

Testimony of George K. Yin *
Hearing Before the Oversight Subcommittee of the
House Committee on Ways and Means
on Legislative Proposals and Tax Law Related to Presidential
and Vice-Presidential Tax Returns
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Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to participate in this hearing on Legislative Proposals and Tax Law Related to Presidential and Vice-Presidential Tax Returns. Title X of H.R. 1 proposes new rules for the disclosure of tax returns of presidents, vice-presidents, and candidates for those offices. My testimony will focus on the existing authority of the Ways and Means Committee to obtain and disclose the tax returns and return information (collectively, “tax return information”) of any taxpayer, including the president, vice-president, and any business that they own.¹ I am happy to answer any questions on the broader issue of tax return privacy and disclosure.

1. The Ways and Means Committee may obtain the tax return information of any taxpayer from the Treasury Department.

Code section 6103(f)(1) authorizes the Ways and Means Committee to obtain the tax return information of any taxpayer (individual or business) from the Treasury Department. The chairman of the committee must forward a written request of the desired information to the Secretary of the Treasury who “shall furnish” it to the committee. If the tax return information can be associated with a specific taxpayer, the committee may receive and examine the information only while sitting in closed executive session unless the taxpayer otherwise consents.

This authority was added in 1924. Previously, the president had the sole right to obtain and disclose the tax returns held by the Bureau of Internal Revenue (BIR) (predecessor to the IRS). Congress decided in 1924 that as a co-equal branch of government, it should have the same authority as the president.

Several matters brought this issue to the attention of Congress. First, Congress had begun an investigation of the BIR and found that it could not carry out its work without having access to tax returns. Second, some in Congress wanted to investigate possible conflicts of interest

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¹ Other congressional tax committees have the identical authority but I will generally reference only the Ways and Means Committee.

involving Andrew Mellon, who as Treasury Secretary continued to own many private business interests. Third, there was concern in Congress that Mellon had improperly accessed and publicly disclosed the tax return information of Senator James Couzens (R.-Mi.) in connection with a feud between the two men. Finally, Congress wanted to examine the tax returns of the alleged principals involved in the Teapot Dome scandal. After initially resisting, President Coolidge provided those returns to Congress (using his authority as president to obtain and disclose anyone's returns). But this experience highlighted for Congress the imbalance in the rights of the two branches to the information.

Section 6103(f) does not place any conditions on the exercise of the authority to obtain tax return information by the Ways and Means Committee. Moreover, it provides no basis for the Treasury Secretary to refuse a request. I believe both features were intentional. Since the president at the time had unconditional access to tax returns, Congress wanted to give its committees the same right.

When the law was passed, Mellon's top deputy at the Treasury wrote to Mellon (who was in Europe) to inform him of the new law. The deputy indicated that he thought it would be very partisan for Congress to use the new law to obtain Mellon's personal tax returns, but "if they demand it we have no recourse."² I believe those few words describe the general understanding in 1924 and the years since that there is no basis for the Treasury Secretary to refuse a committee request under this law.

Should the present Treasury Secretary refuse a committee request, we would be in uncharted territory. The authority appears to have been rarely invoked since 1924, and I know of no instance when a request under the authority has been refused. If a refusal resulted in a conflict requiring judicial resolution, a court might look to precedents involving the analogous question of congressional enforcement of a subpoena. Those cases generally indicate that Congress must act with a legitimate purpose to have its subpoenas enforced, meaning generally a purpose consistent with its responsibilities under the Constitution. Therefore, notwithstanding the absence of statutory conditions, the committee would be well advised to request tax return information only if it has a legitimate purpose.

2. If it has a legitimate purpose, the Ways and Means Committee may submit any of the tax return information it obtains to the House.

Code section 6103(f)(4)(A) (second sentence) authorizes the Ways and Means Committee to submit to the House any tax return information that it obtains pursuant to section 6103(f)(1). The statute does not presently place any limitation or condition on the exercise of this authority

² Letter from Gerrard B. Winston, Undersecretary of the Treasury, to Andrew Mellon, Secretary of the Treasury, July 28, 1924, in General Records of the Treas. Dept., Central Files, 1917-1932 (Ofc. of Treas. Sec'y) (RG 56, Entry No. A1 191), box #198 (BIR Investigation, 1923-32 file), Nat'l Archives & Records Admin., College Park, Md.

by the committee. As originally enacted in 1924, however, the law authorized the committee to submit only “relevant or useful” information to the House. These two modifiers were stricken from the statute (without any explanation) as one of several hundred “technical amendments” approved by the Senate en bloc at the end of its debate of the bill that would become the Tax Reform Act of 1976 (the “1976 Act”). The bill as amended was agreed to by the House and signed into law, again without any discussion of the change.

There is no discussion in the legislative history of the meaning of the two modifiers, which were added by a House floor amendment in 1924. The plain meaning of the words suggests a very low bar for the committee that leaves it with considerable discretion. On the other hand, House debate in 1924 showed much respect for the privacy rights of taxpayers, a congressional concern dating back to at least 1870. Since submission of tax return information to the House for possible disclosure to the public is more invasive of privacy rights than the mere retrieval of such information by the committee (while sitting in closed executive session), Congress must have intended the submission authority to be subject to at least the same limitation placed on the committee’s ability to obtain the information. Hence, I concluded in recent research that the law in 1924 required the committee to have, at a minimum, a legitimate purpose for submitting any information to the House.³

I do not believe the striking of the two modifiers in 1976 changed that interpretation. The legislative history of the 1976 Act indicates Congress’s general intention to tighten existing disclosure rules, not loosen them, including those applicable to its committees. The only statements in the record on this issue by legislators or witnesses were to restrict the discretion of the tax committees, not increase it. I concluded in my research that the amendment was merely a technical drafting change—consistent with the manner in which it was presented to the Senate—to conform to an identical change made to a provision applicable to non-tax committees. Since non-tax committees under the Senate’s bill were barred from making any public disclosures, the words, “relevant or useful,” were dropped from the non-tax committee provision as surplusage. I believe the change to the tax committee provision was made to conform to that amendment and was not intended to have any substantive effect.⁴

Hence, following the 1976 Act and continuing today, the Ways and Means Committee may submit tax return information to the House only if it has a legitimate purpose. This authority is separate from the committee’s right to obtain the information. Since the submission authority might result in disclosure of the information to the public, the committee should exercise it only if the committee has a legitimate purpose for disclosing the information to the public.⁵

³ See George K. Yin, “Preventing Congressional Violations of Taxpayer Privacy,” 69 TAX LAWYER 103, 127-29 (2015).

⁴ See id. at 132-35.

⁵ For a committee submission to the House that, in my view, failed to satisfy the legitimate purpose requirement, see id. at 110-18, 149.

3. The authority of the Ways and Means Committee to obtain and submit tax return information should be interpreted in a manner that does not frustrate Congress’s informing function with respect to such information.

Prior to 1976, the president could disclose tax return information to the public. In addition, the tax committees and certain non-tax committees of Congress could each submit tax return information to the House or Senate for possible disclosure to the public. Consistent with Congress’s goal of providing stronger protections for the privacy rights of taxpayers, the 1976 Act eliminated the ability of both the president and non-tax committees to make any such disclosures. The president was generally barred from making any disclosure at all, and non-tax committees were permitted to submit tax return information to the House or Senate only when that body is sitting in closed executive session (unless the taxpayer otherwise consents).⁶

No change was made, however, to the authority of the tax committees to submit tax return information to the House or Senate. Although desiring to strengthen taxpayer privacy rights, Congress also wanted to protect its ability to carry out its “informing function”—its responsibility to inform the public about the administration of the law.⁷ Just two years earlier, Congress had seen the importance of having this ability when it used its authority under the predecessor to section 6103(f)(4)(A) to release to the public a report of the staff of the Joint Committee on Internal Revenue Taxation⁸ containing tax return information of former President Nixon. With the changes made in the 1976 Act, the tax committee authority became the *only* way for Congress to inform the public about matters requiring disclosure of tax return information.

It was natural for Congress to delegate this responsibility to the tax committees. Following Watergate, Congress knew that the president had misused his authority to protect the confidentiality of tax return information.⁹ In addition, Congress was aware that certain non-tax committees had also not adequately protected it. Meanwhile, the tax committees had handled the information responsibly and without incident. They also were the most likely to need the information.

Because the tax committee authority is the sole means by which Congress can make public disclosures of tax return information, the authority should be interpreted in a manner that does not frustrate Congress’s ability to carry out its informing function with respect to such information. The following example illustrates the type of interpretation required.

Under Code section 6103(f)(3), certain non-tax committees may obtain tax return information from the Secretary of the Treasury. Suppose a non-tax committee obtains such

⁶ See Code section 6103(f)(4)(B) (second sentence) and (g).

⁷ Former President Woodrow Wilson asserted that the informing function is even more important than Congress’s lawmaking role. See WOODROW WILSON, CONGRESSIONAL GOVERNMENT: A STUDY IN AMERICAN POLITICS 303 (1885).

⁸ Now the “Joint Committee on Taxation.”

⁹ One of the Articles of Impeachment against President Nixon involved his use of the tax agency and its tax returns for improper political purposes. See H. Judiciary Comm., Impeachment Article II, H.R. Rep. No. 93-1305, at 3 (1974).

information and Congress determines that its disclosure to the public would further one of the constitutional responsibilities of Congress. Code section 6103(f)(4)(B) (second sentence) permits the non-tax committee to submit the information to the House or Senate but no public disclosure of it is allowed. If the tax committees were unable to obtain the same information because it relates to a matter outside of their legislative jurisdiction, then it would not be possible for Congress to carry out its informing function with respect to the information. In view of its experience with the Nixon report just two years earlier, Congress could not have intended that result in 1976. Hence, the “legitimate purpose” for the tax committees to obtain or submit tax return information should not be limited only to purposes within their specific legislative jurisdiction. Rather, a permissible purpose should include any responsibility given to Congress under the Constitution.

4. Conclusion.

The tax committees have two separate authorities—they may obtain the tax return information of any taxpayer from the Treasury, and may submit any of the information obtained to the House or Senate for possible disclosure to the public. Each action requires the committee to have a legitimate purpose, meaning generally a purpose that furthers a constitutional responsibility of Congress. Since the authority to submit might result in disclosure of the information to the public, the committee should exercise it only if the committee has a legitimate purpose for disclosing the information to the public.

In addition, because the tax committee authority is the sole means by which Congress can make public disclosures of tax return information, the authority should be interpreted in a manner that does not frustrate Congress’s informing function with respect to such information. In 1976, Congress in effect placed tax return information in a locked safe but did not throw away all of the keys for purposes of disclosing such information to the public. Rather, it preserved just one key for that purpose and gave it to the tax committees. The law therefore should be interpreted to enable the tax committees to use the key in appropriate and necessary circumstances.

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Thank you very much. I am happy to answer any questions.