

APPENDIX 5

OTA MEMORANDUM: REVIEW OF INTERNAL REVENUE PROPOSAL FOR COMPUTERIZED TAX ADMINISTRATION SYSTEM (TAS)

May 18, 1976

The Office of Technology Assessment was asked by the House Ways and Means Committee Chairman to review the IRS Report on its proposed tax administration system (TAS) for its security and confidentiality safeguards, without which, it was feared, the system "could become a system of harassment, surveillance, and political manipulation." In particular, the Chairman of the Oversight Subcommittee indicated interest in legislation which would legislate principles about the use of such equipment, including such matters as access, audit trails, and transfer of tax returns between regions.

OTA Approach

To respond to this request, OTA proposes to convene an appropriate panel whose charge will be to advise OTA on how to proceed with this assessment. It is planned that such a panel will meet during the week of June 7. This early date is necessary to meet the needs of the hearings planned later in June by the Oversight Subcommittee.

Summary of System

The Internal Revenue Service has redesigned their basic data processing system to decentralize the taxpayer account files to the ten existing service centers. The former site of the centralized tax account files, the National Computer Center, will be converted to a centralized account directory and control point for intercenter activity. The information in each center's tax account files for taxpayers in its geographical area will be accessible for use by specifically authorized personnel in major IRS offices. The new system (TAS) is a totally integrated system **involving** processing, storage, data communications, and terminal facilities. The Center will control data exchange between centers and maintain a directory of each center's records so that an account is not kept on file at more than one center. Data communications between field locations and host service centers will be provided by a Data Communication Subsystem consisting of dedicated, leased data transmission lines, data communication processors located in each Service center and the NCC; programmable data concentrators; testing and encrypting equipment; and modems to interface with terminals remote from the service centers.

This TAS report raises a number of important issues when its possible impact is considered in connection with the following trends and developments:

- (1) The documented problems of privacy invasions and improper disclosure which have arisen in the administration of the tax laws, and which have been investigated by the Watergate Committee, the Select Intelligence Committee of the Senate, and other Committees.
- (2) The recent and continuing effort to create national data centers either by aggregating data and providing central storage facilities or by linking compatible systems once they are individually established on a decentralized basis. Examples of recent Congressional concern over such efforts is found in the 1974 controversy over FEDNET, the inter-agency computer project planned by the General Services Administration without adequate Congressional input on the policy of systems linkage or computer security and software guarantees.
- (3) The inherent problems of human error in the administration of vast information systems when magnified by computer-assisted programs when they are planned hastily or administered sloppily, with the consequent aggravation to taxpayers and expense to government.

- (4) The current unsatisfied search in government and the private sector for development by the computer industry of standards which will provide maximum guarantees of security and confidentiality for sensitive personal information. Recent GAO reports on computer-related crimes need to be evaluated for their relevance to Internal Revenue data systems.
- (5) The major question, always in delicate balance in negotiations between the computer industry, Congress, the executive branch agencies, and interest groups, as to whether or not the management benefits to government from such an extension of computer technology for information control will outweigh its possible negative impact on the individual, on society, and on the state of civil liberties.

A subissue of this question involves the current debate in public administration circles over whether, in certain programs, centralized or decentralized administration is desirable. In the case of the Internal Revenue Service, which has the most sensitive data on every taxpayer in the country, there is a question of the internal decentralization of the Agency as well as the debate over the separation of the computerized systems of all of the Departments and agencies.

The decision whether or not to computerize, and under what conditions, was a major philosophical and public administration issue in the sixties as government agencies experimented with new computer systems. The Special Subcommittee on Privacy of the House Government Operations Committee, the Senate Judiciary Subcommittee on Administrative Practice and Procedure, and the Constitutional Rights Subcommittee compiled extensive hearing records of social and scientific commentary on the social impact of computer technology. Although the general warnings issued in those years are as significant for those planning and programming new systems today as they were in the early years of computer technology, the issue is frequently lost as government managers and Congress consider later generations of computers and extensions of existing systems. It seems to be assumed that the issue of the beneficial versus adverse impact on society was decided for all time; yet for some purposes, it is a continuing policy issue which is even more important today as the space narrows between the individual and the information technology which government develops to administer the laws affecting people's personal lives. There needs to be consideration of the extent, if any, to which computer technology is expanding the power of government or promoting a de facto change in the constitutional framework for making decisions about people.

Before they are funded, the question, Why go further?, needs to be asked for each major data system, and the technical and administrative conditions surrounding a decision to proceed should be carefully examined. This is particularly applicable to the Internal Revenue Service.

This gap in Congressional oversight was recently the subject of a comment by the Administrative Conference of the United States in a major report issued in November of 1975 on certain issues of privacy, confidentiality and due process involved in the administration of the tax laws. The report stated, "Our study has led to an awareness of other topics that could profitably be examined by the Administrative Conference or by others. *One might examine the impact of IRS's computers upon both the operations of the Service and society at large.* " The report noted that twelve committees and subcommittees of Congress have devoted investigative and hearing time to the Internal Revenue Service affairs.

Despite the oversight by individual members and by committees, I have not yet found a concerted Congressional effort to confront the unique policy problems raised by the combined issues of efficient administration of the tax laws of the country, of civil liberties concerns, of government's records management programs, and computer technology. There is a dearth of technological expertise and resources for such oversight on a continuing basis.

The request to OTA by the House Ways and Means Committee appears to represent the first such opportunity in many years for such an evaluation.

Computer Legislation

The Chairman of the Oversight Subcommittee of the House ways and Means Committee expressed the hope that the OTA report on TAS could assist in legislating certain principles relating to computer software and hardware, such as security and audit trails and other matters. As they may be aware, in addition to certain general laws on data management and on procurement of computer equipment, Congress has already legislated a useful framework for developing specific guarantees for computerized management of tax information.

Privacy Act of 1974

The Privacy Act of 1974 requires each agency to take certain actions with respect to its records systems, and these mandates bear on their plans for new computer technology as well as the politics of their information programs. Included is the requirement to "maintain all records used in making determination about any individual With such accuracy, relevance, timeliness, and completeness as is reasonable necessary to assure fairness to the individual."

Secondly, each agency must "establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. "

Third, there are certain access and disclosure guarantees, and the Senate Government Operations Report on the bill discusses the relationship of these for computer technology. They are rather general, for the press of Committee time prevented detailed focus on the procurement needs of specific programs such as that of the Internal Revenue Service. (Law enforcement needs were addressed there as well as in comprehensive legislation and reports in the Senate and House Judiciary Committees.)

Fourth, each agency must provide "adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitution~ principles of federalism and separation of powers."

The question is left open as to what safeguards are "appropriate" for each system or data bank. Similarly, the "evaluation" of probable or potential effects is undefined by the statute, and is therefore dependent on the concerns of whatever executive or legislative policy-maker is looking at the proposal. It also provides a broad framework for comments by concerned interest groups on possible effects of automatic data processing proposals.

However, while the agencies, including the IRS, are required to make such reports to Congress, there is no effective place which is equipped to question the authority to proceed with the new system on privacy, security, or confidentiality grounds, except at some point in the Appropriations hearing processes, if the issue is raised in a timely manner by a concerned member. In the case of the TAS proposal, the OMB has been said to have given "programmatic approval" but apparently has not approved the kinds of technological guarantees envisioned. Nor is it indicated in the report what individuals or groups were consulted in developing the software and hardware standards to protect the data. Was there an internal task force? If so, are the reports available on it? Was the Computer Center of the National Bureau of Standards involved in the development of the standards to be required?

The Privacy Act also requires the Privacy Protection Commission to conduct a study to determine "whether the Internal Revenue Service should be prohibited from transferring individually identifiable data to other agencies and to agencies of state governments." A determination of this question may make a difference in the capacities of the new ADP system of IRS.

Major Unanswered Questions in the TAS Proposal

There are a number of questions left unanswered by the IRS TAS report which legislative policy-makers would wish to answer in light of current public and congressional concerns, before such a system is funded.

For example:

Decentralization, Accountability and Oversight for Privacy and Confidentiality;

There is the issue of the effect of the technology on IRS internal administration and agency accountability to the Commissioner of Internal Revenue Service, to the President and to Congress. Congressional hearing records indicate serious problems in accounting and controlling the investigative and data-gathering activities of personnel in field offices under the present system. Yet the new TAS would require a massive decentralization of tax account masterfiles, with 8300 terminals in 10 centers and major field offices, with 750 line printers. This means that more tax return histories will be available all over the country potentially to thousands of employees or others with routine, customary, or unique access to the system. It will require more civil servants keeping more information on more taxpayers for a longer time than ever before in our history.

The problem of guaranteeing proper use and security to such sensitive personal information is administratively and technologically difficult in the present system. Securing it on the basis of such a far-flung decentralized administration of the information system, with the aid of an extensive ADP system, raises even more serious questions of administrative control and accountability in the use of the personal information. On the other hand, it can be argued that, under certain administrative and technical conditions, pursuant to specific laws governing disclosure, collection, retention and use of the information, the computerization might well afford even greater guarantees of privacy, confidentiality, and security than would the manual systems.

The report states that many of the features of the new system for safeguarding confidentiality and security are already in effect the present system, which, in view of recent reports of abuses, raises the question whether more stringent controls are not called for.

Compatibility and Systems Linkage with Other Federal ADP Systems In U.S. and Abroad

Surveys have shown that many, many federal departments and agencies utilize tax returns or tax return information in administering the benefits and rights of many Federal programs. Investigations have shown broad indiscriminate sharing of the data in some cases, without proper authority, and individual and group acquisition of tax information for political purposes. Other agencies use it for random cross-checking. Numerous reviews of such sharing and disclosure are now underway.

The report on the TAS proposal does not address the subject of specifically what other government agencies will feed the IRS system for enforcement or other purposes, or will access it on a regular basis for cross-checking for compliance purposes. Nor does it discuss in detail the potential for compatibility or linkage envisioned for federal, state, local, or indeed, international data systems to assure total coverage of the financial transactions of Americans at home and abroad. Yet these are issues which have gained new importance recently, and which are very much related to the kind of programming needs and technological capacities of the new ADP systems. The lack of citizen education about guarantees possible under new computer technology and the apprehension about having all tax return information potentially instantly available to people in the taxpayer's own community or region therefore need to be considered in connection with the new proposal.

Despite the fact that there are many current proposals for limiting this type of data sharing, or, on the other hand, for expanding it in some cases, the report on TAS merely notes that "None of the proposed changes in the Tax Administration System will effect the existing interagency or intergovernmental informational relationships, nor are they expected to impact on the observance

of the principles of separation of powers and of federalism, including the powers and authority of state and local governments. " Yet these are the very relationships which are under investigation by many in Congress and elsewhere. Despite this statement, the TAS report refers elsewhere to pending reforms and states that the Treasury Department has "proposed a comprehensive statutory revision of present law which would substantially restrict access to this information, and would spell out who would have access to this information, for what purposes, and under what circumstances."

Will the new TAS system be designed then, under the old rules, or the new ones? The inconsistency should be resolved here.

Problems of disclosure of entire tax returns, or of information from them, have been the subject of extensive hearings by congressional committees and the Privacy Protection Commission and study by the Administrative Conference. Recent findings by the Watergate Committee and the Senate Intelligence Committee this week led to recommendations for tight legal prohibitions on access to certain kinds of tax data and on investigations of the returns of unpopular or controversial people or businesses beyond the needs of the tax laws.

To meet the concerns of Congress for protecting this kind of information, it may be necessary to consider the need for machines with extraordinary devices and software used so far only in law enforcement work for data sharing and limited access.

Two examples of the potential for linkages and compatibility on the domestic and on an international basis were described by the Commissioner of Internal Revenue service in testimony before the House Government Operations Committee Subcommittee on Commerce, consumer, and Monetary Affairs on April 12, 1976. He described the IRS efforts to process on a nation-wide scale the information documents filed by employers, payers of dividends and interest and to match them with the returns of taxpayers or of non-filers of returns.

In the sixties, and even now, the IRS was unable to undertake the large scale processing needed to match returns and documents in the face of budget restrictions and lack of resources and personnel. It gradually extended its automatic data processing capacities until 1967, when it finally had a computerized master file of individual income returns operational for the entire country. It has now perfected the recording of the social security numbers in the individual master file. It expects, when it finally acquires appropriations, to get total matching and to cover 4.8 million taxpayer cases of erroneous reporting and non-filing, thereby collecting additional revenue of over \$260 million.

Data Sharing With Social Security Administration

The Commissioner cited a new wage reporting law as looking to cooperative effort between IRS and the Social Security Administration in processing W-2 forms beginning in FY 1979. IRS will be studying the alternative methods of joint document processing with SSA "for whatever cost advantages may be found in that regard. "

The social and political implications of this pooling of resources by the two departments with the most extensive information on the average law abiding citizen have not been explored; nor have Congress and the public been involved in determining the conditions of the sharing.

International Programs

Other international programs are underway by IRS to standardize reporting forms to make them machine readable and easily processed by ADP equipment in the U.S. and abroad. There is an IRS proposal to supply other countries a number (the social security number?) to promote ease in reporting on financial transactions of Americans abroad.

Connection With Other Federal Law Enforcement Computers

It is not clear from the IRS report on TAS what, if any, connection there is between the data in TAS computers and other Treasury and Federal computerized data systems maintained for intelligence purposes. The IRS Intelligence Division is linked to the Treasury Enforcement Communications System (TECH) which accesses and is accessed by the FBI's National Crime Information Center, which is linked to state and local law enforcement offices and some state motor vehicle agencies. In 1974, the Intelligence Division began operating over 30 TECH terminals nationwide, which gives them instant access to NCIC files on individuals and businesses of current investigative interest to all Treasury Enforcement agencies.

For years, the Justice Department, through the Law Enforcement Assistance Administration, has funded research to find administrative methods and technology to promote efficient management of law enforcement records and data swapping among certain federal departments and agencies and between federal, state and local law enforcement. Model codes and state laws on these matters have been adopted by a number of states and state computer centers have been established with tight physical and administrative controls as a condition for obtaining federal grants and for sharing in the information exchange. Comprehensive legislation on the specifics of data control and exchange and on the details of the computer technology has been the subject of long negotiations between the Justice Department and Congressional Committees.

The outcome of this debate may or may not affect certain data elements and retrieval and storage capacities of the TAS plan. The plan should be studied for its relationship to the current efforts to exert controls over the computerization and sharing of intelligence information on people.

Summary

A number of Congressional committees, members of Congress, Federal agencies, and other groups have demonstrated interest in this subject. I have talked with staff members of most of them, and have examined their hearings, reports and other documentation of their concern about possible links between IRS computers and information systems and such issues as privacy, confidentiality, and civil liberties.

To varying degrees, all of them have proposals for reforms in the administration of the tax laws to tighten up the system and protect the privacy of citizens and the confidentiality of tax returns.

Depending on which reforms are finally enacted, the changes may alter existing relationships for information exchange and for actual and potential linkage between IRS systems and those of other Federal departments and agencies and state and local governments.

In addition, they may well affect many phases of the management technology involved in information collection, storage, maintenance, retrieval, use and dissemination. These changes will require at least some measure of reevaluation of the software and hardware needs for the proposed decentralized computerized system, and possible new procurement standards governing access, confidentiality, security, transmission, systems linkage, storage capacity, retrieval capability, and other features.

This analysis of some major concerns suggested by the new plan does not ignore the obvious economic and management benefits of such changes, but rather is meant to focus on some large issues which, on first glance, appear either to have been ignored or not specifically addressed in the official explanation of the TAS. It may be that some of these are matters which can be explained away or resolved easily.

The plan should be studied from a philosophical and social theory view, as well as from a privacy and civil liberties perspective. It needs the comments of experts who understand the political and administrative changes being considered in the context of the technology sought to effect them.

In addition, it requires the perspective of public administration, with a concern for organizational theory and the physical and human elements which would be required for a successful operation. Such a perspective would bring also a concern for the problems of span of control and the relative benefits of administration by means of field structure versus centralized structure. The plan then requires some economic analysis to consider anew the cost-benefits ratio when these other factors caused by the possible social and individual impact of the plan have been added to the equation.

The following are among sources examined in connection with the proposed Tax Administration System:

U.S. Congress, House Committee on Ways and Means. *Hearings*, "Confidentiality of Tax Return Information. " 94th Congress, 2d Session, January 28, 1976.

U.S. Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer and Monetary Affairs. *Hearings*, Internal Revenue Service Operations, Income Information Document Matching Program. April 12, 1976.

U.S. Congress, House Subcommittee on Government Information Individual privacy. *Hearings*, 1974, 75, 76.

U.S. Congress, Senate Committee on Finance, Subcommittee on Administration of the Internal Revenue Code. *Hearings*, "Federal Tax Return Privacy," April 21, 1975 and January 23, 1976, Parts I and H, 94th Congress.

U.S. Congress, Senate Appropriations Committee, Subcommittee on Internal Revenue Service, etc. *Hearings*, 1974, 75.

U.S. Congress, Joint Committee on Internal Revenue Taxation, Committee Print, "Investigation of the Special Service Staff of the Internal Revenue Service," Prepared for the Joint Committee by its Staff. 94th Congress, 1st Session, June 5, 1976.

U.S. Congress, Joint Committee on Internal Revenue Taxation, Staff, "Confidentiality of Tax Returns" Committee Print, September 25, 1975, Prepared for the use of the Committee on Ways and Means.

U.S. Congress, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Final Report. 94th Congress 2d Session, April 26, 1976. Recommendations, Internal Revenue Service. p. 313.

U.S. Congress, Senate Judiciary Committee Subcommittee on Constitutional Rights. Political Intelligence in the Internal Revenue Service, Special Services Staff.

Administrative Conference of the United States. Report on Internal Revenue Service Project. (Draft, November 1975) Especially, Ch 6, "Tax Return Confidentiality."

U.S. Privacy Commission. *Hearings*, March 1976 – Tax Return Privacy; Testimony and proposed disclosure code developed by the Commission.

U.S. Advisory Commission on Intergovernmental Relations. Report.

American Bar Association Tax Section. (Comments)

American Civil Liberties Union. (Comments)

Tax Reform Research Group. (Comments)