

TAXPAYER BROWSING PROTECTION ACT

APRIL 14, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 1226]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1226) to amend the Internal Revenue Code of 1986 to prevent the unauthorized inspection of tax returns or tax return information, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

At the end of the bill insert the following new section:

SEC. 3. CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION OF RETURNS AND RETURN INFORMATION; NOTIFICATION OF UNLAWFUL INSPECTION OR DISCLOSURE.

(a) CIVIL DAMAGES FOR UNAUTHORIZED INSPECTION.—Subsection (a) of section 7431 of the Internal Revenue Code of 1986 is amended—

(1) by striking “DISCLOSURE” in the headings for paragraphs (1) and (2) and inserting “INSPECTION OR DISCLOSURE”, and

(2) by striking “discloses” in paragraphs (1) and (2) and inserting “inspects or discloses”.

(b) NOTIFICATION OF UNLAWFUL INSPECTION OR DISCLOSURE.—Section 7431 of such Code is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

“(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.—If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer’s return or return information in violation of—

“(1) paragraph (1) or (2) of section 7213(a),

“(2) section 7213A(a), or

“(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.”

(c) NO DAMAGES FOR INSPECTION REQUESTED BY TAXPAYER.—Subsection (b) of section 7431 of such Code is amended to read as follows:

“(b) EXCEPTIONS.—No liability shall arise under this section with respect to any inspection or disclosure—

“(1) which results from a good faith, but erroneous, interpretation of section 6103, or

“(2) which is requested by the taxpayer.”

(d) CONFORMING AMENDMENTS.—

(1) Subsections (c)(1)(A), (c)(1)(B)(i), and (d) of section 7431 of such Code are each amended by inserting “inspection or” before “disclosure”.

(2) Clause (ii) of section 7431(c)(1)(B) of such Code is amended by striking “willful disclosure or a disclosure” and inserting “willful inspection or disclosure or an inspection or disclosure”.

(3) Subsection (f) of section 7431 of such Code, as redesignated by subsection (b), is amended to read as follows:

“(f) DEFINITIONS.—For purposes of this section, the terms ‘inspect’, ‘inspection’, ‘return’, and ‘return information’ have the respective meanings given such terms by section 6103(b).”

(4) The section heading for section 7431 of such Code is amended by inserting “INSPECTION OR” before “DISCLOSURE”.

(5) The table of sections for subchapter B of chapter 76 of such Code is amended by inserting “inspection

or” before “disclosure” in the item relating to section 7431.

(6) Paragraph (2) of section 7431(g) of such Code, as redesignated by subsection (b), is amended by striking “any use” and inserting “any inspection or use”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to inspections and disclosures occurring on and after the date of the enactment of this Act.

I. SUMMARY AND BACKGROUND

A. SUMMARY

H.R. 1226, as reported by the Committee on Ways and Means, provides for a criminal penalty for unauthorized willful inspection (“browsing”) of tax returns and return information. The bill provides for civil damages for unauthorized inspection, and also contains a notification requirement.

B. BACKGROUND AND REASONS FOR LEGISLATION

Widespread indications of browsing have made it imperative that Congress create a criminal penalty in the Internal Revenue Code to penalize this behavior.

C. LEGISLATIVE HISTORY

Committee bill

H.R. 1226 was introduced by Chairman Archer (for himself, Ms. Dunn, Mr. Rangel, Mrs. Johnson of Connecticut, Mr. Coyne, Mr. Thomas, Mr. Herger, Mr. Camp, Mr. Ensign, Mr. Hayworth, Mr. Weller, Mrs. Kennelly of Connecticut, Mr. Levin, Mr. Kleczka, Mr. Lewis of Georgia, Mr. Neal of Massachusetts, Mr. Jefferson, Mr. Tanner, Mrs. Thurman, and Mr. Portman) on April 8, 1997. The bill was considered in a Committee on Ways and Means markup on April 9, 1997, and was ordered favorably reported, with an amendment, by voice vote.

II. EXPLANATION OF THE BILL

PRESENT LAW

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized willful disclosure is a felony punishable by a fine not exceeding \$5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431).

There is no explicit criminal penalty in the Internal Revenue Code for unauthorized inspection (absent subsequent disclosure) of tax returns and return information. Such inspection is, however, explicitly prohibited by the Internal Revenue Service (“IRS”).¹ In a recent case, an individual was convicted of violating the Federal wire fraud statute (18 U.S.C. 1343 and 1346) and a Federal com-

¹ IRS Declaration of Privacy Principles, May 9, 1994.

puter fraud statute (18 U.S.C. 1030) for unauthorized inspection. However, the U.S. First Circuit Court of Appeals overturned this conviction.² Unauthorized inspection of information of any department or agency of the United States (including the IRS) via computer was made a crime under 18 U.S.C. 1030 by the Economic Espionage Act of 1996.³ This provision does not apply to unauthorized inspection of paper documents.

REASONS FOR CHANGE

The Committee believes that it is important to have a criminal penalty in the Internal Revenue Code to punish this type of behavior. The Committee also believes that it is appropriate to provide for civil damages for unauthorized inspection parallel to civil damages for unauthorized disclosure.

EXPLANATION OF PROVISIONS

Criminal penalties (sec. 2 of the bill and new sec. 7213A of the Code)

The bill creates a new criminal penalty in the Internal Revenue Code. The penalty is imposed for willful inspection (except as authorized by the Code) of any tax return or return information by any Federal employee or IRS contractor. The penalty also applies to willful inspection (except as authorized) by any State employee or other person who acquired the tax return or return information under specific provisions of section 6103. Upon conviction, the penalty is a fine in any amount not exceeding \$1,000,⁴ or imprisonment of not more than 1 year, or both, together with the costs of prosecution. In addition, upon conviction, an officer or employee of the United States would be dismissed from office or discharged from employment.

The Congress views any unauthorized inspection of tax return information as a very serious offense; this new criminal penalty reflects that view. The Congress also believes that unauthorized inspection warrants very serious personnel sanctions against IRS employees who engage in unauthorized inspection, and that it is appropriate to fire employees who do this.

Civil damages (sec. 3 of the bill and sec. 7431 of the Code)

The bill amends the provision providing for civil damages for unauthorized disclosure by also providing for civil damages for unauthorized inspection. Damages are available for unauthorized inspection that occurs either knowingly or by reason of negligence. Accidental or inadvertent inspection that may occur (such as, for example, by making an error in typing in a TIN) would not be subject to damages because it would not meet this standard. The bill also provides that no damages are available to a taxpayer if that taxpayer requested the inspection or disclosure.

The bill also requires that, if any person is criminally charged by indictment or information with inspection or disclosure of a tax-

² U.S. v. Czubinski, DTR 2/25/97, p. K-2.

³ P.L. 104-294, sec. 201 (October 11, 1996).

⁴ Pursuant to 18 U.S.C. sec. 3571 (added by the Sentencing Reform Act of 1984), the amount of the fine is not more than the greater of the amount specified in this new Code section or \$100,000.

payer's return or return information in violation of section 7213 (a) or (b), section 7213A (as added by the bill), or 18 USC section 1030 (a)(2)(B), the Secretary notify that taxpayer as soon as practicable of the inspection or disclosure.

EFFECTIVE DATE

The bill is effective for violations occurring on or after the date of enactment.

III. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made concerning the vote on the motion to report the bill. The bill (H.R. 1226) was ordered favorably reported, as amended by voice vote on April 9, 1997, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the estimated budget effects of the bill as reported.

The bill, as reported, is estimated to have an indeterminate revenue effect.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

Budget authority

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased budget authority.

Tax expenditures

In compliance with subdivision (B) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill as reported involve no new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with subdivision (C) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, requiring cost estimate prepared by the Congressional Budget Office, the Committee advises that the Congressional Budget Office has submitted the following statement on this bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 11, 1997.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1226, the Taxpayer Browsing Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 1226—Taxpayer Browsing Protection Act

H.R. 1226 would ban the authorized inspection of federal tax returns or tax return information. Violators of the bill's provisions would be subject to a criminal fine and imprisonment. In addition, H.R. 1226 would permit taxpayers whose returns are unlawfully inspected to bring a civil action against the United States.

CBO estimates that enacting this legislation would have no significant impact on the federal budget. While the bill could lead to increases in both direct spending and receipts, the amounts involved would be less than \$500,000 a year. Because H.R. 1226 could affect direct spending and receipts, pay-as-you-go procedures would apply.

Enacting H.R. 1226 could increase government receipts from criminal fines. Such fines would be deposited in the Crime Victims Fund and would be spent in the following year. Thus, direct spending from the fund would match the increase in revenues with a one-year lag. In any case, CBO estimates that the criminal fines would likely total less than \$500,000 a year.

Enacting this legislation also could increase civil actions by taxpayers against the Internal Revenue Service. Successful litigants would be paid from a permanent, indefinite appropriation for Claims, Judgments, and Relief Acts. CBO estimates that any increase in direct spending from such payments also would total less than \$500,000 annually.

H.R. 1226 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not impose costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

**V. OTHER MATTERS TO BE DISCUSSED UNDER THE
RULES OF THE HOUSE**

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to subdivision (A) of clause 2(l)(3) of rule XI of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was the result of the Commit-

tee's oversight activities concerning reports of unauthorized "browsing" of taxpayer's returns and return information by Internal Revenue Service personnel that the Committee concluded that it is appropriate to enact the provisions contained in the bill as reported.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to subdivision (D) of clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in the bill.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 7 ("All bills for raising revenue shall originate in the House of Representatives") and Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts * * * of the United States").

D. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the provisions of the bill do not impose a Federal mandate on the private sector nor a Federal intergovernmental mandate. Thus, the provisions of the bill do not affect the competitive balance between the private sector and State, local, and tribal government.

E. APPLICABILITY OF HOUSE RULE XXI5(c)

Rule XXI5(c) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

INTERNAL REVENUE CODE OF 1986

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Subtitle F—Procedure and Administration

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES**Subchapter A—Crimes****PART I—GENERAL PROVISIONS**

Sec. 7201. Attempt to evade or defeat tax.

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Sec. 7213A. *Unauthorized inspection of returns or return information.*

* * * * *

SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.**(a) RETURNS AND RETURN INFORMATION.—****(1) * * ***

(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (l)(6), (7), (8), (9), (10), (12), or (15) or (m)(2), (4), (5), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

* * * * *

SEC. 7213A. UNAUTHORIZED INSPECTION OF RETURNS OR RETURN INFORMATION.**(a) PROHIBITIONS.—**

(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—*It shall be unlawful for—*

(A) any officer or employee of the United States, or

(B) any person described in section 6103(n) or an officer or employee of any such person,
willfully to inspect, except as authorized in this title, any return or return information.

(2) STATE AND OTHER EMPLOYEES.—*It shall be unlawful for any person (not described in paragraph (1)) willfully to inspect, except as authorized in this title, any return or return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2).*

(b) PENALTY.—

(1) *IN GENERAL.*—Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) *FEDERAL OFFICERS OR EMPLOYEES.*—An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) *DEFINITIONS.*—For purposes of this section, the terms “inspect”, “return”, and “return information” have the respective meanings given such terms by section 6103(b).

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CHAPTER 76—JUDICIAL PROCEEDINGS

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Subchapter B—Proceedings by Taxpayers and Third Parties

Sec. 7421. Prohibition of suits to restrain assessment or collection.

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Sec. 7431. Civil damages for unauthorized *inspection* or disclosure of returns and return information.

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SEC. 7431. CIVIL DAMAGES FOR UNAUTHORIZED *INSPECTION* OR DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) *IN GENERAL.*—

(1) **[DISCLOSURE]** *INSPECTION OR DISCLOSURE* BY EMPLOYEE OF UNITED STATES.—If any officer or employee of the United States knowingly, or by reason of negligence, *inspects* or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) **[DISCLOSURE]** *INSPECTION OR DISCLOSURE* BY A PERSON WHO IS NOT AN EMPLOYEE OF UNITED STATES.—If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, *inspects* or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against such person in a district court of the United States.

[(b) NO LIABILITY FOR GOOD FAITH BUT ERRONEOUS INTERPRETATION.]—No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.]

(b) *EXCEPTIONS.*—No liability shall arise under this section with respect to any *inspection* or disclosure—

(1) *which results from a good faith, but erroneous, interpretation of section 6103, or*

(2) *which is requested by the taxpayer.*

(c) DAMAGES.—In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) the greater of—

(A) \$1,000 for each act of unauthorized *inspection* or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of—

(i) the actual damages sustained by the plaintiff as a result of such unauthorized *inspection* or disclosure, plus

(ii) in the case of a [willful disclosure or a disclosure] *willful inspection or disclosure or an inspection or disclosure* which is the result of gross negligence, punitive damages, plus

(2) the costs of the action.

(d) PERIOD FOR BRINGING ACTION.—Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized *inspection* or disclosure.

[(e) RETURN; RETURN INFORMATION.—For purposes of this section, the terms “return” and “return information” have the respective meanings given such terms in section 6103(b).]

(e) NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.—If any person is criminally charged by indictment or information with *inspection* or disclosure of a taxpayer’s return or return information in violation of—

(1) paragraph (1) or (2) of section 7213(a),

(2) section 7213A(a), or

(3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code,

the Secretary shall notify such taxpayer as soon as practicable of such *inspection* or disclosure.

(f) DEFINITIONS.—For purposes of this section, the terms “inspect”, “inspection”, “return”, and “return information” have the respective meanings given such terms by section 6103(b).

[(f)] (g) EXTENSION TO INFORMATION OBTAINED UNDER SECTION 3406.—For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any *inspection* or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

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