at 151. The entire text of the policy reversal is as follows:

Secretary Snyder announced today that the Treasury Department has abandoned the policy under which criminal prosecution has not been recommended in cases where taxpayers made voluntary disclosures of intentional violation of the internal revenue laws prior to the initiation of the investigation by the Bureau of Internal Revenue. This action was recommended by Commissioner Dunlap. In connection with this change of policy, the Secretary issued the following statement:

While it has been the long-established policy of the

Treasury Department to refrain from recommending criminal prosecution where taxpayers make voluntary disclosure of intentional tax evasion prior to the initiation of an investigation by the Bureau of Internal Revenue, it has been concluded that such policy will no longer be followed. Litigation in the courts in recent years has illustrated the controversial nature of the question as to what constitutes a true voluntary disclosure in fact. In the administration of the policy it has been difficult and at times impossible to ascertain whether the disclosure was made because the taxpayer realized he was under investigation or whether the disclosure was in fact voluntary and in reliance on the immunity held out by the policy.

The intensified enforcement activities of the Bureau's special tax fraud drive and racket squads throughout the country are ferreting out the willful tax evaders, and resulting in recovery of the additional taxes and penalties due the Government. It is the policy of the Treasury Department to recommend criminal prosecution in every case where the facts and circumstances warrant that action.

Id. at 151-52. The purpose behind the public announcement of the voluntary disclosure policy in 1945 was primarily to produce revenue collections from sources which could not otherwise be discovered. Id. at 152-53. The extent to which the policy did generate increased tax revenues, and the extent to which its withdrawal caused a decrease in revenue are unknown. Id. at 152-52, 161-62. The most complex difficulty in administering the voluntary disclosure program was fixing the date on which the investigation began. Id. at 160-63. This date was critical for a taxpayer to obtain criminal tax immunity. Id.

30. Proposals, *supra* note 29, at 151-52. See also Harry G. Balter, Caplin Restates Voluntary Disclosure Policy As Rumors of IRS Change Circulate, 16 J. Tax'n 104 (1962).

31. Balter, *supra* note 29, ¶¶ 4.02-4.04.

32. See Proposals, *supra* note 29, at 162-63.

33. See, e.g., Connelly v. United States, 249 F.2d 576 (8th Cir. 1957).

34. Balter, *supra* note 29, ¶¶ 4.02-4.04.

35. United States v. Baskes, 442 F. Supp. 322 (1977), *aff'd*, 649 F.2d 471 (7th Cir., 1980).

36. I.R.S. News Rel. 92-94 (Sept. 30, 1992), 1992 CCH ¶ 46,553.

37. Id.

38. See *id.*

39. I.R.S. News Rel. 92-114 (Dec. 7, 1992), 1992 CCH ¶ 46,669.

40. Nagle, *supra* note 19, at 833 (noting a statement of Steven Harris, a Miami tax practitioner, indicating that the nonfiling program of the Internal Revenue Service is "virtual amnesty" from prosecution). Acting Commissioner Dolan and Acting Assistant Attorney General, Tax Division, James A. Bruton disagreed with the view of Harris that the term amnesty was an accurate description of the nonfiler program. Id.

41. IRS Official Says Taxpayers Should Not Expect Announcement of Full Tax Amnesty, Daily Tax Rep., (BNA) (Jan. 7, 1993). Acting Commissioner Dolan stated, on January 6, 1993, before the Bentley College Center for Tax Studies 15th Annual Institute on Federal Taxation, that, while the principal thrust of the nonfiling program is not one of criminal prosecution, the "IRS has stopped short of promising amnesty to all nonfilers because some cases are so egregious and so significant that the IRS will introduce criminal prosecution." Id. Frank Wolpe, Director of the Center for Tax Studies at Bentley College expressed the concern that some career members of the Criminal Investigations Division might attempt to end run the program by making early contact with nonfilers before they come in voluntarily. Id. Notwithstanding, Acting Assistant Attorney General James A. Bruton has said that the Service has not recommended criminal prosecution in any case where

the taxpayer participated in the nonfiler program. Nagle, *supra* note 19, at 833.

42. See Nagle, *supra* note 19, at 833. At the mid-year meeting of the American Bar Association Tax Section, Internal Revenue Service Director of Practice Leslie S. Shapiro expressed the view that Internal Revenue Service Circular 230 would be amended so that tax professionals who had failed to file an income tax return, but had then come forward and voluntarily filed a return, would receive a letter of reprimand rather than face possible disbarment. Former Commissioner Shirley Peterson stated that the Tax Section had been informed that there are a shocking number of tax practitioners, including attorneys and certified public accountants, who have not filed. *Id.*

43. *Id.* More than 300 American Bar Association members have assisted the Service in the nonfiler program through telephone assistance and on-site tax clinics. *Id.*

44. IRS Looking to Expand the Non-filer Program to Employment and Other Taxes, *Daily Tax Rep.*, (BNA) (Feb. 19, 1993). Because some nonfilers have failed to file other tax returns, they are reluctant to make a voluntary disclosure about their failure to file an income tax return. Internal Revenue Service Chief Operations Officer Dave Blattner and Internal Revenue Service Compliance 2000 Executive Marshall Washburn have informally indicated that the Service is considering expanding its nonfiler program to other returns such as excise and employment tax returns. *Id.*

45. This assumes the government will not increase expenditures as new revenues are generated.

46. See Jeffrey A. Dubin, et al., *Penny-Wise and Pound-Foolish: New Estimates of the Impact of Audits on Revenue*, 35 *Tax Notes* 787 (May 25, 1987). Graetz is also of the view that audits are a principal force for deterrence and should be restored to the central place of enforcement. See J. Andrew Hoerner, *Think Incremental Tax Changes, Graetz Tells Compliance Conference*, 49 *Tax Notes* 1271, 1272 (Dec. 17, 1990).

47. Nagle, *supra* note 19, at 834.

48. The Internal Revenue Service, through the leadership of, among others, former Commissioner Shirley Peterson and former Assistant to the Secretary of the Treasury for Tax Policy Fred T. Goldberg, adopted a new approach with respect to administration of the tax laws under the policy known as Compliance 2000. [See *Testimony Before the Subcomm. on Treasury, Postal Service and General Government of the House Comm. on Appropriations*, 103d Cong., 1st Sess. (1993) (testimony of Michael P. Dolan).] The focus of this program is to increase voluntary compliance, reduce taxpayer burdens, and improve productivity and customer service. A main feature of this program is to treat the taxpayer as a customer or client of the Internal Revenue Service. Regional Commissioner Leon Moore, in discussing elements of the recently announced nonfiling program of the Internal Revenue Service, stated this change in policy was part of a new policy to make the Internal Revenue Service more "user-friendly." [Internal Revenue Service Regional Commissioner Leon Moore, Address at the Central Region Internal Revenue Service and Bar Association Liaison Meeting (Nov. 13, 1992); see also, Internal Revenue Service Regional Counsel Clarence E. Barnes, Jr., Address at the Central Region Internal Revenue Service and Bar Association Liaison Meeting (Nov. 13, 1992) (expressing similar concerns that compliance achieved solely through fear was becoming outdated). See Kent W. Smith & Loretta J. Stalans, *Encouraging Tax Compliance With Positive Incentives: A Conceptual Framework and Research Directions*, 13 *Law & Pol'y* 35 (1991) (suggesting that positive incentives, rather than threats, punishment and incapacitation, can increase compliance with the tax laws and that additional research is needed on this approach). The Smith and Stalans article includes an excellent bibliography. *Id.* at 50-53.] The taxpayer is now recognized as an important resource who should not live in fear and suspicion of the Internal Revenue Service, but rather should look to the Internal Revenue Service for competent and caring assistance in meeting the complex responsibilities created by the existing tax system. See *IRS Expects Continued Oversight by Appropriations Subcommittee*, *Daily Tax Rep.*,

(BNA) G-1, G-2 (Feb. 9, 1993). Acting Commissioner Dolan stated that the "IRS is using a more 'differentiated' approach to the taxpayer community." He explained that taxpayers are broken down into three groups: (1) those in compliance; (2) those who want to be in compliance but fail to do so because of the burden; and (3) those who are intentionally out of compliance. For the first two groups, Dolan indicated that the Service will be less confrontational and more innovative, but for those intentionally out of compliance, the Service will use its arsenal of enforcement procedures. *Id.* See also Dolan, *supra* note 13. Too often, the typical antagonism between the agency as enforcer and the taxpayer or tax adviser as advocate, are counter-productive, particularly when there exist many ways in which all of the participants can cooperate. The dynamics of an enormous increase in the number of returns filed, the limited audit resources of the Internal Revenue Service, the complexity of the tax system, and the synergistic interaction between all of these factors demands that we seek new ways of designing tax laws to achieve efficient administration and an increase in voluntary compliance.

49. See Dolan, *supra* note 13.

50. *Id.* The percentage of audits has declined from 6.5% of all returns in the mid-sixties to less than 1% today. Hoerner, *supra* note 46, at 1272. Indeed, the long-term increase in the staffing of the Service, when considered with an enhanced budget authority and reduced productivity, places the Service in an awkward position. See F.R. Nagle, *IRS Productivity Dropped Alarmingly During the '80s*, *Magazine Finds*, 49 *Tax Notes* 1274 (Dec. 17, 1990).

51. See Dolan, *supra* note 13, at 10-11. What is envisioned is that modernized computers will perform automated audits. Forms W2 and 1099, as well as other relevant information concerning one's income tax return, will be cross-referenced with the information set forth in the return itself and the computer will be programmed to request certain additional information when it identifies inconsistencies or irregularities. If this data supplies all the needed information to resolve the audit, the computer will either accept the return as filed or send out a 30-day letter proposing adjustments. If the information does not adequately answer the questions raised, the computer will refer the return to an agent for further discussions with the taxpayer. *Id.* The American Bar Association has made comprehensive recommendations regarding implementation of certain changes which would improve taxpayer compliance. See American Bar Association Commission on Taxpayer Compliance, *Report and Recommendations on Taxpayer Compliance*, 41 *Tax Law*. 329 (1988).

With regard to designing tax forms or laws to increase efficiency, the author believes that structural modifications in tax forms, like the relatively recent requirement that all dependents' Social Security numbers be stated on the return, should be developed. This one structural change caused an amazing decrease in claimed dependents of over 7 million. *Id.* Finally, changes should be made in the structural design of the tax law to decrease the need to verify deductions. See Daniel Feenberg & Jonathan Skinner, *Raising Revenue Without Raising Tax Rates*, 58 *Tax Notes* 969 (Feb 15, 1993) (discussing, for example, what the increase in standard deduction might do in reducing the number of taxpayers who itemize and how changes of this nature could also increase revenue); see also Charles E. McLure, Jr., *The Budget Process and Tax Simplification/Complication*, 46 *Tax L. Rev.* 25 (1989); Paul R. McDaniel, *Federal Income Tax Simplification: The Political Process*, in *Federal Income Tax Simplification* 507 (C. Gustafson ed.) (1979); Deborah H. Schenk, *Simplification for Individual Taxpayers: Problems and Proposals*, 45 *Tax L. Rev.* 121 (1989).

52. House Comm. on Government Operations, *Tax Systems Modernization: Some Early Observations on Its Progress*, H.R. Rep. No. 388, 102d Cong., 1st Sess. (1991) (available in Tax Notes, microfiche Database Doc. 91-10225 (Dec. 9, 1991)). While the modernization of computer resources presents a principal mechanism by which the Service can keep modest pace with the exponential increase in the number of income tax returns and other information-

al reports, the Service's road to successfully effecting modernization of its computer systems has been uncertain and frustrating. According to this report, the Service is in the third phase of attempting to modernize its antiquated computer systems under a program entitled Tax Systems Modernization ("TSM"). There is a serious question whether the Service possesses the management controls in the areas of procurement and systems development to successfully achieve its modernization objectives. *Id.* at 5. The report concluded with the view that TSM is a critical long-term program, which is not only massive and challenging, but also fraught with risk. *Id.* at 8. With the anticipated 30% annual increase in the number of returns filed through the year 2008, failure to bring this highly complex and advanced computer system on-line could have a disastrous impact on future administration of the tax laws. *Id.* at 18 n.1. See Dolan, *supra* note 13, at 10-11 (providing a current report on TSM); Ford & Evans, *supra* note 13, at 1272, 1273.

53. In the instructions to its Form 656, the Service has stated its policy regarding offers-in-compromise. Department of the Treasury, Internal Revenue Service, Offer in Compromise, Instructions to IRS Form 656 (Rev. Feb. 1992). The Service policy as stated in the Instructions is as follows:

The Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential. An offer in compromise is a legitimate alternative to declaring a case as currently not collectible or to a protracted installment agreement. The goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government.

In cases where an offer in compromise appears to be a viable solution to a tax delinquency, the Service employee assigned the case will discuss the compromise alternative with the taxpayer and, when necessary, assist in preparing the required forms. The taxpayer will be responsible for initiating the first specific proposal for compromise.

The success of the compromise program will be assured only if taxpayers make adequate compromise proposal [sic]. consistent with their ability to pay and the Service makes prompt and reasonable decisions. Taxpayers are expected to provide reasonable documentation to verify their ability to pay. The ultimate goal is a compromise which is in the best interest of both the taxpayer and the Service. Acceptance of an adequate offer will also result in creating for the taxpayer an expectation of and a fresh start towards compliance with all future filing and payment requirements.

54. See Rita L. Zeidner, *A Year Later, IRS Reports Gains From Offers In Compromise Program*, 58 Tax Notes 540 (Feb. 1, 1993) (comparing offer-in-compromise statistics for 1992 with those for 1991). The new offer-in-compromise policy is not only imminently practical but it also benefits both the taxpayer and the government in that it accelerates collection of outstanding taxes while giving the taxpayer a fresh start.

55. Overview, *supra* note 16, at 199-200. The Service has had difficulty securing competent employees to provide taxpayer assistance. In a recent year, 36.3% of all answers provided by the Service to taxpayers were incorrect. The Service attributes this high error rate to inadequate training and high employee turnover. *Id.* (setting forth a brief discussion regarding efforts by the Service).

56. See Dubin, et al., *supra* note 46.

57. See Dolan, *supra* note 13.

58. See Graetz, *supra* note 10; Goldberg, *supra* note 10. See also Feasibility and Revenue Impact of a Federal Tax Amnesty Program, Hearings Before the Subcomm. on Commerce, Consumer and Monetary Affairs of the House Comm. on Government Operations, 101st Cong., 2d Sess. (1990). But see Martinez, *supra* note 10, at 563-66

(making a strong statement against the adoption of a federal tax amnesty program from the perspective of fairness, impact on future compliance, and deterrence, among other important concerns).

59. Graetz, *supra* note 10; Goldberg, *supra* note 10. Increased enforcement after the period of tax amnesty is one of the main ingredients to insure success. A comprehensive review of eight state and three European countries' tax amnesty programs revealed the following four conditions for a successful outcome:

(1) The program must be long enough to allow taxpayers to respond and should not coincide with the regular tax filing season; (2) the amnesty program should be accompanied by the enactment of laws for stiffer fines and prison terms for tax evaders; (3) audit coverage should be expanded; and (4) the amnesty program should be well-publicized.

State, *European Tax Amnesties Surveyed*, 23 *Tax Notes* 350 (Apr. 23, 1984) (summarizing a recent report by the Congressional Research Service).

60. But cf. Nagle, *supra* note 19, at 834 (during the existing nonfiler program the Service is continuing to regularly refer nonfiler criminal cases to the Department of Justice for accelerated prosecution during the tax filing season). See James Alm, et al., *Amazing Grace: Tax Amnesties and Compliance*, 43 *Nat'l Tax J.* 23, 24 (1990). Although tax compliance might normally decrease after tax amnesty, if post-amnesty enforcement efforts are increased, aggregate compliance will actually increase. *Id.* But while amnesty programs may be appropriate as a transition to enhance enforcement and generate immediate revenue, such programs may not be effective in identifying tax evaders, resulting most likely in only modest long-term gains. See Ronald C. Fisher, et al., *Participation in Tax Amnesties: The Individual Income Tax*, 42 *Nat'l Tax J.* 15 (1989).

61. Cf. Angelini, *supra* note 10, at 908.

62. Perhaps it is a misallocation of Service resources to use the tax laws as a primary weapon against organized crime because it hinders one of the fundamental objectives of the Service, that is, collecting revenue. Participants in illegal activities are certain that the information contained in accurate income tax returns will be used against them for purposes of other federal criminal prosecutions. Accordingly, many either fail to file or file a fraudulent income tax return. If the information contained in a return were protected from use in a subsequent criminal prosecution, other than a prosecution involving tax violations, it may be possible to induce some of the many persons engaged in illegal activities to file accurate income tax returns. Nevertheless, because of past governmental practices with regard to the use of such information, one would be extremely naive to believe that the announcement of such a change in policy would have an immediate and positive impact on the receipt of tax revenues.

63. Cf. *Tax Compliance: IRS to Give Circular 230 Leniency to Non-Filing Tax Practitioners*, *Daily Tax Rep.*, (BNA) G3, G4 (Feb. 9, 1993) (noting that the Tax Section of the American Bar Association working with the Service has attempted to persuade individual states to use Compliance 2000 guidelines for nonfilers of state tax returns).

64. Although, in 1986, one authority expressed the view that the net revenue from federal tax amnesty would only be approximately \$1 billion, he still was of the view that federal tax amnesty may be appropriate.

If there are no prospects of significant revenue from a Federal tax amnesty, should use of an amnesty be opposed? The answer is "not necessarily." There are reasons for tax amnesties apart from revenue. An amnesty may be an equitable way of allowing people to turn over a new leaf and become compliant. More importantly, an amnesty may be perceived as a useful, equitable, and necessary tool when major changes are made in a tax system or when a major effort to increase compliance is undertaken. . . .

Thus, the arguments for and against amnesty must be

based on equity and on long-run compliance effects. Would an amnesty be equitable both to those who have abused the tax system in the past and to those who have paid all of their tax obligations? To a large extent, the answer to this question involves political judgment. But that judgment might be based on whether an amnesty would improve long-run compliance, thereby helping to reduce the tax burdens of those who have been compliant. If an amnesty does permanently return people to the tax system and does raise revenue for an extended period of time, the equity argument could tilt in favor of amnesty. Thus, the wisdom of tax amnesties cannot be determined until more is known about their long-run compliance effects.

Allen H. Lerman, *Tax Amnesty: The Federal Perspective*, 39 Nat'l Tax J. 325, 331 (1986).

65. But see Martinez, *supra* note 10, at 538. Martinez is of the view that the present adoption of federal tax amnesty would constitute an uncontrolled experiment in a national laboratory where actual results would, under current information, be no better than a guess. *Id.*

66. The first reading assignment for any task force assigned to review the issue of tax amnesty would be the King Report. See *Proposals*, *supra* note 29. This report is as current with respect to the important legal issues concerning the administration of tax amnesty as any existing report. One senses that it should have been fully reviewed by the Service before it began its "mini-amnesty" program for nonfilers.



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