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The Disclosure of Individual Tax Returns: A Historical Overview



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Other Briefs will no doubt deal with disclosing the president's tax returns. I would like to offer a more general historical perspective.

Public access to federal tax return information has been debated since the enactment of the first federal income tax. To fund the Civil War, the Revenue Act of 1862 imposed an income tax on individuals and provided that the public was entitled to see the names of taxpayers and their tax liabilities. The public was notified of this opportunity through newspaper advertisements and posted notices. Presumably, in an era without mass communication, sufficient administrative procedures or machinery, or reliable mail systems, the public posting was a means of notifying taxpayers, first, that they owed taxes; second, of the determination of their taxable income and tax liability; and finally, of the impending arrival of the tax collector.

The Revenue Act of 1864 allowed newspapers to publish the income and tax liabilities of all taxpayers. As public opinion turned against the income tax, Congress prohibited the publication of tax returns in 1870 before ending the income tax altogether a year later.

The Income Tax Act of 1913 provided that tax returns "shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President." The president, however, did not exercise his authority, allowing progressives in Congress to debate access to income tax returns during subsequent revenue acts. In 1918 the commissioner relented to disclosure advocates and allowed the public to view lists of individual taxpayers who filed returns in a specific district.

The publication of this information, however, was prohibited.

The high-water mark in favor of disclosure occurred with the Revenue Act of 1924. Fueled by the Teapot Dome Scandal and that of the IRS, the public disclosure of income tax returns had become a rallying cry for farm-bloc senators, who warned that "secrecy is of the greatest aid to corruption" and urged that "today the price of liberty is not only eternal vigilance but also publicity."

The 1924 act required the disclosure of names, addresses, and tax liabilities (or refunds) to discourage evasion and end improper business methods. The House Ways and Means Committee and the Senate Finance Committee could request the actual returns. Some advocates wanted the entire return to be published. Every federal agency could request on a case-by-case basis the tax returns. The request would be acted on by the Treasury secretary or the IRS commissioner. A few agencies had broader access for investigative purposes.

Even this more limited disclosure was opposed by former Treasury Secretary Andrew W. Mellon and President Calvin Coolidge, who argued that publicity would do nothing to raise revenue, would encourage tax evasion, and serve only as popular fodder for newspapers. *The New York Times* and other newspapers devoted entire pages to publishing the taxes paid by thousands of persons. Enterprising persons published pamphlets containing the names of taxpayers and the amounts they paid. The Supreme Court upheld the right of newspapers to print the lists made public.

The disclosure by newspapers was railed against for the breach of individual privacy, failure to uncover tax evasion, questionable use of the information by the public, and cost of disclosure to the government. In 1926 the law was changed to exclude tax liabilities from public disclosure, requiring only the taxpayers' names and addresses.

As a result of a well-publicized tax evasion scandal and the urging by crusader Sen. Robert M. La Follette Jr., Congress revisited the disclosure requirement in 1934, a time during the Great Depression in which popular resentment against the rich was palpable. Rather than publish

the full tax return, individuals were required to complete a “pink slip” containing their name and address, gross income, deductions, net income, credits, and tax liability. These pink slips were to be made public and justified on the assumption that publicity would deter tax evasion.

Opposition was fierce and immediate. The anti-disclosure group, Sentinels of the Republic, led a large media-savvy taxpayer protest. The congressional debate was colored by the Lindbergh kidnapping and the crime wave that marked the Great Depression. Individuals feared that if their returns were made public, kidnapers, con artists, and other defrauders would mark them as possible victims. Prohibition, it was argued, would encourage revenue-starved bootleggers to turn to ransoming the kidnapped. In response, Congress repealed the pink slip requirement before the law could take effect.

That left the law as it stood before the pink slip movement, and subsequent debate over disclosure was marked by a dizzying sequence of policy flips and twists. And of course, this all occurred at a time when few persons even paid the income tax, but those who did were of great wealth and influence.

The law remained unchanged until, in the aftermath of Watergate, Congress enacted IRC section 6103, no doubt the subject of other Briefs.

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